

Spokely ("Plaintiffs").

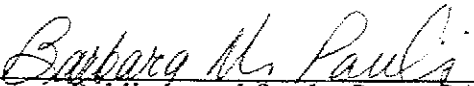
2. I have personal knowledge of the facts contained herein, and am competent to testify thereto.
3. Attached as Exhibit A to this Affidavit is a true and correct copy of an excerpt from the 1987 House Research Agency report entitled "Public Financing In Alaska."
4. Attached as Exhibit B to this Affidavit is a true and correct copy of "Governor Releases Amended Endorsed Budget," Office of the Governor February 5, 2016 Press Release.
5. Attached as Exhibit C to this Affidavit is a true and correct copy of and Attorney General's Opinion, File No. 366-464-83, dated February 28, 1983.
6. Attached as Exhibit D to this Affidavit is a true and correct copy of Fiscal 50: State Trends and Analysis, January 29, 2015 Update, the Pew Charitable Trusts.
7. Attached as Exhibit E to this Affidavit is a true and correct copy of an article published in the Peninsula Clarion on January 26, 2015.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

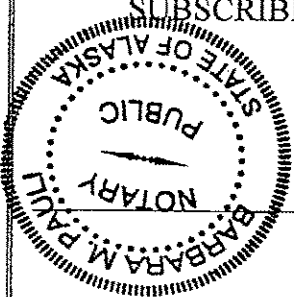


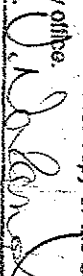
 Louisiana W. Cutler

SUBSCRIBED AND SWORN to before me this 6th day of February, 2015.



 Notary Public in and for the State of Alaska
 My commission expires: 12/10/2017



I hereby certify that the annexed instrument
 is a true and correct copy of the original one
 filed in my office.
 ATTEST:

 CLERK-TRIAL COURTS
 State of Alaska
 at Ketchikan

K&L GATES LLP
 420 L STREET, SUITE 600
 ANCHORAGE, ALASKA 99501-1971
 TELEPHONE: (907) 276-1969

**PUBLIC SCHOOL FINANCING
IN ALASKA**

**House Research Agency
Alaska State Legislature
February 1987**

House Research Agency Report 87-A

In 1985, the Southwest Region School District filed suit alleging that the State improperly withheld PL 874 payments from that district during the 1984 to 1985 school year. An out-of-court settlement, contingent on legislative appropriation, has been reached between the State and the district. The settlement of this complaint removes the State from additional jeopardy for payments which may have been improperly withheld for FY 85, but not for FY 86 and FY 87. Should it be determined that the State improperly withheld State aid in consideration of PL 874 payments for these or future years, the State may be required to repay all funds improperly withheld. In addition, failure to remedy noncompliance could result in loss of federal funds (pages 25-26).

Equalization of School District Revenues

Equalization is the process by which state aid payments to school districts are adjusted to account for differences in property wealth among those districts. During the past few years, lawsuits in several states have challenged state education financing laws on the grounds that those laws do not adequately equalize state aid. The following education financing strategies are commonly used by states to allocate state aid for education. In many cases, they are used in combination or with modifications that reflect specific characteristics of states:

Flat Grants. Each school district receives the same revenue per student or per instructional unit. To the extent that local revenue is needed to supplement state aid, that revenue is not equalized because wealthier districts can raise more tax revenue per student at the same level of tax effort than can poorer districts (page 27).

Foundation Plans. Each school district is guaranteed a level of State funding, usually established on a per student basis. As a condition of receipt, all districts impose a uniform tax levy. The foundation then pays each district the difference between the local tax yield and the guaranteed level of support. As with flat grants, local revenue raised in excess of the required local contribution is not equalized (page 28).

