

LEGAL SERVICES

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

(907) 465-2450
LAA.Legal@akleg.gov
120 4th Street, Room 3


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

MEMORANDUM

August 26, 2021

SUBJECT: Permanent Fund Amendment
(SB 53; Work Order No. 32-GS1693\A.8)

TO: Senator Roger Holland
Attn: Ed King

FROM: Emily Nauman
Deputy Director 

Please find the abovementioned amendment attached.

As you are likely aware, under the constitutional dedicated funds prohibition,¹ the appropriations in sec. 37.13.145(b) of the bill are not mandatory. Each year the legislature is free to appropriate *any* amount from the earnings reserve account for any public purpose. The language added by the amendment does not change that.

The Alaska Supreme Court has confirmed this understanding. In *Wielechowski v. State*, the court held that despite the mandatory statutory language, the use of permanent fund income in the ERA is subject to normal appropriation and veto budgetary procedures.² In sum, the legislature may appropriate from the earnings reserve account any amount, and may divide that amount across whatever purposes, regardless of the language in statute. This is true with the current statute and will remain true if the statute is amended as in the attached bill.

¹ That section, in full, provides:

SECTION 7. Dedicated Funds. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

² 403 P.3d 1141, 1143 (Alaska 2017). The holding in *Wielechowski* is consistent with several other cases on the budget process and the anti-dedication clause. See *Alaska Legislative Council v. Knowles*, 21 P.3d 367 (Alaska 2001); *State v. Alex*, 646 P.2d 203 (Alaska 1982); and *Sonneman v. Hickel*, 836 P.2d 936 (Alaska, 1992).

Senator Roger Holland

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If I can be of further assistance, please advise.

ELN:mjt

21-351.mjt

Attachment