

HB

276



cc
74B 276

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 7, 1989

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

Dear Mr. Speaker:

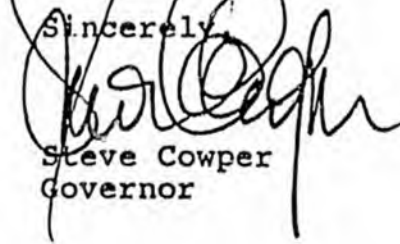
Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that amends AS 43.-23.045 by excluding potential revenue from the State v. Amerada Hess case from the permanent fund earnings available for distribution as dividends.

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 typed name and title.

Steve Cowper
Governor

MEMORANDUM

State of Alaska

Department of Law

TO Members of the Legislature

DATE April 24, 1989


FILE NO

TEL NO 465-3600

SUBJECT

HB 276 and the recent
court decision in
Standard v. Schaible

FROM


Douglas B. Baily
Attorney General

The recent Ninth Circuit Court of Appeals decision in Standard v. Schaible did not resolve the bias issue -- it only delayed its resolution. Basically, the court ruled that the issue was not "ripe", and that the federal courts would rule on the issue only after the Alaska courts had the initial chance to decide whether there was unconstitutional bias because of the potential impact of the Amerada Hess case on the amount of Permanent Fund dividends. The matter was dismissed "without prejudice" and with the express invitation to the Producers to come back to the federal courts if the State did not provide a fair and unbiased forum for the resolution of the dispute. The Ninth Circuit Court of Appeals stated:

In dismissing this matter without prejudice, the district court issued a challenge to the State of Alaska to provide a forum which will ensure a fair trial before an unbiased judge and unbiased jurors within a reasonable time. The district court invited the Producers "to reopen this federal case" if the State Officials fail to provide an unbiased forum within a reasonable time. We applaud the district court's wise resolution of a very delicate test of the joint responsibility of state and federal courts to provide every person with due process.

The burden, therefore, is still on the State to guarantee a fair tribunal. Without passage of legislation, the State would have to convince both the state courts and the federal courts that the effect on Permanent Fund dividends does not raise constitutional problems. Failure to convince either tribunal would result in losing the state forum. In essence, the Ninth Circuit Court of Appeals merely passed on the issue for the time being, reserving its look at the issue until after the state Superior Court and Supreme Court has a chance to make the initial judgment.

DBB:jf



Alaska Permanent Fund Corporation

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M E M O R A N D U M

DATE: April 26, 1989

TO: Senator Pat Pourchot
Chairman, Senate State Affairs Committee

FROM: Jim Kelly *JK*
Research & Liaison Officer

SUBJECT: Analysis of Senate Bill No. 295/HB 276

Attached is one chart prepared by the Alaska Permanent Fund Corporation at your request. The chart compares the impact on future per capita dividend payments of three scenarios:

1) SB 295 would exclude from all future dividend calculations all income earned on money which is deposited in the Permanent Fund as a result of State v. Amerada Hess. This is shown on the chart as the series of solid bars entitled "Excluded/SB 295," and is the same as continuation of the status quo.

2) "\$100M Included" refers to the series of cross-hatched bars which depict the impact on future per capita dividends of the Permanent Fund receiving \$100 million as a result of State v. Amerada Hess and including the net income earned on that deposit in all future dividend calculations.

Compared to the status quo and SB 295, the increase in per capita dividends under this scenario would range from \$1.00 in 1991 to \$13.00 in 2005.

3) "\$650M Included" refers to the series of dotted bars which depict the impact on future per capita dividends of the Permanent Fund receiving \$650 million as a result of State v. Amerada Hess and including the net income earned on that deposit in all future dividend calculations.

Compared to the status quo and SB 295, the increase in per capita dividends under this scenario would range from \$6.00 in 1991 to \$82.00 in 2005.

Senator Pat Pourchot
April 26, 1989
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The \$100 and \$650 million figures used above represent the range of potential payments to the Permanent Fund as a result of the State v. Amerada Hess case. In both cases, it is assumed that the deposits to the principal of the Permanent Fund deriving from this litigation would occur in fiscal 1991.