Percentage Equalizing Plans. Each district is guaranteed state support at a certain percentage of the district's budget. The percentage of each district's budget that is derived from state aid is inversely related to the wealth of the district. Under certain conditions, percentage equalizing plans equalize education resources among districts to a greater extent than foundation plans because all the dollars within a district's budget are equalized, not just those related to the foundation level of support. Alaska's current education financing law uses the percentage equalization concept, but the law restricts the degree of fluctuation in the percentage

of each district's State aid between 97 and 100 percent. This significantly limits the degree of equalization achieved (pages 28-29).

Power Equalizing Plans. These plans refer to the recapture and redistribution of local tax revenue by the state. Under this type of plan, a district which generates revenue (at a uniform tax rate) that exceeds its state aid allocation would return this excess revenue to the state for allocation to other districts (page 29).

Full State Funding. Total expenditures to each district are provided by state or federal sources. Currently, Hawaii is the only state with full state funding (page 30).

Alaska's current education financing law combines the flat grant and percentage equalization strategies. City and borough school districts receive at least 97 percent of their State aid as a flat grant while REAAs receive 100 percent of their State aid as a flat grant. City and borough districts may receive additional funds depending upon their property value. Those districts with per-student property values higher than the statewide average receive no additional aid while those with per student property value less than the statewide average receive relatively more aid. In FY 87, four districts--North Slope, Sand Point, Valdez and Unalaska--had per-student property values which exceeded the statewide average. Consequently, these districts received 97 percent of basic need while other districts received a higher percentage. The current foundation law also contains a secondary allocation designed to encourage local contributions for education in the city and borough districts (pages 34-35).

Although school district revenue derived from State aid is equalized, the tax rates required to generate additional local funds depend upon the property wealth of the district and so are not equalized. Approximately 26 percent of all FY 87 city and borough school district revenues are derived from local sources (page 41).

In addition, funds distributed through the secondary allocation provisions of the foundation program are not equalized. These allocations are based on actual contribution per ADM. The wealthier a district, the more dollars it can contribute for education at a given rate of taxation (page 41).

Relationship Between Property Wealth and Education Revenue. We examined the relationship between the FY 87 property wealth and revenue of Alaska's city and borough school districts. In the absence of a vigorous equalization formula which neutralizes the revenue raising advantage of the wealthier districts, we would expect wealthier districts to have significantly higher revenue per ADM than poorer districts. This is not necessarily the case. The mean budgeted revenue per ADM for the 10 districts with the lowest property value per student is \$10,398 as compared with \$7,847 for the 10 districts with the highest property value per student and

SUMMARY

\$6,888 for the remaining 12 districts. The average revenue per ADM among the REAAs is \$9,193. (In all cases, revenues are adjusted for the geographical differentials used to adjust education costs in the previous foundation formula.) Several factors help to explain these results:

The foundation formula allocates more revenue per student to the smaller single-city districts and REAAs (which have many smaller school sites) than it does to other districts. Among the city and borough districts, smaller single-city districts are among the poorest with regard to property value (page 47).

The current foundation program was designed in part to provide each district with revenue dependent upon revenue received in previous years, which in turn was based on revenue received in FY 83. Because the foundation law that was in effect in FY 83 equalized State aid, current State aid continues to reflect this equalization (page 47).

The degree to which State funds support local school districts mitigates the wealth advantage of some districts. Because State aid provides such a high percentage of the education need of most districts, relatively few local resources are needed to supplement these funds (page 47).

Several characteristics of the State's education financing system may be potentially troublesome. The relationship between a school district's tax generating potential and its education revenue is relatively weak. This is because much of the equalization that does occur is based on the district size, number of schools and other factors unrelated to district wealth. For example, the North Slope and Valdez, the two wealthiest districts in the state, both among the top ten districts in revenue per ADM but levy local taxes at rates below districts with less revenue per ADM (page 48).

