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Minutes of the House

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MINUTES

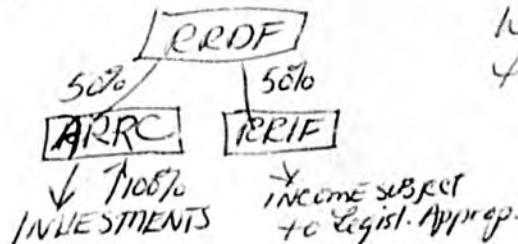
House Special Committee on
the Alaska Permanent Fund

March 2, 1978, 7:00 PM
Capitol, Room 124

Chairman Gruening called the meeting to order. Present were Committee members Rep. Haugen, Rep. Gardiner, Rep. Schaeffer and Rep. Meekins. Others: Mr. Berrier, Mr. Edenso, Mr. Rhode, Mr. Rosenstein, Mr. Singer and Rep. Malone.

CS for HB682 was distributed to the Committee

82, a memo from Tom Singer with the Gov's comments and suggested amendments attached was distributed to the Committee.



When the RRIF reaches 250,000,000 then flow of \$ is cut off to RRDF.

Rep. Gardiner moved to add after "fund" (pg 11, l 7) "the unexpended and unobligated portion of any appropriation at the end of a fiscal year does not lapse into the General Fund but remains available for appropriation as provided in this section in subsequent fiscal year." Rep. Gruening objected that "appropriation" was not the right word. The idea is to allow them to retain investment funds but not excess operating funds. Rep. Malone suggested breaking this into two sections - one for investment funds, one for operating funds that would be subject to the Budget Act. Rep. Gardiner withdrew his motion. Mr. Berrier will work this out for the CS.

Pg 2 Minutes March 2

CS HB 682 discussion cont.

Comment one of the Gov's letter was addressed:

Rep. Gardiner moved to change the title of CS HB 682 to "An Act relating to renewable resource funds". There was no objection; it was adopted.

~~Comment~~ Governor's comment two was addressed:

Rep. Gruening moved (pg 6, l 19) to delete "yet" and add after "have", "direct"; delete "or demonstration of projects". The motion was withdrawn.

Rep. Gruening moved (pg 6, l 18)

"(12) provide grants (only) for projects (or demonstration of projects) having broad public application but which do not (yet) have direct income-producing potential. (but which have public)"

Rep. Schaeffer objected & withdrew his objection. The motion was adopted w/o objection.

Rep. Gardiner moved (pg 8, l 22-26) to delete entire subsection (2) and replace with "Attachment 2 Sec 170 (2). and it was adopted.

Rep. Gardiner moved (pg 9, l 18) to add after subsection (5) a new subsection (6) to read "allocate more than 10% of the annual appropriation of the corporation to grants." It was adopted w/o objection.

Comment 3 of Governors:

Rep. Gardiner moved (p. 8, l. 13) after "costs" add "including additional governmental costs" It was adopted w/o objection.

Rep. Gruening moved (p. 3, l. 5) to add "total" after "the" ^{receipts} There was no objection.

Rep. Gruening moved to delete p. 8, l. 27 & 28 and replace with:

(3) In evaluating projects, consider the preferences and priorities of the residents of the region in which the project is to be located."

It was adopted w/o objection.

Rep. Gruening moved to adopt the amendment Mr. Berrie had written out for Sec. 37.12.200 clarifying operating budgets and investmt. funds' lapse at end of fiscal year. It was adopted without objection.

Rep. Gruening moved to have Mr. Berrie provide a final CS HB682 to the Committee early next week and the Comm. will have a short meeting to pass it out.

Rep. Gruening moved to use the PERS Statute ^{Teachers} definitions of investmts p 13, l. 20. It was adopted w/o objection.

Rep. Gruening moved the redraft of B HJR 31 and to add on line 16 after ~~fund~~ "the" "Renewable Resource Development Fund and the ~~fund~~" copy in the record. It was adopted without objection.

Rep. Gruening moved to pass HB 595 out of Committee. It was moved out of Committee without objection. Recommending DO PASS were Reps. Hungen, Gardiner, Schaeffer and Gruening.

