

HB

276

HOUSE COMMITTEE ON STATE AFFAIRS

**RECAP OF
HB 276**

Permanent Fund - Amerada Hess Litigation

Received April 7, 1989
by The Rules Committee by
Request of the Governor

Heard April 18, 1989

Committee Substitute adopted April 18, 1989

Passed Out of Committee April 18, 1989
3 Do Pass
3 No Recommendation

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Request of the Governor

CSHB 276 (SA)
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April 18, 1989
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April 10, 1989

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 7, 1989

FURTHER REFERRALS: JUDICIARY
FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 276

HOUSE BILL NO. 276 [PERMANENT FUND - AMERADA HESS LITIGATION]
"An Act amending the permanent fund dividend fund statutes to permit litigation of State v. Amerada Hess in Alaska courts; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with (SHB 276(SA)) the same title
 a new title
 have attached amendment(s)
 do pass
 do not pass
 no recommendation
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
 zero fiscal note _____
 zero with analysis _____

- fiscal note(s) _____
 zero fiscal note(s) 4/7/89 DAR
 zero fn/analysis 4/7/89 APFC

SIGNING DO PASS:

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>David Douley</u>		X	
<u>Jim Busch</u>		X	
<u>Scott Anderson</u>		X	

D.A. Bush
Chairman's Signature

Item 2

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

cc
248276

April 7, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

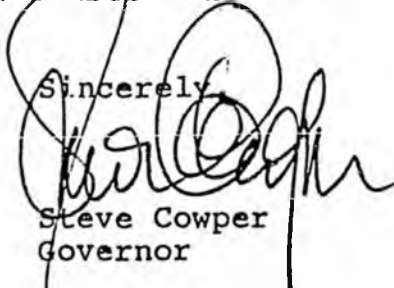
Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that amends AS 43.-23.045 by excluding potential revenue from the State v. Amerada Hess case from the permanent fund earnings available for distribution as dividends.

Under current law, the commissioner of revenue must transfer to the dividend fund 50 percent of the income of the Alaska permanent fund which is determined to be available for distribution. Normally this would include income derived from litigation involving the state's royalties. However, in November 1987 three defendants in the State v. Amerada Hess royalty litigation filed suit in federal court to prevent that case from being tried in any court in Alaska. Standard Alaska Petroleum, Exxon, and Chevron USA claim that no judge or jury in Alaska can provide them with a fair trial since all judges and jurors have a financial stake in the outcome and are, therefore, unconstitutionally biased. In particular, the companies assert that these judges and jurors qualify for permanent fund dividends and would financially benefit if the state prevailed in the Amerada Hess case because any money awarded the state would increase the amount available for distribution.

The state Department of Law is vigorously contesting this claim and was successful in having the federal case dismissed in the United States District Court. However, the matter has been appealed to, and is pending before, the Court of Appeals for the Ninth Circuit. Were we to lose this case, the state would be faced with having a non-Alaska court interpreting the meaning of an Alaska lease form and deciding fundamental state policies regarding oil and gas leasing in this state. If the case is still on appeal at the time of trial, now scheduled for April 4, 1990, there would be a cloud hanging over the lengthy proceedings, perhaps compelling enough to lead to further postponements.

This bill would eliminate the due process arguments advanced by the companies, thus making it possible for the trial to stay on schedule in an Alaska court where it belongs. This result is achieved by preventing income earned from any judgment favorable to the state from entering the permanent fund dividend stream. This sacrifice is a small price to pay for assuring that Alaska courts will be the final arbiters of Alaska royalty law.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the word "Sincerely,".

Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Revenue-APFC
 Title: Amending the PF dividend fund
statutes to permit litigation of State v. Amerada Hess
 BRU: _____
 Sponsor: Rules-Request of Governor
 Components: _____
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact - see attached

Prepared by: *David A. Rose* Phone: 465-2047
 Division: David A. Rose, Exec. Director Date: April 6, 1989
Alaska Permanent Fund Corporation
 Approved by Commissioner: *A. Mulone* Date: 4/6/89
 Agency: _____

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Continuation of Fiscal Note/Bill Analysis

Permanent Fund Dividend Fund Statute Amendment to Permit
Litigation of State v. Amerada Hess in Alaska

This bill would eliminate certain due process arguments currently advanced by the defendants in State v. Amerada Hess, by neutralizing the impact upon Permanent Fund dividends of a decision favorable to the State. The Alaska Permanent Fund's legally mandated share of all funds received in a settlement of the litigation, including associated interest, would be credited to the principal of the Fund at the time of receipt. It is expected that the settlement could range from \$400 million to \$2.6 billion, the latter number estimated by the defendants.

All future earnings on this portion of Fund principal would be forever excluded from Permanent Fund dividend calculations. In this manner, the bill prevents all income earned from a judgment favorable to the State from entering the Permanent Fund dividend stream, and makes it possible to continue the trial in an Alaska court on schedule.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 276
PUBLISH DATE: HOUSE 4/7/89

FISCAL NOTE

REQUEST

Revision Date: _____
Title: An Act amending the PFD statutes
Sponsor: Rules/Governor
Requestor: Rules

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: This bill would have no affect on the administration of the dividend program.

