

EO

75

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE


P.O. BOX Y, JUNEAU 99811

(907) 465-3892

February 24, 1989

## M E M O R A N D U M

To: Representative Mike Davis, Chair  
Legislative Council

From: Representative Dave Donley, Chair   
House Labor and Commerce Committee

Re: Executive Orders and the BASIS system

I am writing to request that Executive and Administrative Orders be included under the "bills in Committee" menu of the BASIS system.

Our Committee recently "found" an Executive Order that had been filed along with the other original bills in a secured file accessed only by the Committee secretary. Since the EO did not appear on the BASIS print outs used to set the weekly committee calendar, it was easily lost track of even though the actual bill was secure. Therefore we were suddenly caught without sufficient time to review the EO with the 60 day limit rapidly approaching.

In addition to the problem outlined above, it is difficult to find out what Executive and Administrative Orders have been introduced and where they have been referred to since they are not listed in the BASIS system at all.

In most cases this wouldn't be a problem because Executive and Administrative Orders generally represent simple technical changes in the structure of the Administration. However, in some cases, such as the EO we "found", they make substantial changes that should more appropriately be reviewed by the Legislature during the public hearing process.

I would appreciate your immediate attention to this matter. Please call me or Ginger Baim at 4954 if you have any questions or need additional information.

cc: Representative Ben Grussendorf, Chair  
House Rules Committee

Chief Clerk, Alaska State House of Representatives

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892

February 27, 1989

## M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair  
House Labor and Commerce Committee

Re: Proposed Committee Legislation

Attached is a draft House Special Concurrent Resolution disapproving Executive Order 75, a measure transferring certain energy loan programs from various state agencies to the Alaska Power Authority.

EO 75 changes the APA's name to the Alaska Energy Authority, to "reflect the agency's increased and diversified responsibility for energy matters resulting from this Order", and transfers responsibility for administering the Bulk Fuel Revolving Loan Fund and the Power Development Revolving Loan Fund (PDRLF) to the APA.

While the Governor has clear authority to restructure state government as he sees fit, the effect of EO 75 is to make substantial changes in the way the APA functions and in the scope of their authority. More importantly, EO 75 may remove substantive energy policy decisions and use of the revenues generated from the PDRLF from Legislative review and the Budget process.

By placing the PDRLF directly under the APA, the agency is placed in an unprecedented position of being able to make loans to itself for power projects under 1.5 megawatts without legislative review. In the past few years the Legislature has lapsed funds from the PDRLF into the General Fund. EO 75 will allow the APA to encumber those funds in the future.

There are several bills currently pending before the Legislature that affect the future and scope of responsibilities of the APA including HB 143, currently in the House Labor and Commerce Committee. It is appropriate for the Legislature to have time to act on these measures during the public hearing process before a measure as sweeping as EO 75 goes into effect. In addition, EO 75 does not become effective until July 1, 1989, so delay of its implementation until the Legislature has had time to act should not interfere with the Governor's ability to restructure the Agency in the future.

In order to disapprove an EO, a Resolution must be adopted by a majority vote during a special joint session prior to March 9, the last day of the 60 days the Legislature has to act on an EO. Since time is so short, this Resolution must be introduced no later than tomorrow (Wednesday, March 1) in order to have chance to be reviewed by the Legislature prior to the deadline.

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 27, 1989

SUBJECT:           Constitutionality of Executive Order  
                  No. 75 (Transferring programs to the  
                  Alaska Power Authority)

TO:                Representative Dave Donley, Chairman  
                  House Labor and Commerce Committee

FROM:             Teresa B. Cramer *TBC*  
                  Legislative Counsel

You have requested an opinion concerning the constitutionality of Executive Order No. 75, transferring certain programs to the Alaska Power Authority (APA) and changing the name of the authority to the Alaska Energy Authority.