The meeting was adjourned at 9:45 PM.

MEMORANDUM

To: Rep. Terry Gardiner

From : Tom Singer

Date: 2/1/78

Re: Governor's Letter on HB 682 (Attachment 1)

Bill Berrier, Ken Rosenstein, and I went over the Governor's comments. Our conclusions are as follows:

Governor's changes:

1. The Committee has already made a policy decision to reject this suggestion.
2. We are working on grants. I gave you my draft changes (Attachment 2) yesterday. Do you or the Committee want to pursue the subsidy and interest rate question?
3. We suggest the following clarifying amendment:
Page 8, line 13, after "all costs" add "to the public".
4. We suggest the following clarifying amendments:
Page 3, line 5, after "the" add "total".
5. Berrier has already advised the Committee on this point. The general severability statute also covers us.
6. The first point is covered in Sec.37.12.200 Budget and Appropriations - "The Corporation may expend money only as appropriated by the legislature". (p. 11, lines 4 & 5) The second point is also a point the Committee wanted to address. If the Committee wants the ARRC to retain appropriated but unexpended monies, Berrier recommends the following change.

Page 11, line 7, after "fund." add a new sentence
"The unexpended and unobligated portion of any appropriation at the end of a fiscal year does not lapse into the General Fund but remains available for appropriation as provided in this section in subsequent fiscal years."

If the Committee wants these monies to lapse into the RR Investment Fund, the following change is needed:
page 13, line 17, after "fund" add "or the Alaska Renewable Resources Corporation".

3 motions

*move
Gardiner*

*except
the operating
budget*

If the Committee wants these monies to lapse into the General Fund, no change is needed.

7. These changes have been made.

8. This point is moot as the CS gives these monies to the Alaska Permanent Fund Corporation to manage.

9. We recommend the following clarifying change:

Page 8, lines 27 & 28, delete this section and replace with "In evaluating projects, consider the preferences and priorities of the residents of the region in which the project is to be located."



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 23, 1978

The Honorable Terry Gardiner
Chairman, Subcommittee on Renewable
Resources
House Permanent Fund Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

You have asked for my comments on HB 682 "An Act relating to nonrenewable resource revenues." I endorse the concept and objectives of the proposal and support the bill with the following proposed changes:

- adopt*
1. The title of the bill does not adequately represent the purpose and proposal set forth. Confusion might be avoided by reflecting the "renewable resource" emphasis of the bill in the title.
An Act relating to ren. resource funds.
 2. Grant and loan procedures and criteria should be clarified in the bill. The corporation should develop standards regarding interest rates to be offered, and should be required to indicate in its budget submission the amount of interest subsidization anticipated.
 3. Section 37.12.170 should be clarified to indicate that government costs (roads, sewer, etc.) generated by the corporation's projects are to be specified by the corporation in its project evaluations.
 4. Section 37.12.050(a) dealing with the allocation of monies is ambiguous and should be reworded to reflect the intent that the entire amount referred to in AS 37.11.020 is allocated to the corporation.
 5. Section 37.12.070 requires legislative confirmation of appointees to the board of trustees. Similar requirement have been held unconstitutional. Either the requirement should be eliminated or the Constitution amended.
- adopt*

The Honorable Terry Gardiner
February 23, 1978
Page 2

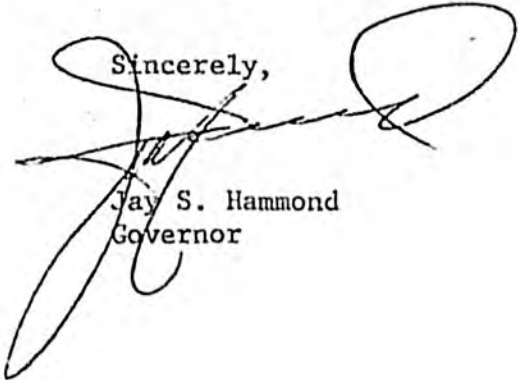
6. In order to avoid constitutional prohibitions regarding dedicated funds, it should be clearly stated in Section 37.12.050(b) that no monies may be expended by the corporation without an appropriation by law. Further, the disposition of funds not appropriated should be clarified (i.e., do they lapse into the Investment Fund?).
7. The loan limit of \$1.5 million should be increased and the maximum on the proportion of total obligations of a project which the corporation could hold should be raised from 25 percent to 50 percent.
8. Section 37.12.060 should be changed to allow for investment in the Alaska renewable resources investment fund by the Department of Revenue in the types of instruments defined in Attachment 2.
9. Section 37.12.170(3) should be clarified to reflect the intention that the corporation consider community input regarding projects.

