

COMMITTEE REPORT
SENATE

FURTHER:

1/13/86

Date _____

Mr. President

The Committee on FINANCE considered SJR 28
proposing amendments to the Constitution of the State of Alaska relating
to the Alaska Permanent fund.

and (a majority of the committee) (the committee) reports it back with
the following recommendations:

- do pass
- do pass with attached amendment(s)
- rep'ace with/or adopt CS for _____
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

Chairman recommendation

Introduced: 1/13/86
Referred: Finance

1 IN THE SENATE

BY KERTTULA AND V. FISCHER

2 SENATE JOINT RESOLUTION NO. 28

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 Proposing amendments to the Constitution
6 of the State of Alaska relating to the
7 Alaska permanent fund.

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

9 * Section 1. Article IX, sec. 15, Constitution of the State of Alaska,
10 is amended to read:

11 SECTION 15. ALASKA PERMANENT FUND. At least twenty-five percent
12 of all mineral lease rentals, royalties, royalty sale proceeds, feder-
13 al mineral revenue sharing payments and bonuses received by the State
14 shall be placed in a permanent fund, the principal of which shall be
15 used only for those income-producing investments specifically des-
16 ignated by law as eligible for permanent fund investments. Fifty
17 percent of the [ALL] income from the permanent fund shall be deposited
18 in the general fund unless otherwise provided by law. Fifty percent of
19 the income from the permanent fund shall be retained in the permanent
20 fund.

21 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended
22 by adding a new section to read:

23 SECTION 29. UNDISTRIBUTED INCOME ACCOUNT. On July 1, 1987, all
24 assets of the undistributed income account established in AS 37.13.145
25 shall be added to the principal of the Alaska permanent fund.

26 * Sec. 3. These amendments take effect July 1, 1987.

27 * Sec. 4. The amendments proposed by this resolution shall be placed
28 before the voters of the state at the next general election in conformity
29 with art. XIII, sec. 1, Constitution of the State of Alaska, and the

1 election laws of the state.

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ALASKA STATE LEGISLATURE

.14th.. Legislature .2nd.... Session

SENATE JOINT RESOL., NO. 28....

By KERTTULA, V. FISHCER.....

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund.

Introduced in the Senate .1/13...., 19..86

HISTORY IN THE SENATE

1986

i

13

Read first time and referred to Committee on

Finance

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by President
Sent to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by Speaker
Returned to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Received from House

To enrolling

Reported correctly enrolled

Sent to Governor

..... by Governor

Filed with Lt. Governor

Chapter No.

SECTIONAL ANALYSIS OF SENATE JOINT RESOLUTION 28

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund

Section 1

Would amend Article 9, Section 15 of the Alaska Constitution by requiring that 50% of the income of the Permanent Fund go into the general fund for distribution as dividends and the remaining 50% be retained in the Permanent Fund.

Section 2

Article 15 of the Constitution is amended by adding a new section which stipulates the following: All assets of the Undistributed Income Account are to be deposited into the Permanent Fund effective July 1, 1987.

Section 3

These amendments to the Constitution take effect on July 1, 1987.

Section 4

These proposed amendments shall be voted on by the people of Alaska at the next general election.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

FISCAL DETAIL

Bill/Resolution No. : SJR 28
 Title : Proposing amendments to the
Constitution of the State of Alaska
relating to the Alaska Permanent
 Sponsor : Sen. Kerttula
 Requestor : _____
 Date of Request : _____

Agency Affected : All
 BRU : _____
 Fund : _____
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Senator Jan Parks, Co-chairman Phone : 465-4523
 Division : Senate Finance Committee Date : 2/26/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

512
28
POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907-465-1800

MEMORANDUM

March 10, 1986

SUBJECT: Appropriation of money from the permanent fund

TO: Senator Richard Eliason

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

You have asked whether the legislature may appropriate money from the principal of the permanent fund if the money represents deposits made to the fund in excess of the amount required under the constitution. The permanent fund is dealt with in Article IX, Section 15 of the Constitution of the State of Alaska as follows:

At least twenty-five percent 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. (Emphasis added)

The question you have posed has never been considered by the Supreme Court. Nevertheless, the language of the constitutional provision is so clear I feel certain that the court, if faced with the question, would hold that the legislature lacks the power to appropriate from the principal of the permanent fund regardless of whether the money being appropriated was from deposits in excess of the amount required.