You question whether the transfer of the power development revolving loan fund (PDRLF), which makes loans to the APA, from the Department of Commerce and Economic Development to the APA itself violates the power of the governor under the state constitution to reorganize the executive branch of government. You also have asked whether the APA could encumber the revenue stream coming into the PDRLF and prevent the legislature from reappropriating those receipts.

In my opinion, Executive Order No. 75 is a valid exercise of the governor's powers under sec. 23, art. III, Constitution of the State of Alaska, which reads in pertinent part:

The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders.

The APA is an independent public corporation located in the Department of Commerce and Economic Development

Representative Dave Donley  
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(AS 44.83.020). It is subject to the reorganization power of the governor.

The Executive Order does not make any substantive changes to the programs transferred. It transfers the PDRLF and the bulk fuel revolving loan fund to the APA. The fact that transferring the PDRLF to the APA permits the APA to make a loan from one fund under its control to another program under its control, though anomalous, is not a violation of the governor's powers of reorganization.

Your second question concerns the ability of the APA to encumber the receipts of the PDRLF.

Under Sec. 44.83.510(a) of the Executive Order (currently AS 44.33.610(a)), the PDRLF may be used for financing a power project acquired or constructed under the energy program for Alaska. The definition of "power project" in AS 44.83.230(4) is very broad, including a "plant, works, system, or facility" that is used for electrical or thermal energy production, waste energy utilization and energy conservation, or transmission, purchase, sale, exchange, or interchange of electrical or thermal energy. Therefore, the energy program for Alaska could include a wide variety of undertakings.

The energy program for Alaska is set out in AS 44.83.380 - 44.83.425. Under AS 44.83.380(b), the APA may acquire or construct power projects, but only if the project is submitted and approved under AS 44.83.177 - 44.83.187.

The legislative review process set out in AS 44.83.177 - 44.83.187 prohibits the APA from embarking on the engineering or design phase of a proposed new project for which legislative approval is required until the legislature has approved the project. However, under AS 44.83.187, certain kinds of projects are exempt from legislative approval. (Generally, projects that generate 1.5 megawatts of power or less, and those that generate more than 1.5 but not more than 25 megawatts and are financed by revenue bonds are exempt. Transmission lines that cost less than \$3,000,000 are also exempt.) Under Sec. 44.83.510(b) (currently AS 44.33.610(b)) the requirement for legislative approval under AS 44.83.185(c) applies only to those projects that are not exempted from legislative approval under AS 44.83.187. An exempt project could be undertaken as part of the energy program for Alaska without legislative review and the PDRLF

Representative Dave Donley  
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could be used as a funding source.

If the APA encumbered the revenue stream from the PDRLF before the effective date of an appropriation depleting the fund, the encumbrance would defeat the appropriation to the extent of the amount obligated. If the project were one that fell within the exemption to legislative review, the APA could finance its acquisition or construction without prior legislative approval.

If I may be of further assistance, please advise.

TBC:gc  
WkG7/062

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 27, 1989

SUBJECT: Constitutionality of Executive Order  
No. 75 (Transferring programs to the  
Alaska Power Authority)

TO: Representative Dave Donley, Chairman  
House Labor and Commerce Committee

FROM: Teresa B. Cramer *JBC*  
Legislative Counsel

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37.3 mil*

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If I may be of further assistance, please advise.

TBC:gc  
WkG7/062



# Alaska State Legislature

6 DV

## House of Representatives

### Office of the Chief Clerk

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

February 27, 1989

#### M E M O R A N D U M

TO: Representative Dave *D. Jones* Chair  
House Labor and Commerce *Committee*

FROM: Irene Cashen, Chief Clerk *Irene*

RE: Executive Orders and the BASIS System

I agree with you. It would be helpful to have Executive Orders available in BASIS. We have requested this from Data Processing in the past, but it has never been a high priority.

Marshall Slater in Data Processing has told me it might be possible to enter this information into the system, but there are major problems that would need to be solved.