These changes are acceptable to all of the concerned departments. Additional information about these changes is attached.

There is one additional possible amendment about which there is some dispute among departments and about which I express no opinion at this time: should the board of the corporation be three full-time members or a seven-member advisory group to an existing department? A few of the pros and cons associated with the structural alternatives are discussed in the attachments.

Thank you for this opportunity to comment on HB 682. I appreciate the cooperative method in which you have approached the development of this legislation.

Sincerely,



Jay S. Hammond
Governor

Attachments

Summary of Comments
on House Bill 682

Revenue; Commerce and Economic Development (Jim Edenso)

Changes in the form of organization for the Alaska Renewable Resources Corporation (ARRC) were suggested. It was proposed that the ARRC be located in the Department of Commerce and Economic Development (instead of Revenue) with the Director of the Division of Economic Enterprise as Executive Director of the corporation. The Board of Trustees established in HB 682 would be changed from a three-member, full-time, salaried group to a seven-member (five private citizens plus Commissioners of Revenue and Commerce and Economic Development); non-salaried, advisory Board of Directors.

Language clarifications and deletions were suggested for the following sections:

Page 8, line 8; 37.12.170 (D) -- eliminate this section because the requirement of "best efforts" to retain a supported activity in the state is unreasonable and difficult to administer.

Page 8, line 15; 37.12.170 (F) -- clarify wording to indicate that the intention of the section is to require the ARRC specify government costs engendered by projects.

Page 9, line 2; 37.12.170 (3) -- clarify wording to reflect the intention that the ARRC consider community input regarding projects.

Page 9, line 5; 37.12.170 (b) (1) -- eliminate the \$1.5 million investment ceiling, because this amount would exclude important projects.

Page 9, line 9; 37.12.170 (b) (2) -- change the maximum amount of total obligations of a project which the ARRC can hold from 25 percent to 50 percent.

Further, it was recommended that Treasury manage the investment portion of the Fund. (This is now specified in the bill, although there has been some discussion of management by the Permanent Fund Corporation.)

Budget and Management (Ron Lind)

The need to include a section which would specify a method for handling interest rate subsidies was reiterated. Such a section might contain instructions to the corporation to develop standards regarding interest rates to be offered, and further to indicate in their budget submission the amount of interest subsidization anticipated.

The bill should include standards and criteria for the issuance of grants to the private sector. In its present form, HB 682 contains virtually no guidance regarding the granting function.

Problems exist with the provision which requires that the monies allocated by the corporation cannot be used to fund permanent state or local governmental positions. This requirement should be eliminated.

The section (37.12.170 (F)) regarding the specification of government costs should be clarified and retained.

There appears no advantage to the expanded board of directors approach as recommended by the Departments of Commerce and Economic Development and Revenue. If the purpose of their proposal is to make the corporation a state agency, this could be done more simply and efficiently by eliminating the advisory board and designating an existing department to carry out the functions specified in the bill.

Department of Natural Resources (Fred Boness)

The full-time, three-member board structure currently embodied in HB 682 is preferable to the expanded board structure discussed above. Three individuals devoting full efforts will have high visibility and should be able to generate a much higher level of interest and activity than could a part-time board composed of five private citizens and two commissioners.

Fish and Game (Ronald O. Skoog)

HB 682 places emphasis on potentially commercial activities. There are research and development activities which should not be excluded from consideration for funding simply because they are not foreseeably commercial.

