

S B

295

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SB 295

SPONSOR Governor

BILL TITLE Transfers to dividend fund.
(Amerada HESS)

DATE REFERRED 4-20-89

HEARING SCHEDULED 4-24-89

FISCAL NOTE PREPARED ✓

SPONSOR CONTACTED Mary Halloran 3568

INTERESTED PARTIES CONTACTED

✓ Mary

✓ Doug Bailey, AG 3600

✓ Jim Kelly, 2047

OTHER

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 4-20-89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

JUD

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 4-24-89

4/20/89
Mr. President:

STATE AFFAIRS Committee considered SB 295

transfers to the dividend fund; efd

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title
- _____ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

FISCAL NOTE(S) attached zero fiscal impact
 appropriation no FN attached Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

Tim Kelly

OTHER RECOMMENDATIONS

Col Adams - No Rec.

Jan Fick No Rec.

Pat Samuels Do Pass

Committee backup attached

Chair: _____ signature and recommendation

FISCAL NOTE

REQUEST:

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

Agency Affected: Revenue-APFC
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						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

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

HOUSE BILL NO.

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.

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: Elvin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: April 6, 1989

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 4/19/89

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

Amended: 5/3/89

gol149hJ

Offered: 4/29/89

Referred: Rules

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2

CS FOR HOUSE BILL NO. 276 (Finance) am

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to transfers to the dividend fund;

7

and providing for an effective date."

8

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

9

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

10

(b) Notwithstanding any contrary provision of law, each year the

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commissioner shall transfer to the dividend fund 50 percent of the

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income of the Alaska permanent fund earned during the fiscal year

13

ending on June 30 of the current year and available for distribution.

14

However, income earned on money awarded after trial in State v.

15

Amerada Hess, et al., 1JU-77-847 Civ. (Superior Court, First Judicial

16

District) shall be treated in the same manner as other income of the

17

Alaska permanent fund, except that it is not available for distribu-

18

tion to the dividend fund, and shall be annually deposited into the

19

principal of the Alaska permanent fund.

20

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

(SB 295)
Identical to Senate version except
for this clause —
prevents the Amerada Hess
money from being used for
inflation-proofing

Impact on dividends ATTACHED.

25
Pat

Alaska State Legislature



Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling

P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members
FROM: Senator Pat Pourchot, Chairman
RE: SB 295, Treatment of Amerada Hess Income
DATE: April 27, 1989

Please find attached information prepared by the Permanent Fund Corporation on the effects of SB 295 on future per capita dividend payments. You'll note that two scenarios are compared and that the impact on dividends ranges from \$1 to \$82.



Alaska Permanent Fund Corporation

P.O. Box 4-1000 Juneau, Alaska 99802-4100

(907) 465-2047 Telecopy (907) 586-2057

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 *[Signature]*
Research & Liaison Officer

SUBJECT: Analysis of Senate Bill No. 295

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
Page 2

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.

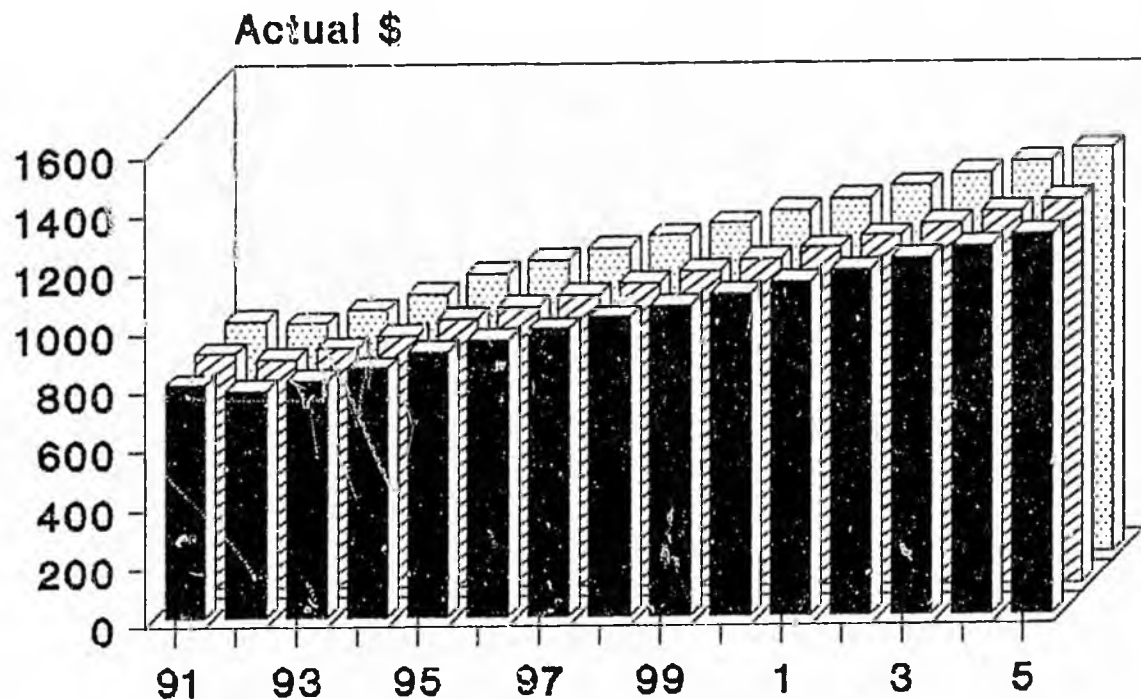
For Your Information: These projections are based on a certain set of basic assumptions; the numbers shown on the attached chart would change if different assumptions were used. The assumptions used in the preparation of the chart are listed and explained herein.