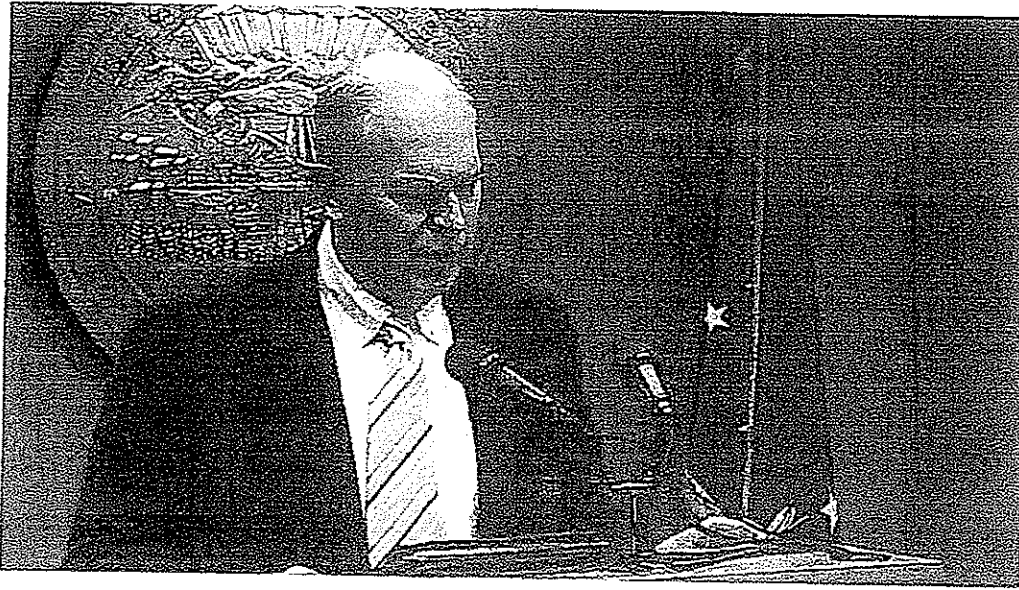
Also, because equalization is not based on district wealth, the current pattern of State aid allocations may be difficult to maintain if State appropriations for education continue to decline. As State aid declines, school districts can either reduce education programs or increase local support to supplement State aid. Under the latter option, wealthier districts will raise more local revenue per pupil for a given level of taxation than poorer districts (pages 48-49).

Finally, compliance with PL 874 is problematic under Alaska's current education financing law. Should compliance be required, the State will have to meet one of the federal equalization tests. Should it be determined that current State law does not equalize revenues sufficiently to meet one or more of these tests, the State would face liability for funds improperly withheld as well as possible suspension of future PL 874 payments (page 49).

Search

Governor's Office > Press Room > Full Press Release

GOVERNOR RELEASES AMENDED ENDORSED BUDGET



February 5, 2015 JUNEAU—Governor Bill Walker today released his budget for fiscal year 2016 (July 1, 2015 – June 30, 2016), which he emphasized is a starting point for discussions.

"There are cuts in here, and some will be painful," Governor Walker said. "Our state right now has a \$3.6 billion budget deficit, leading us to draw about \$10 million every single day from savings. I want to be up-front with Alaskans throughout this process."

The fiscal year 2016 budget has more changes than the placeholder budget the Walker administration submitted in December. With the decline in state revenues, the Walker administration cut an additional \$132 million from agencies' unrestricted general fund operating budgets from the December budget, while preserving Governor Walker's vision to maintain essential services and protect reserves.

"We will prioritize the delivery of services and look for ways to provide services at lower costs," said Pat Pitney, Director of Office of Management and Budget. "We will combine services where possible to gain efficiencies."

The administration focused on reducing overhead and administrative costs before reducing services, and worked hard to make sure cuts do not disproportionately impact small, outlying offices where services may be most needed.

The proposed fiscal year 2016 budget reflects a \$240 million reduction in agency unrestricted general fund spending from fiscal year 2015 and eliminates more than 300 positions.