Activities and purposes of the proposed corporation are duplicative of Alaska Department of Fish and Game activities and, therefore, steps will be necessary to avoid fragmentation. The provision disallowing the funding of permanent government position further complicates the relationship between state agencies and the corporation. This provision is unreasonable and should be eliminated. (The full text of Fish and Game comments is attached.)

Department of Law (Rodger W. Pegues)

See attached memorandum.

MEMORANDUM

RECEIVED
FEB 17 1978
POLICY DEVELOPMENT
& PLANNING

TO: ☐ Fran Ulmer
Director
Division of Policy Development
and Planning
Office of the Governor

DATE: February 17, 1978

FILE NO:

TELEPHONE NO:

FROM: Ronald O. Skoog
Commissioner
Department of Fish and Game

SUBJECT: House Bill 682
An Act relating to renewable
resources revenues

The Department of Fish and Game has reviewed House Bill 682 and generally concurs with the intent of the legislation. I would like to offer however, the following specific comments:

1. The overall intent of the legislation appears to be somewhat exclusionary of some types of projects that the State might propose. It appears as if only those interests that the foreseeable end product is commercially oriented will be funded. The Department has considered for some time that an area such as nongame research and development may be a logical item to receive this type of funding. We feel that these projects should not be excluded from consideration simply because there is not a foreseeable commercial project. Secondly, a project of this nature probably would never be attempted by the private sector due to the diffuse monetary benefits.
2. Section 37.12.030-040

Presently within at least ADF&G a mechanism already exists to handle the rehabilitation, enhancement, and development of renewable resources. The Bill appears to be duplicative and may create additional fragmentation. Many of the other renewable resources are under Federal management on which this Bill would have little or no impact. I am also concerned that if a private corporation begins to fund State projects it may want to participate actively in technical matters like site selection and species management.

Section 37.12.150

The stipulation that no permanent State or local government positions be hired would appear to be unacceptable to us. If, for example, a fish hatchery is funded under this Bill it is inconceivable that we would not have permanent positions attached to that project. The alternative, I suppose, is to fund only the hatchery and allow the General fund to finance all related positions to that facility. Secondly, if a large number of projects are generated the administrative/technical workload that will fall on agencies will be very large. Must we fund additional technical personnel from General funds or should we make the granting agency pay for its burdens on the agency? The latter, I believe, is a better solution.

MEMORANDUM

TO: [Frances A. Ulmer, Director
Div. of Policy Development & Planning
Office of the Governor

DATE: February 21, 1978

FILE NO: J-66-499-78

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Renewable resource
fund. HB 682

By:

Rodger W. Pegues
Assistant Attorney General

RECEIVED
FEB 18 1978
POLICY DEVELOPMENT
& PLANNING

You have asked for our comments on this subject. We confine them to the principal legal problems which we perceive. We will discuss these legal problems section by section.

AS 37.12.050(a).

This subsection is extremely ambiguous. One may, on the one hand, interpret it to provide for 5 percent of the 5 percent referred to in AS 37.11.020 to be allocated to the corporation or, on the other hand, as providing for the entire amount referred to in AS 37.11.020 to be allocated to the corporation. Whichever result is intended, the section needs to be rewritten to clarify its meaning.

AS 37.12.050(b).

This subsection provides for half of all "actual" (gross?) receipts of the corporation to be deposited in the renewable resources investment fund. What happens to the other half is not explained. Presumably, it is expended by the corporation on one or another of the activities it is authorized by the bill to undertake.

What the bill appears to do is provide both for the expenditure or investment of money through appropriations made by law and also to provide for expenditure or investment of a set percentage of mineral revenues for a special purpose without an appropriation made by law. To the extent that it would do the latter, it would constitute a dedicated fund, and it would be unconstitutional and invalid. Alaska Const., art. IX, §7.

The existing law also sets up special funds. But it also requires an appropriation to be made by law in order to expend any money from the funds. AS 37.11.030, 070. Moreover, the legislature could -- at any time -- appropriate any and all monies from either of the two funds to any

Frances A. Ulmer
Div. of Policy Development
and Planning
February 21, 1978
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purpose whatsoever. Hence, there is no true dedication. Here, however, the corporation appears to be empowered to make expenditures */ without any appropriation made by law, and only a part of its spending will be covered by appropriations. If our perception of the bill is correct, then the bill constitutes an attempt to create an unconstitutional dedicated fund.

