

# LEGAL SERVICES

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## MEMORANDUM

April 10, 2026

**SUBJECT:** Legislative confirmation of members of the Alaska Permanent Fund Corporation Board (HB 315; Work Order No. 34-LS1491\A)

**TO:** Representative Ashley Carrick  
Chair of the House State Affairs Committee  
Attn: Stuart Relay

**FROM:** Megan A. Wallace  
Chief Counsel 

You asked if there were any legal issues with requiring legislative confirmation of the public members of the board of trustees (board) for the Alaska Permanent Fund Corporation. Because the Alaska Permanent Fund Corporation is a public corporation, requiring legislative confirmation of board members is likely unconstitutional.

### Discussion

The Alaska Permanent Fund Corporation is a public corporation managed by the board.<sup>1</sup> The board consists of six members appointed by the governor.<sup>2</sup> Two of the members must be the heads of principal departments of state government, one of whom must be the commissioner of revenue. The other four members are public members.<sup>3</sup>

AS 37.13.050, as originally enacted in 1980, required that all members except for the commissioner of revenue be confirmed by "a majority of the members of the legislature in joint session."<sup>4</sup> The statute was amended in 1982, and the amendment removed the legislative confirmation requirement.<sup>5</sup>

I was unable to find any legislative history to explain why the legislative confirmation requirement was removed in 1982. Nevertheless, the confirmation requirement is probably unconstitutional.

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<sup>1</sup> AS 37.13.040.

<sup>2</sup> AS 37.13.050(a).

<sup>3</sup> *Id.*

<sup>4</sup> Sec. 5, ch. 18, SLA 1980.

<sup>5</sup> Sec. 1, ch. 81, SLA 1982.

Under art. III, sec. 26, Constitution of the State of Alaska:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

In *Bradner v. Hammond*, the Alaska Supreme Court held that art. III, sec. 26 outlined the extent of the legislature's authority regarding executive appointment.<sup>6</sup> If a board or commission is not the head of a principal department or a regulatory or quasi-judicial agency, then the legislature cannot require legislative confirmation of the board or commission members.<sup>7</sup>

In *Walker v. Alaska State Mortgage Authority*, the Alaska Supreme Court held that the Alaska State Mortgage Association, a public corporation of the state, was not at the head of a principal department.<sup>8</sup> A board or commission "at the head of a principal department" means the head of the 20 principal departments that the executive branch must be organized into under art. III, sec. 22 of the Alaska Constitution.

The meaning of a "regulatory or quasi-judicial agency" was discussed at the Constitutional Convention (convention).<sup>9</sup> Delegate Victor Rivers, chair of the executive branch committee, described a "regulatory board" as follows:

The purpose of that is that in a regulatory board, regulating the power rates, telephone rates, etc., the power of removal might be the power to make the office ineffective so that removal would be prescribed by the legislature.<sup>10</sup>

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<sup>6</sup> 553 P.2d 1, 7 (Alaska 1976).

<sup>7</sup> *Id.*

<sup>8</sup> 416 P.2d 245, 250 - 251 (Alaska 1966).

<sup>9</sup> Art. III, sec. 26, was proposed by the Committee on the Executive Branch as Committee Proposal 10 (later amended and resubmitted as Committee Proposal 10a), at the Constitutional Convention. Alaska Constitutional Convention Proceedings (ACCP), Part 6.

<sup>10</sup> ACCP, at p. 1102 - 03. The delegates also acknowledged that a "regulatory board" could also be a "quasi-judicial board." ACCP, at p. 2206.

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From the discussion it appears that the framers believed that a "regulatory board" was a board that issued rules or regulations to govern the public or the use or management of resources. A "regulatory board" governs at-large or in an area or field.

The constitutional convention proceedings are also helpful in determining whether a public corporation could be considered a "regulatory board." The convention specifically discussed the relationship between art. III, sec. 26 and the University of Alaska, a public corporation, and public corporations generally. The discussion included this statement by Delegate Sundborg:

This whole section applies only to three classes of agencies. It applies to principal departments of the state, to regulatory bodies and quasi-judicial bodies. It is inconceivable to me that no matter what the legislature did it could ever put the University of Alaska under one of those three headings, and I am very much afraid here that if we read in here an exception saying that it shall not apply to the University of Alaska, that it would apply or that it could be construed to apply to any other state corporation because we had not excepted that from the language.<sup>11</sup>

Affirming these concerns, the convention created a separate provision, outside of art. III, sec. 26, specifically requiring the confirmation of the Board of Regents of the University of Alaska.<sup>12</sup>

#### Conclusion

Based on the language of art. III, sec. 26, the minutes of the Alaska Constitutional Convention, and the decisions in the *Walker* and *Bradner* cases, it seems likely that a court would find a requirement for legislative confirmation of the members of the board of trustees of the Alaska Permanent Fund Corporation unconstitutional.

If you have any questions, or if I can be of further assistance, please advise.

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<sup>11</sup> ACCP, at p. 2257. Delegate Walsh stated that he believed that the University of Alaska was not subject to the requirements of sec. 26 because it was a public corporation. ACCP, at p. 2246. Delegate Riley stated he believed that the University of Alaska was clearly beyond the reach of sec. 26. ACCP, at p. 2248.

<sup>12</sup> Art. VII, sec. 3, Constitution of the State of Alaska.