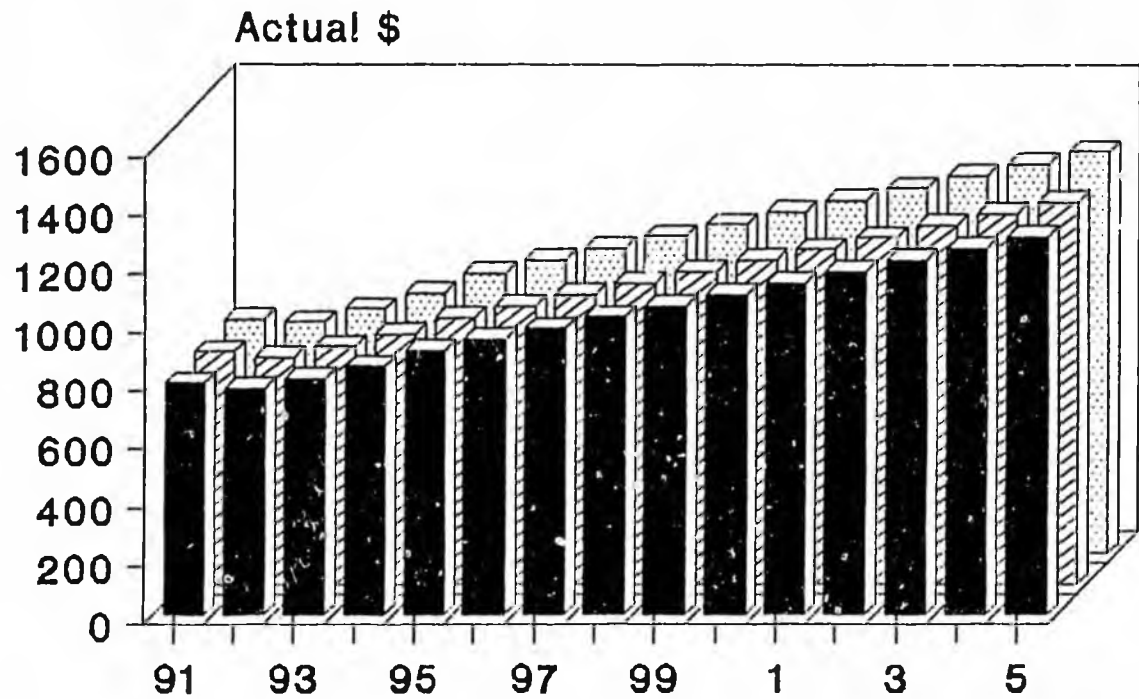
For Your Information: These projections are based on a certain set of basic assumptions; the numbers shown on the attached chart would change if different assumptions were used. The assumptions used in the preparation of the chart are listed and explained herein.

It is the Corporation's policy to use conservative assumptions wherever possible. Thus, the Fund's long-term rate of return is projected to average 3% per year after inflation; long-term inflation is projected to average 6% per year; and the assumptions for numbers of future dividend recipients and amounts of future dedicated State oil revenues are taken from the Department of Revenue's most recent "low case" forecast.

PLEASE NOTE THAT THE CORPORATION NEITHER SUPPORTS NOR OPPOSES ANY PROPOSED CHANGES TO THE CURRENT USE OF FUND EARNINGS, EXCEPT AS THEY MAY RELATE TO THE PROPER EXERCISE OF THE TRUSTEES' FIDUCIARY RESPONSIBILITIES AS REQUIRED UNDER THE PRUDENT INVESTOR RULE.

IMPACT ON PER CAPITA DIVIDENDS

Amerada Hess \$ to PF Included/Excluded From Annual Dividend Calculations



\$650M Included	800	837	957	1044	1127	1209	1292	1376
\$100M Included	795	813	912	990	1069	1147	1227	1307
Excluded/SB 295	794	809	904	981	1058	1136	1215	1294

Fiscal Years

FISCAL NOTE

REQUEST:

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

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: [Signature] 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 6, 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)