This is not a minor matter. Enormous amounts of money could be involved. Any state official who participates in their unconstitutional allocation and expenditure could be personally liable to the state, and there would be a duty to recover the wrongfully expended funds from those officials and from the recipients. 1963 Op. Att'y Gen., No. 20. Accordingly, we strongly recommend that the bill be amended to provide that none of the monies allocated to the corporation under section 50 can be expended except as authorized by an appropriation made by law. If this is not done, we would have to advise the Commissioner of Revenue that he could be personally liable for any monies he paid over to the corporation which were thereupon expended without an appropriation made by law.

AS 37.12.070.

This section would require that the appointment of persons to the corporation's board of trustees be confirmed by the legislature. The board is not the head of a principal department. It is not a regulatory or quasi-judicial board. Accordingly, the appointments to the board can not be made subject to legislative confirmation. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976). AS 37.12.090(b) is equally defective.

There are several bills before the legislature which contain similar invalid provisions. We do not comprehend this apparent disregard for the Alaska Supreme Court's

*/ "Expenditures" would include so-called investments in enterprises or ventures of relatively high risk or with relatively low rates of return.

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Div. of Policy Development
and Planning
February 21, 1978
Page #3

recent ruling on this matter nor the apparent willingness to throw the composition of these important boards into legal jeopardy. There are going to be enough grounds for legal challenges to these corporations without adding yet another.

AS 37.12.090.

Just as the legislature cannot expand its power over the confirmation of gubernatorial appointees so it cannot usurp power over their subsequent discharge. The hiring and firing of officials in the executive branch is not a part of the law making power of government. It is part of the executive power. The legislature may participate in its exercise only to the extent authorized by the constitution and no further. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

The provisions in this section for legislative approval are a potential mischief maker for the future of the corporation. Recently, similar provisions almost hamstrung the Pipeline Commission, and only the timely resignation of the commissioner who had been fired by the governor removed the matter from the hands of the courts -- a place in which it never belonged. There simply is no reason for muddying the water here with a requirement which is patently unconstitutional. Myers v. United States, 272 U.S. 52 (1926).

AS 37.12.100.

It is not likely that the governor would appoint a non-resident or a very new resident to the board, yet it would be a possibility. It was in recognition of the possible need or opportunity for the governor to reach out and select a non-resident that a residency requirement for heads of principal departments was stricken by the framers of the Alaska Constitution. 3 MINUTES, ALASKA CONSTITUTIONAL CONVENTION 2232-2244 (1956). There is some reason to infer that the constitution's framers intended a blanket ban on a restriction on executive appointments based on residence. Id. The same is true for judicial appointments. Id., at 2232-2233. The framers were interested in quality; if the best man lived Outside, they reasoned, we ought to hire him. Accordingly, while perhaps not constitutionally infirm, this residence requirement might well be deleted.

Frances A. Ulmer
Div. of Policy Development
and Planning
February 21, 1978
Page #4

AS 37.12.170(b)(1), (2), and (3).

It is our best guess that, except as provided for in the constitution, i.e., art. III, §23; art. X, §12, the legislature cannot veto an action proposed or taken by another branch of the government. This point of law is now in litigation in Kelley v. Hammond, and to a lesser degree, in State v. A.L.I.V.E. Voluntary. We would, therefore, advise that an express provision be added to the bill to state that, if the legislative veto is unconstitutional, then the provisions for it are severable, assuming that result is intended.

Conclusion:

This review and comment are hurried in response to a last-minute request. The bill could present other legal problems which we may have missed.