The constitutional provision mandates that twenty-five percent of the money derived from certain sources be placed in the permanent fund, but it also provides for the possibility that the legislature could choose to put additional money

Senator Richard Eliason
Page 2
March 10, 1986

into the fund by modifying the language containing the deposit requirement with the words "at least". The provision then goes on to specifically state that the principal be used only for investments, without enunciating any distinction based on the source of the money that comprises the principal. Under the strict terms of Section 15, only the income of the permanent fund may be deposited in the general fund for possible appropriation by the legislature. Therefore, the legislature is powerless to appropriate from the principal of the fund unless the terms of Section 15 are relaxed through the adoption of a constitutional amendment by the voters.

TBC:mkr
m3/143

301228
Legal opinion file

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 6, 1986

Honorable Dick Eliason
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: Irretrievability of money appropriated to the permanent fund

Dear Senator Eliason:

You have requested our advice if money appropriated to the principal of the Alaska permanent fund (Alaska Const. art. IX, sec. 15) may be withdrawn. We have issued an opinion on this topic in 1977. See 1977 Inf. Op. Att'y Gen. (Aug. 31; 66-3-78-0106). We have reviewed the conclusions set out in the 1977 opinion and reaffirm them. We hope this memo answers your question, and apologize for any inconvenience caused by the delay in answering your question.

Sincerely yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By:

James L. Baldwin
James L. Baldwin
Assistant Attorney General

JLB/pjg

Enc.

August 31, 1977

Hon. Clark Gruening
Chairman
House Special Committee on
the Permanent Fund
528 West Fifth, Suite 270
Anchorage, Alaska 99501

Re: Permanent fund, irretrievability
of money appropriated to;
our file J-66-106-73

Dear Representative Gruening:

You have asked whether money appropriated to the permanent fund in excess of the amount required by the constitution is irretrievable.

Section 15 of article IX of the Alaska Constitution, as added by the 1976 amendment to the constitution, reads as follows (emphasis added):

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.

Your question really is whether the limiting language of section 15 applies not only to the mandatory 25 percent of mineral revenues placed in the permanent fund but also to any additional money placed in the fund.

We believe that the answer is yes.

The language of the amendment providing for the permanent fund is clear enough. There is to be a permanent fund. At least 25 percent of the enumerated mineral revenues are to be placed in it. The use of the words "[a]t least" clearly contemplates that additional monies may well be placed in the fund. Once there, they form the fund's principal. That principal "shall be used only" for income-producing investments. Hence, on its face, what becomes a part of the principal may no longer be withdrawn for another purpose. Only the income from investments of the principal is available.

It is a universal principle that the legislature's law-making power is plenary except as limited by the state or federal constitutions. In order to hold that the legislature may not appropriate additional monies to the permanent fund and also provide for their subsequent withdrawal, the courts must find an express or implied prohibition against its doing so. Facially, the constitution's restriction on the use of the fund's principal seems to constitute such an implied restriction, *i.e.*, the principal may be invested but nothing else, including a withdrawal, may be done with it.

It could be possible, one might argue, for the legislature to make appropriations to the fund by law and specify that they are made on the condition that they are intended to be retrievable and are null and void ab initio if ruled not to be. The problem is that the courts would likely rule that the condition itself is so inconsistent with the provisions of section 15 that it is absolutely void, *i.e.*, that the legislature is prohibited from withdrawing from the principal both directly and indirectly.

Or the legislature could appropriate to the fund and specify that the monies appropriated are not to be considered a part of the fund's "principal" in the sense of the constitution, *i.e.*, as monies available solely for investment, but rather are to be considered as a temporary addition to the fund which is to be used for investment but which shall be accounted for separately and may be withdrawn. Again, the problem is that the courts would likely rule that such legislation is so inconsistent with the provisions of section 15 that it is void. Either there is a permanent fund or there is not.

We are dealing here with a peculiar--perhaps unique--quasi-trust. Unlike most trusts, the principal may not be reached whatever, either now or in the future. No one has a future right to the principal. Instead, the principal is to be invested in perpetuity to produce income.

Hon. Clark Gruening
August 31, 1977
Page 3

Only the income from investments may be reached. Absent still another constitutional amendment, we see no way around this result. A permanent fund was intended, and a permanent fund appears to have been achieved.

Accordingly, we doubt very much that any money appropriated to the permanent fund may subsequently--without a constitutional amendment--be withdrawn.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By:
Rodger W. Pegues
Assistant Attorney General

RWP:chp

Introduced: 1/13/86
Referred: Finance

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BY KERTTULA AND V. FISCHER

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FOURTEENTH LEGISLATURE - SECOND SESSION

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