Both the House and Senate are working with the identical executive order numbers at the same time. This creates a special problem, since the information entered from each house would be interspersed and garbled.

The BASIS system would have to be reprogrammed to accept EO numbers. Marshall told me this is a major change and should not be handled until the interim. The whole BASIS concept would have to be reprogrammed. A time-consuming undertaking.

Until DATA Processing can accommodate us, we will enter the information into the printed STATUS OF BILLS AND RESOLUTIONS that is distributed every week. It's too late to be of much help this year. We will continue to enter this in the printed status next year if BASIS hasn't been reprogrammed.

I'm enclosing a copy of what will appear in the STATUS. Maybe, just having it available in the printed STATUS will solve the problem and it won't be necessary to have it on-line in BASIS. Please let me know what you think.

Encl.

cc: Grussendorf, Chair, Rules Committee  
Mike Davis, Chair, Legislative Council

STATUS OF EXECUTIVE ORDERS

<u>EO NUMBER</u>	<u>ABBREVIATED TITLE</u>	<u>SPONSOR</u>	<u>DATE</u>	<u>CURRENT STATUS</u>
EO 72	SOME FUNCTIONS OF MEDICAID RATE COMMISSION TO H&SS	GOVERNOR	1/09/89 1/09/89	(H) HES (S) HES
EO 73	CERTAIN LICENSING FUNCTIONS FROM REVENUE TO FISH & GAME	GOVERNOR	2/01/89 1/11/89	(H) FIN (S) RES then FIN
EO 74	REGULATION GAMES CHANCE/SKILL FROM REVENUE TO COMMERCE	GOVERNOR	2/08/89 1/09/89	(H) RUL (S) L&C then FIN
EO 75	BULK FUEL LOANS/POWER DEV. LOANS	GOVERNOR	1/09/89  1/09/89	(H) L&C then FIN then CRA (S) RES

DEPARTMENT OF ADMINISTRATION FY 90 PROPOSED

COMPONENT	TOTAL	GF	FED REPTS	OTHER	FORMULA
<b>SENIOR PROGRAMS</b>	<b>91644.4</b>	<b>59327.3</b>			YES
(46.45% OF DOA BUDGET)					
LONGEVITY BONUS	56469.3	56469.3			
PIONEER HOMES	25707.9			2.3	
OLDER ALASKANS COMM.	9467.2	2858.0	5693.7		
<b>PUBLIC SERVICES</b>	<b>18509.3</b>	<b>18509.3</b>			
(9.38% OF DOA BUDGET)					
PUBLIC DEFENDER	6869.5	6869.5			
OFFICE OF PUBLIC ADVOCACY	3838.3	3838.3			
APCC	609.5	609.5			
APBC	7192.0	7192.0			
<b>LEASING AND FACILITIES</b>	<b>28039.5</b>	<b>26114.9</b>		<b>1924.6</b>	YES
(14.21% OF DOA BUDGET)					
<b>RISK MANAGEMENT</b>	<b>20354.0</b>	<b>138.1</b>		<b>20215.9</b>	
(10.32% OF DOA BUDGET)					
<b>CENTRAL ADMIN.</b>	<b>18029.1</b>	<b>12364.8</b>		<b>5664.3</b>	
(9.14% OF DOA BUDGET)					
<b>INFO. RESOURCE MGMT.</b>	<b>20643.2</b>	<b>15774.5</b>		<b>4868.7</b>	
(10.46% OF DOA BUDGET)					
INFO. RESOURCE MGMT.	12290.5	8991.8		3298.7	
TELECOMMUNICATIONS	5689.2	4119.2		1570.0	
RATNET	2663.5	2663.5			
<b>TOTAL DOA BUDGET</b>	<b>197306.7</b>	<b>158937.2</b>	<b>5693.7</b>	<b>32675.8</b>	