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: April 5, 1989

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 4/5/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 10, 1989

The Honorable H. A. Boucher
Chair, House State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: Proposed committee
substitute for HB 276
Our file: 773-89-114

Dear Representative Boucher:

It has come to our attention that the title of HB 276 could be made more specific and that it would be helpful to make express a point that is now only implied in the amendment in sec. 1 of the original bill. A proposed committee substitute, drafted for possible adoption by your committee, is attached.

The change in the bill title makes clear that the bill is to prevent amounts received as a result of the State v. Amerada Hess litigation from being used for permanent fund dividends. The current title merely indicates that the effect of the bill will be to permit litigation of that case in Alaska courts and thus make moot the current legal challenge to having that case heard by an Alaska court.

With regard to the change in the text, the original version of the bill relies on the application of existing law with regard to oil and gas income. The change offered by this draft committee substitute makes clear that money received as a result of the State v. Amerada Hess litigation will be treated the same as other income of the Alaska permanent fund, except for

Item 5

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

Honorable H. A. Boucher, Chair
House State Affairs Committee
Our file: 773-89-0114

April 10, 1989
Page 2

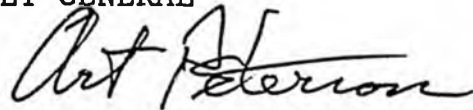
permanent fund dividends. Both versions make clear that that money is not available for distribution to the dividend fund from which permanent fund dividends are paid.

Thank you for your consideration of this matter.

Yours truly,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:



Arthur H. Peterson
Assistant Attorney General

AHP/cb

Enclosure

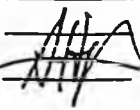
cc w/encl.: Robert A. Evans
Legislative Liaison
Office of the Governor

Bruce Botelho
Assistant Attorney General
Juneau

DRAFT # 2cb

DATE: 4/10/89

BOOKPROOFED: _____

APPROVED: 

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 276

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act amending the permanent fund dividend fund statutes to prevent amounts received as a result of the litigation of State v. Amerada Hess in Alaska courts from being used for permanent fund dividends; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 43.23.045(b) is amended to read:

(b) Notwithstanding any contrary provision of law, each year the commissioner shall transfer to the dividend fund 50 percent of the income of the Alaska permanent fund earned during the fiscal year ending on June 30 of the current year and available for distribution. However, income earned on money awarded after trial in State v. Amerada Hess, et. al., 1JU-77-847 Civ. (Superior Court, First Judicial District) shall be treated in the same manner as other income of the Alaska permanent fund, except that it is not available for distribution to the dividend fund.

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

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STATE OF ALASKA THE LEGISLATURE

BOUCHER STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 14, 1989

SUBJECT: Income earned on money awarded after trial
(CSHB 276(SA))

TO: Representative H.A. "Red" Boucher

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

You have asked for comments on a draft committee substitute submitted by the Department of Law.

(1) I believe that the title satisfies the requirements of article II, section 13 of the state constitution. Nevertheless, it is not very precise. I would recommend something like:

"An Act relating to income earned on money awarded after trial in State v. Amerada Hess; and providing for an effective date."

(2) I am uncertain as to the effect of the substantive change made to AS 43.23.045(b). The added provision specifically deals with "income earned on money awarded after trial". Should the possibility of settlement be dealt with? The provision appears to apply only to income earned on money awarded after the litigation. Will any interest have been earned on that money during the course of litigation or will any interest be awarded in the case, and should that income be considered in this bill? The provision provides that future income earned on the money awarded will be "treated in the same manner as other income" of the permanent fund. At the same time it is not available for distribution to the dividend fund. Does this mean that the income will not be considered in determining the level of the dividend each year, or only that the physical dollars generated as income of the litigation money will not be the ones used to pay that dividend? The language needs to be clarified, both to achieve the desired result in court and to allow administration of the provision if it becomes law.

TBC:lmb:kb
L7/067

4/18/89

ROYALTY COSTS .

TITLE CHANGE - - HB 276

→ 1 Billion to 2 Billion \$

New Title:

An Act relating to transfers to the dividend fund; and providing for an effective date.

\$20 mil expended already!
TRIED NEXT YR IN JUNE

9th circuit would rule that move / Judge (Cline Field)
that out of AREA

STANDARD US: S. C. GIGER / LAWSUIT OF COURSE

Risks

- 1) loose right to try A-H. IN STATE
- 2) loose try IN FEDERAL COURT

where case go?

NO ALTERNATE FORUM / JURISDICTIONAL LAW -
MAY BE CAST TRY IN ANOTHER JURISDICTION -
COULD RESULT IN delay - AS IS SCHEDULE
FOR NEXT YR.

IF TAKEN AWAY, OIL CO. WOULD ARGUE
STATUS OF TRANSFERS IN NEW JURISDICTION
COULD RESULT IN STATE NOT HEARING OTHER

CASES BE PRESENTED FROM OTHER JURISDICTION

(U) STATE COURTS -