"We'll work to minimize state employee layoffs by eliminating vacant positions and reducing others through retirements, resignations and transfers," Governor Walker said. "However, we are also leading by example. I cut 11 percent of my executive office through leaner staffing and operations."

EXHIBIT B
Page 1 of 2

Some highlights of the budget include:

- Maintaining funding for front-line social workers at Office of Children's Services
- Reducing government overhead. For example, cut \$6 million, which is 22 percent, from administrative functions within the Department of Administration's budget
- Meeting non-negotiable obligations. For example, covered \$257 million of retirement costs.

Governor Walker believes the state can strengthen private, nonprofit, tribal and federal partnerships, and provide state services with less state support while minimizing impacts on Alaska's economy.

"We'll leverage non-state dollars," Governor Walker said. "For example, we anticipate saving \$4 million in the Department of Corrections for inmate health care due to Medicaid expansion."

The proposed budget now moves to the legislature, which will refine the numbers through the legislative process.

Governor Walker encourages all Alaskans to stay active in the budget discussion and make their voices heard so the state can reduce expenditures but continue the level of service important to citizens.

To view Governor Walker's endorsed FY16 proposed budget, visit <https://www.omb.alaska.gov/html/budget-report/fy-2016-budget/amended.html>.

Here is a glossary of terms: <https://www.omb.alaska.gov/html/information/budget-terminology.html>

UGF – unrestricted general funds

PFT – permanent full-time employee

PPT – permanent part-time employee

NP – non-permanent employee

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1983 WL 42481 (Alaska A.G.)

Office of the Attorney General

State of Alaska
File No. 366-464-83
February 28, 1983

Deadline for submitting capital appropriations

*1 Peter McDowell
Director
Office of Management & Budget
Governor's Office

You have orally asked for a quick response to the question of what deadline, if any, applies to the governor's submission to the legislature of bills making appropriations for capital projects. The short answer is that there is none.

The governor's authority for submitting appropriation bills to the legislature derives, primarily, from the following two provisions of the Alaska Constitution:

Article III, Section 18:

MESSAGES TO THE LEGISLATURE. The governor shall, at the beginning of each session, and may at other times, give the legislature information concerning the affairs of the State and recommend the measures he considers necessary. [Emphasis added.]

Article IX, Section 12:

BUDGET. The governor shall submit to the legislature, at a time fixed by law, a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments, offices, and agencies of the State. The governor, at the same time, shall submit a general appropriation bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenues.

Implementing the first sentence of the latter section, the legislature has enacted several provisions in AS 37.07, the Executive Budget Act. AS 37.07.020, 'Responsibilities of the Governor,' requires the governor to 'prepare and submit to the legislature before the fourth legislative day a budget for the succeeding fiscal year.' Under AS 37.07.062, 'Capital Budget,' the general appropriation bill submitted under AS 37.07.020 is to 'contain a separate section for capital outlays.' HB 105, introduced January 21, 1983, complies with those statutes.¹

The legislature has also enacted AS 37.07.070, 'Legislative Review.' That section begins by requiring the legislature to consider the governor's 'proposed comprehensive operating and capital improvements programs and financial plans . . .' and requiring the operating and capital budgets to be separately reviewed. That section also says:

During each regular session of the legislature, legislative review of the governor's supplemental appropriation bills and the governor's budget amendments shall be governed by the following time limits:

(1) Requests by the governor for supplemental appropriations for state agency operating budgets for the current fiscal year may be introduced by the rules committee only through the 45th legislative day.

