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MEMORANDUM

March 4, 2025

SUBJECT: Permanent fund appropriation language
(SB 109; Work Order No. 34-LS0598\N)

TO: Senator Lyman Hoffman
Co-Chair of the Senate Finance Committee
Attn: Pete Ecklund

FROM: Megan A. Wallace
Chief Counsel 

You asked for an explanation as to why the above-referenced bill requires legislative appropriations, as opposed to the "shall transfer" language currently found in AS 37.05.145(b).

Despite use of the words "shall" and "transfer" in the current law, under the constitutional dedicated funds prohibition,¹ appropriations related to the dividend are not mandatory. Each year, the legislature is free to appropriate any amount from the earnings reserve account for any public purpose.

The Alaska Supreme Court has confirmed this understanding. In *Wielechowski v. State*, the court held that despite the "seemingly mandatory" statutory language, the use of permanent fund income in the earnings reserve account is subject to normal appropriation and veto budgetary procedures.² In sum, the legislature may appropriate from the earnings reserve account any amount each year, and may divide that amount across

¹ Art. IX, sec. 7, 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).

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whatever purposes it sees fit, regardless of the language in statute. This is true with the current statute and will remain true, even if the statutes are amended to make language related to the appropriations mandatory.

For these reasons, the above-referenced bill was drafted using the "may appropriate" language.

MAW:boo

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