

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE

March 1, 2001
3:40 p.m.

MEMBERS PRESENT

Senator Gene Therriault, Chair
Senator Randy Phillips, Vice Chair
Senator Rick Halford
Senator Bettye Davis

MEMBERS ABSENT

Senator Drue Pearce

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 82(STA)

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

MOVED CS SB 82 (STA) OUT OF COMMITTEE

SENATE BILL NO. 92

"An Act relating to removal of members of the board of trustees of the Alaska Permanent Fund Corporation; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 82 - See State Affairs minutes dated 2/20/01.

SB 92 - No previous action recorded.

WITNESS REGISTER

Bob Storer
Executive Officer, Alaska Permanent Fund Corporation
P.O. Box 25500
Juneau, AK 99802-5500

POSITION STATEMENT: Testified on SB 92

Ron Lorensen
Counsel to the Alaska Permanent Fund Corporation
One Sealaska Place Suite 300

Juneau, AK 99801

POSITION STATEMENT: Answered questions about SB 92.

Clark Gruening
Chairman of the Board of Trustees
Alaska Permanent Fund Corporation
217 Second Street Suite 604
Juneau, AK 99801

ACTION NARRATIVE: Supports SB 92.

TAPE 01-10, SIDE A

Number 001

CHAIRMAN GENE THERRIAULT called the Senate State Affairs Committee meeting to order at 3:40 p.m. Present were Senators Phillips, Davis and Chairman Therriault.

The first order of business was SB 82.

SENATOR HALFORD arrived at the meeting.

#SB 82

SB 82-2001 REVISOR'S BILL

CHAIRMAN THERRIAULT said that changes were made to the original Revisor's Bill that raised concerns expressed by Senator Halford. He asked Senator Halford whether his questions had been answered and said that the revisor was present and ready to testify if necessary.

SENATOR HALFORD said it wasn't necessary for her to testify.

CHAIRMAN THERRIAULT said that the State Affairs CS was before the committee and he asked committee members for any amendments. There were none. He asked for the will of the committee.

SENATOR DAVIS made a motion to move CS SB 92 (STA) with zero fiscal note from committee with individual recommendations. There was no objection.

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#SB 92

SB 92-REMOVAL OF MEMBERS OF THE PF BOARD

CHAIRMAN THERRIAULT called Mr. Storer forward to testify.

MR. BOB STORER, executive officer of the Alaska Permanent Fund

Corporation, said that the purpose of this legislation is to insert language to AS 37.13.070 (a) to allow public members of the board to be removed from office and only for cause. Currently, public members are appointed to serve staggered four-year terms and they may be removed simply with a letter from the governor. The board feels that it is important that the removal for cause language is included in statute because it is in keeping with the state managed Alaska State Pension and Investment Board (ASPIB).

MR. STORER has been involved with managing institutional funds in the state for 18 years and, from an investment perspective, continuity is imperative in successfully managing large sums of money such as the Permanent Fund. It is a mature fund that has grown to about \$27 billion and has very sophisticated asset classes. From the investment perspective, "It is important that that institutional memory be carried through in the evolution of changes in board members."

Number 319

Recently the board spent a year looking at the very sophisticated private equity asset class and decided they wouldn't make the investment primarily because the gubernatorial election is in two years and board members could be replaced, at the pleasure of the next governor, with new members who, most probably, won't be educated about this asset class. This decision was made even though current board members know that, over time, this type of investment performs better than the broad market.

CHAIRMAN THERRIAULT said he voted for this language last year as a proposed constitutional amendment but now, after much study, he feels that a discussion is in order about the constitutionality of making this requirement under Article 3, section 25 and 26. Last year, there was significant testimony supporting a constitutional amendment as the appropriate method for this change. Without this, there is a question of whether the legislature has the authority to make this requirement. Also, SB 89 passed in 1996 was vetoed, at least in part, because of this same language.

He said he wants to support the bill because he believes it's the right thing to do but doesn't want to create a constitutional problem.

MR. STORER said that it is his understanding that the veto wasn't due to the constitutional question. He said that clause was included when the Alaska State Pension and Investment Board was created and it hasn't been challenged.