RWP/pjg

RECEIVED

FEB 23 1978

37.11.090. Investments. Investment responsibility for the Alaska Renewable Resources Investment Fund shall reside with the Treasury Division of the Department of Revenue. Treasury may invest the Alaska Renewable Resources Investment Fund in any of the following so long as Treasury investment policy is consistent with the prudent man rule:

(1) bonds or other interest-bearing obligations and securities of the (A) United States or an agency of the United States, (B) a state of the United States, or (C) a political subdivision of a state of the United States, if the political subdivision has a population as shown by the last federal census preceding the investment of not less than 30,000 inhabitants; with respect to political subdivisions of this state, no population limitation applies;

(2) first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States or held by the division of veterans' affairs under AS 26.15, or loans guaranteed by the division of veterans' affairs under AS 26.15.040(b);

(3) corporation bonds and preferred and common stocks as the Treasury considers proper investments for the fund;

(4) first lien real estate mortgage securities held by the Department of Natural Resources under AS 03.10;

(5) shares of federally chartered savings and loan associations in Alaska, to the extent that such investment is insured by the federal government or an agency thereof;

(6) deposits with mutual savings banks in Alaska, to the extent that such investment is insured by the federal government or an agency thereof;

(7) deposits with state and national banks in Alaska to the extent that the investment is insured by the federal government or an agency of the federal government;

(8) mutual funds;

(9) the guaranteed portion of Small Business Administration loans;

(10) first lien real estate mortgages guaranteed by the federal Veterans Administration;

(11) notes secured by mortgages of commercial or residential real estate or other security if the mortgages are insured by a private mortgage insurance corporation which is authorized to do business in Alaska and has combined capital, surplus and reserves aggregating at least \$20,000,000; however, (A) no mortgage insurance is necessary for commercial loans having loan-to-value ratios of less than 50 per cent and the minimum coverage of other commercial loans shall be 10 per cent for those having a loan-to-value ratio of 50-60 per cent and 15 per cent for those having a loan-to-value ratio greater than 60 per cent but no more than 75 per cent, and (B) no mortgage insurance is necessary for residential loans having a loan-to-value ratio of less than 70 per cent and the minimum coverage of other residential loans shall be 10 per cent for those having a loan-to-value ratio greater than 70 per cent but less than 90 per cent and 20 per cent for those having a loan-to-value ratio of 90 per cent;

(12) conventional residential mortgages if the originating financial institution retains at least 25 per cent of the mortgage for a minimum of two years;

(13) notes secured by mortgages of commercial real estate if the originating financial institution retains at least 25 per cent of the mortgage;

(14) FHA guaranteed portion of business and industrial loans made under the Rural Development Act of 1972;

(15) guaranteed portion of loans made under the Federal Ship Financing Act of 1972;

(16) bonds, debentures, notes, or other obligations issued, guaranteed, or assumed as to both principal and interest by the government of the Dominion of Canada, or by any province of Canada, or by any municipality of Canada which has

has a population of not less than 150,000, if (A) the full faith and credit of the issuer, guarantor, or assumer of the bonds, debentures, notes, or other obligations is pledged for the payment of principal and interest on them, (B) the principal and interest on them is payable in United States currency, either unconditionally or at the option of the holder, and (C) these obligations are rated A or an equivalent quality by a nationally recognized rating organization;

(17) bankers' acceptances which are eligible for discount at the Federal Reserve Bank and negotiable time certificates of deposit issued by commercial banks.

ATTACHMENT 2

Draft Grant Standards for CSHB 682

Sec. 37.12.150(12)

Alt. 1: Provide grants only for projects which have no profit producing potential and which have potentially broad application to the public;

Alt. 2: Provide grants only for projects which have potentially broad application to the public;

Alt. 3: Provide grants only for projects which would implement the purposes of the corporation but which would not result directly in returns capturable by the grant recipient;

37.12.170(2)
Sec. 160.2

Use the financial mechanism most appropriate to the conditions of the applicant and the proposed project and which will most effectively utilize the funds available; grants may be made by the board of up to 90% of total project costs for the following purposes:

(a) projects for the applied research and development of products, technologies, or innovations for the rehabilitation, enhancement, or development of the state's renewable resources;

(b) projects for the demonstration on a one-time basis of the economic or technical feasibility of a new product, market, or technology involving a renewable resource; or

(c) projects for the rehabilitation, enhancement, or development of a common property resource where the benefits from the project cannot be captured by any single economic unit.