First of all, that section does not set a time limit for consideration of supplemental appropriation bills for capital items; it mentions only 'operating budgets.' Secondly, that statute is rather strangely worded in that it leads off with the idea that it will be setting a limitation for legislative review of appropriation bills, but then the first paragraph under that lead-in language is worded in terms of a limitation on the introduction of the governor's recommended appropriation bills. Since the governor's authority and responsibility are derived from the constitution, any statutory restriction on the exercise of that authority or responsibility must be viewed as merely a procedural directive to the executive.² To give it greater weight than that could prevent the governor from dealing with emergencies and other situations in which the best interests of the state require an appropriation to be submitted after the statutorily specified time. Such a restriction would violate the separation-of-powers doctrine—a doctrine which the Alaska Supreme Court has held applies in this state. Public Defender v. Superior Court, Third Judicial District, 534 P.2d 947 (Alaska 1975).

*2 Moreover, nothing in Article II of the Alaska Constitution, the legislative article, restricts the right or power of the legislature to consider appropriation measures submitted after that 45th-day deadline. Similar to the executive's situation, the existing constitutional power and responsibility of the legislature to legislate cannot be restricted by any provision short of a constitutional amendment. Perhaps recognizing this, the statutes do not specify any sanctions for failure to abide by this additional time limitation.

Supporting the conclusion that the 45th-day limitation set in AS 37.07.070(1) is directory rather than mandatory are the fundamental rules of construction that an interpretation which would preserve the constitutionality of a statute is preferred over an interpretation which would require holding it invalid (Sands, Sutherland Statutory Construction, 4th ed., sec. 45.11) and that 'unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result' (*id.*, sec. 45.12). Applying AS 37.07.070(1) strictly, rather than just as a guide, could prevent the governor from introducing an essential appropriation bill; that would produce a result that is both unconstitutional and unreasonable.

This is consistent with AS 37.07.010, 'Statement of Policy,' which indicates that the basic purpose of the Executive Budget Act is the orderly development and review of a comprehensive system for state program and financial management. The purpose is not arbitrarily to erect barriers to dealing with the state's needs.

Although dealing with a matter of form rather than a deadline, the court in People v. Tremaine, 21 N.E.2d 891 (N.Y. 1939), ruled that, in light of the executive's obligation to prepare a budget, the manner in which the budget and appropriation bills are drafted before submission to the legislature is within the sound discretion of the executive, subject to any guidelines set out in the constitution. Disputes between the executive and the legislative branches concerning such matters basically involve political questions and the courts of often will not decide them. See Saxton v. Carey, 378 N.E.2d 95 (N.Y. 1978). Meeting the statutory deadlines would, of course, avoid the present issue, and that might be the most appropriate course of action.

To summarize: (1) the deadlines set in AS 37.07.020 and 37.07.062 appear to be constitutional under Article IX, Section 12 of the Alaska Constitution and they have been met by HB 105; (2) the 45-day limitation imposed by AS 37.07.070(1) must be construed to be merely directory rather than mandatory; and (3) AS 37.07.070(1) does not refer to capital appropriations.³

Further supporting the conclusion that AS 37.07.070(1) is regarded as merely directory is the fact that, since that deadline's enactment in 1977, there have been numerous instances of supplemental appropriations for operating budgets (as well as capital projects) introduced after the 45th legislative day. Just a few examples are:

1982 Session

*3 SB 894—supplemental appropriation to Human Rights Commission for personal services money (377-094-82). Introduced 4/20/82 (100th day).

1981 Session

HB 294—supplemental appropriation to Department of Law for miscellaneous judgments (\$956,000) (377-137-81). Introduced 3/9/81 (57th day).

HB 295—supplemental appropriation to Department of Administration and Department of Transportation and Public Facilities for administrative costs, deferred compensation, and claim settlement for Cold Bay Project (377-142-81). Introduced 3/9/81 (57th day).

HB 296—supplemental appropriation to Department of Public Safety for Public Safety Employees Association (377-142-81). Introduced 3/9/81 (57th day).

HB 297—supplemental appropriation to Departments of Labor and Military Affairs for workers' compensation fund and second injury fund (377-138-81). Introduced 3/9/81 (57th day).