**BUDGET COMPARISON**  
(GF ONLY-NUMBERS IN MILLIONS)

	<b>FY 75</b>	<b>FY 80</b>	<b>FY 85</b>	<b>FY 90</b>
<b>EDUCATION *</b>	132.7	250.6	536.2	493.1
% of budget	31%	26%	25%	24%
% of change		+45%	+114%	-8%
<b>SCHOOL DEBT RET.</b>	4.8	24.1	94.7	104.0
% of budget	1%	3%	4%	5%
% of change		+402%	+293%	+10%
<b>LONGEVITY BONUS</b>	6.1	13.4	43.4	56.1
% of budget	1%	1%	2%	3%
% of change		+120%	+224%	+29%
<b>H&amp;SS PAYMENTS</b>	25.5	36.7	75.8	129.0
% of budget	6%	4%	4%	6%
% of change		+44%	+107%	+70%
<b>POWER COST EQUAL</b>	0	0	12.2	17.9
% of budget			1%	1%
% of change				+47%
<b>MUNICIPAL ASST &amp; REVENUE SHARING</b>	12.9	38.3	141.7	96.9
% of budget	3%	4%	7%	5%
% of change		+197%	+270%	-32%
<b>SENIOR TAX RELIEF &amp; SHARED TAXES</b>	7.2	9.5	13.8	18.2
% of budget	2%	1%	1%	1%
% of change		+32%	+45%	+32%
<b>UNIVERSITY</b>	30.7	101.7	166.9	159.1
% of budget	7%	11%	8%	8%
% of change		+231%	+64%	-5%
<b>COURT SYSTEM</b>	11.7	23.8	38.8	41.2
% of budget	3%	2%	2%	2%
% of change		+103%	+63%	+6%
<b>LEGISLATURE</b>	3.6	20.2	35.3	31.2
% of budget	1%	2%	2%	1%
% of change		+461%	+75%	-12%

	<b>FY 75</b>	<b>FY 80</b>	<b>FY 85</b>	<b>FY 90</b>
<b>AGENCIES</b>	188.4	441.3	951.7	926.0
% of budget	44%	46%	45%	44%
% of change		+134%	+116%	-3%
<b>TOTAL BUDGET</b>	423.6	959.6	2110.5	2072.7
% of change		+127%	+120%	-2%

\*FY 75 Education totals include state operated schools

% of budget includes total operating budget-excluding debt service

% of change is compared to previous FY

Agency total does not include formula programs

Total Budget does include formula programs

6-0924A  
Cramer  
2/25/89

1 IN THE HOUSE

BY THE LABCR AND  
COMMERCE COMMITTEE

2 HOUSE SPECIAL CONCURRENT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 Disapproving Executive Order No. 75.

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

7 WHEREAS the governor, under authority of art. III, sec. 23 of the  
8 Constitution of the State of Alaska, has proposed the transfer of certain  
9 programs from the Department of Commerce and Economic Development and the  
10 Department of Revenue by Executive Order No. 75; and

11 WHEREAS the governor has submitted Executive Order No. 75 to the  
12 presiding officer of each house of the legislature as required by AS 24.-  
13 30.130(b); and

14 WHEREAS art. III, sec. 23 of the Constitution of the State of Alaska  
15 provides that unless disapproved within 60 days of a regular session by  
16 resolution concurred in by a majority of the members of the legislature in  
17 joint session, an executive order becomes effective at a date thereafter  
18 designated by the governor; and

19 WHEREAS Executive Order No. 75 significantly increases and diversifies  
20 the jurisdiction of the Alaska Power Authority; and

21 WHEREAS the legislature is precluded from amending executive orders  
22 during the review process; and

23 WHEREAS there are several measures concerning the scope and future of  
24 the Alaska Power Authority now being considered by the legislature; and

25 WHEREAS the legislature has not had time to fully examine the issues  
26 raised by Executive Order No. 75;

27 BE IT RESOLVED by the Alaska State Legislature that Executive Order  
28 No. 75 is disapproved.