MR. RON LORENSEN, outside counsel for the Permanent Fund from Simpson Tillinghast & Longenbaugh, said that the constitutionality of the issue is debatable with no clear answer either way. Generally, the executive branch has applied a strict interpretation that this would be unconstitutional because it limits the appointment and removal power of the governor. It is arguable because there are specific situations where the attorney general's office has chosen "step back" from the issue.

CHAIRMAN THERRIAULT asked for discussion on the Bradner versus Hammond decision.

MR. LORENSEN said he would put it in the context of the ASPIB legislation passed in the early 1990s. Removal for cause was specifically addressed and Governor Hickel vetoed the legislation, largely because it limited his appointment and removal powers. The following year, the legislative and executive branches negotiated their differences and ASPIB was passed rather than form a separate corporation, as initially envisioned. The cause provision remained in the legislation and the attorney general didn't address the provision even though he took a very strong position in the initial legislation.

CHAIRMAN THERRIAULT said that a member that was removed could also raise the question of constitutionality.

MR. LORENSEN thought it most likely that just the governor would raise the constitutionality issue if he or she couldn't remove for cause because an individual removed for cause wouldn't have a constitutional basis for challenging the action.

CHAIRMAN THERRIAULT asked whether he had had discussions with the department of law concerning this issue.

MR. LORENSEN said he has and that, during drafting, he discussed this legislation with Jim Baldwin from the attorney general's office. He thought Mr. Baldwin was ready to let the legislative process take its course.

SENATOR HALFORD thought it was advisable to hear from Mr. Baldwin directly.

CHAIRMAN THERRIAULT said that the Governor's previous statements were quite explicit, that it needed to be in the constitution. Although the Chair believes this is the correct course of action, he wants to know whether they are facing a sure veto.

SENATOR HALFORD said either "that or selective enforcement."

CHAIRMAN THERRIAULT said the 1996 letter suggesting veto of SB 89 indicated that removal for cause may "constitute usurpation of the executive power of appointment." Findings of the court in Bradner versus Hammond discussed the power of confirmation and appears to use the same argument as imposing removal for cause.

MR. LORENSEN said the arguments begin in the same place but "where I'm sitting, I would head in a different direction as I was making the argument."

CHAIRMAN THERRIAULT asked why.

MR. LORENSEN said the legislature never gets directly involved; it passes a general law and then has nothing further to do with the appointment or removal process. Setting out a general rule is very different from the legislature reinserting itself later in the confirmation process.

CHAIRMAN THERRIAULT asked whether this isn't "a matter of degrees. Instead of the legislature stepping in and turning down an appointment, which I would agree, would be a higher level of legislative involvement, the removal for cause is still a diminishment of the governor's overall power."

MR. LORENSEN said it is a matter of degree but that's what makes the difference important. That's also why he can't say that the issue is constitutional and Mr. Baldwin can't say it is not.

Number 112

SENATOR DAVIS asked about the veto last year.

CHAIRMAN THERRIAULT said the bill last year proposed a constitutional amendment, covering a number of corporations, and it was defeated. For himself, he believes this is a protection that is needed for the Permanent Fund Board of Trustees so incoming governors can't make a total change of members, thereby breaking the continuity of investment expertise of board members.

SENATOR DAVIS asked whether fear that a new governor would clear the slate prompted this legislation.

CLARK GRUENING, Chairman of the Board of Trustees for the Alaska Permanent Fund Corporation, said that language currently in statute requires that the Governor give a written reason for removal from the board. The fund has been in existence for 25 years and the corporation was formed in 1980. In that time, there have been 38

trustees, none of which were removed using the written requirement until 1990 when then Governor Hickel removed three public trustees. Again in 1994, Governor Knowles removed three trustees. Because of this action, the board is concerned that a pattern for removal is becoming established.

He stressed that this isn't a tenure bill, it is for continuity of institutional investment knowledge. This is apparent when you consider that a new governor is immediately able to appoint two new commissioner members followed within six months by the appointment of one public member. Public members serve staggered four-year terms.

CHAIRMAN THERRIAULT asked which trustee members have cabinet positions.

MR. GRUENING replied that it is set forth in statute that the commissioner of revenue and one other cabinet member will be appointed to serve on the board of trustees.

CHAIRMAN THERRIAULT clarified that this is why language specifically talks about public members.

He announced that the bill would be held in committee for discussion with Mr. Baldwin from the Department of Law.

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The meeting was adjourned at 4:00 p.m.