HB 298—supplemental appropriation to University of Alaska for sewage disposal costs, teachers contracts (377-139-81). Introduced 3/9/81 (57th day).

HB 462—special appropriation to provide financing for alternative energy loans (377-162-81). Introduced 4/2/81 (81st day).

HB 463—special appropriation to Alaska Power Authority for power project financing and personnel costs (377-163-81). Introduced 4/2/81 (81st day).

SB 259—supplemental appropriation to Department of Health and Social Services for nursing services (377-141-81). Introduced 3/9/81 (57th day).

SB 267—supplemental appropriation to Department of Fish and Game to reimburse governor's contingency fund for construction costs of crib dam (377-140-81). Introduced 3/11/81 (59th day).

SB 309—supplemental appropriation to Department of Health and Social Services and Department of Public Safety for administrative services and program costs (377-143-81). Introduced 3/19/81 (67th day).

SB 322—supplemental appropriations to various departments to pay prior-year obligations and miscellaneous claims (377-150-81). Introduced 3/24/81 (72nd day).

1980 Session

HB 939—supplemental appropriation to Department of Transportation and Public Facilities for state equipment fleet fuel (377-131-80). Introduced 3/6/80 (53rd day).

HB 959—supplemental appropriation (\$271,354,000) to Alaska Housing Finance Corporation (377-137-80). Introduced 3/17/80 (64th day).

HB 958—supplemental appropriation for confidential unit salary increases (377-138-80). Introduced 3/17/82 (64th day).

Norman C. Gorsuch
Attorney General
Arthur H. Peterson
Assistant Attorney General

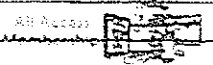
Footnotes

- 1 AS 37.07.060(b)(3), which also sets a 4th-legislative-day deadline, speaks of a report, rather than a bill, containing the governor's capital improvements program.
- 2 Reaching a similar conclusion is the January 16, 1963 Opinion of the Attorney General regarding executive orders and the statute which is now AS 24.30.130(b).
- 3 The time available has not allowed extensive research into the court decisions, statutes, and Constitutional Convention Proceedings. However, this memorandum should suffice for the present.

1983 WL 42481 (Alaska A.G.)

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Revenue officials explain tax credit issue flagged by Walker

Posted: January 26, 2015 9:40pm

By Secky Bohrer

JUNEAU — State Revenue department officials told lawmakers Monday that the tax credits that were a source of contention in an opinion piece by Gov. Bill Walker are being paid primarily to small explorers or those developing new oil and gas fields in Alaska.

Walker earlier this month said the state stood to pay out about \$100 million more in oil and gas production credits than it takes in in production taxes this year and about \$400 million more next year. He referenced the 2013 rewrite of Alaska's oil tax law, saying the overhaul occurred with little consideration given to low prices. Giving away more in tax breaks than the state collects is irresponsible and unsustainable, Walker said.

The department, in its fall revenue forecast, projected that the state would pay \$625 million in so-called refundable credits. Revenue Commissioner Randall Hoffbeck told the Senate Finance Committee these are credits primarily to explorers or developers that have no tax liability. He said the credits are split pretty evenly between activity on the North Slope and in Cook Inlet.

The North Slope's major players are not part of the group that would benefit from this category of credits, and they are paying taxes, Hoffbeck said. But production taxes amid low oil prices are forecast to total about \$524 million this year, down from about \$2.6 billion last fiscal year, according to the department.

Committee co-chair Anna MacKinnon, R-Eagle River, said the opinion piece seemed to leave the impression that the problem was with the North Slope's big three companies.

Walker's spokeswoman has said the governor was sharing facts with Alaskans as he and the administration were learning them and that the piece was not a precursor to any legislation. Walker took office in December.

Hoffbeck said there is no systemic problem with the credits themselves. He said this is a cash-flow issue, driven by low prices.

"Investments in the future, when you don't have much revenue, are painful. But they're still investments in the future," Hoffbeck said.

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