Also: Does the Committee want to put a cap on the total amount of a given year's allocation which goes to grants, say 10 or 20%?

replaces
pg 8
2-26
w/ this



STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 2, 1978

SUBJECT: HB 595 - Permanent Fund Income

TO: Representative Clark Gruening, Chairman
Special Committee on the Permanent Fund

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have asked three questions in connection with this bill

1. Does providing by statute that permanent fund income be used for a particular purpose violate the constitutional prohibition against dedicated funds?
2. If HB 595 were enacted and guarantees made under its terms, what effect would repeal have on guarantees outstanding at the time of the repeal?
3. Do the guarantees contemplated by this bill constitute a debt of the state which would require voter approval to incur?

1. The prohibition against dedicated funds is contained in Art. IX, section 7 of the constitution which, as amended, provides:

"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." (emphasis added)

The exception to the prohibition is the section which constitutionally authorizes the Alaska Permanent Fund. This section reads:

"At least twenty-five per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

The permanent fund is therefore entirely distinct by constitutional provision from the state general fund. It is specifically exempted from the prohibition against dedication. The only constitutional limitation is that permanent fund income shall be deposited in the general fund unless otherwise provided by law.

Providing by statute for use of permanent fund income is specifically authorized by the constitution. It does not violate the constitutional prohibition against dedication of funds contained in Sec. 7 since that section expressly does not include the permanent fund.

2. Guarantees of indebtedness under HB 595 create a contractual relationship. A law may be repealed at any time. However, both the state and federal constitutions prohibit impairment of the obligations of contracts.

The United States Constitution, in Sec. 10, provides:

"No state shall... pass any... law impairing the obligation of contracts..."

The Alaska Constitution provides in Art. I, sec. 15:

"No law impairing the obligations of contracts... shall be passed."

The accepted rule as to the effect of repeal is stated in 16 CJS 1277 as

"A state statute is a law within the meaning of constitutional provisions prohibiting laws impairing the obligations of contracts, whether the impairment occurs by repeal or modification of the statute. Such constitutional provisions apply only to legislation subsequent in time to the contract alleged to have been impaired."

Representative Clark Gruening
Page 3
March 2, 1978

There are certain exceptions relating to the police power of the state but they are not applicable here. To be constitutionally valid, an act repealing the guarantee provisions of this bill, if the bill had been enacted and guarantees issued under it, must recognize the continuing validity according to their terms of outstanding guarantees.

3. Any guarantee issued under the terms of this bill would be payable "solely from the income derived from the Alaska Permanent Fund." The general credit of the state may not therefore be pledged nor a debt of the state created.

BGB:jpd

Introduced: 3/14/77
Referred: Special Committee on
the Alaska Permanent Fund and
Judiciary

1 IN THE HOUSE

BY MALONE

2 HOUSE JOINT RESOLUTION NO. 31

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 Proposing an amendment to the Constitution
6 of the State of Alaska relating to legis-
7 lative confirmation authority.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. Article III, sec. 26, Constitution of the State of Alaska,
10 is amended to read:

11 Section 26. BOARDS AND COMMISSIONS. When a board or commission is
12 at the head of a principal department or a regulatory or quasi-judicial
13 agency, its members shall be appointed by the governor, subject to
14 confirmation by a majority of the members of the legislature in joint
15 session, and may be removed as provided by law. Members of ^{any} board^s
16 commission^s or agency^{ies}, established to administer the fund^{Per P.F.S. Devel. Fund and the} created under
17 Section 15 of Article IX, ³²¹ are subject to confirmation by a majority of
18 the members of the legislature in joint session. They shall be citizens
19 of the United States. The board or commission may appoint a principal
20 executive officer when authorized by law, but the appointment shall be
21 subject to the approval of the governor.

22 * Sec. 2. The amendment proposed by this resolution shall be placed
23 before the voters of the state at the next general election in conformity
24 with art. XIII, sec. 1, Constitution of the State of Alaska, and the election
25 laws of the state.