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



	91	93	95	97	99	1	3	5
\$650M Included <i>6</i>	800	837	957	1044	1127	1209	1292	1376 <i>-84</i>
\$100M Included	795	813	912	990	1069	1147	1227	1307 <i>-13</i>
Excluded/SB 295 <i>1</i>	794	809	904	981	1058	1136	1215	1294

Fiscal Years

1/4 proceeds

STEVE COWPER
GOVERNOR



295

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 20, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

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.

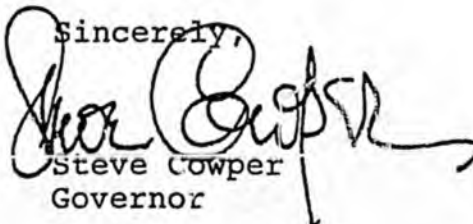
Under current law, the commissioner of revenue must transfer to the dividend fund 50 percent of the income of the Alaska permanent fund which is determined to be available for distribution. Normally this would include income derived from litigation involving the state's royalties. However, in November 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.

295

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", with a long horizontal flourish extending to the right.

Steve Cowper
Governor

S295.TXT
4/24/89

SB 295 TRANSFERS TO THE DIVIDEND FUND

TO TESTIFY

MARY HALLORAN, O.M.B.

DOUG BAILEY, ATTORNEY GENERAL

F.Y.I.

THE BILL PROHIBITS "INCOME EARNED ON MONEY AFTER TRIAL" FROM BEING DISTRIBUTED TO THE DIVIDEND FUND. IS THERE A CHANCE THE CASE WILL BE SETTLED RATHER THAN TRIED? IF SO, I ASSUME INCOME EARNED ON SETTLEMENT MONIES COULD BE USED FOR DIVIDENDS.

HOW WOULD EXCLUDING THESE FUNDS FROM THE DIVIDEND CALCULATION IMPACT THE AMOUNT OF THE DIVIDEND?

SB 295 PROPOSES A STATUTORY CHANGE. COULD THE PROVISION BE REPEALED AFTER TRIAL, AND THE INCOME ON THE MONIES BE CALCULATED INTO FUTURE YEARS' DIVIDENDS?

21-Apr-89

LOW REV, LOW POP.

	Current Law	With 250.0 DIFF.	
94	\$924.73	\$926.88	2
95	\$989.61	\$996.55	7
96	\$1,037.79	\$1,049.43	12
97	\$1,087.60	\$1,104.38	17
98	\$1,138.94	\$1,161.10	22
99	\$1,191.76	\$1,217.15	25
0	\$1,245.87	\$1,272.73	27
1	\$1,301.88	\$1,329.85	28
2	\$1,359.54	\$1,388.92	29
3	\$1,419.10	\$1,449.69	31
4	\$1,479.46	\$1,511.08	32
5	\$1,543.43	\$1,576.40	33

what is this figure?
dollars per PFD

from Mary Halloran, OMB

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Falke, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling



P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members
FROM: Senator Pat Pourchot, Chairman
RE: April 24 Committee Meeting
DATE: April 24, 1989

Today at 1:30 in the Beltz Room the Senate State Affairs Committee will hear the following bills:

SJR 38, Proposing an amendment to the Constitution of the State of Alaska relating to terms of legislators

SJR 38 would, by Constitutional amendment, limit tenure in the Legislature to eight consecutive years. After serving eight years a person would again be eligible to seek legislative office at the second biennial election. SJR 38 would go before the voters at the next general election and, if approved, would take effect at the 1992 election.

Article III, sec. 5 of the Constitution limits governors to two full successive terms. After the two terms a person is not eligible to seek the governor's office until one full term has intervened.

SB 284, An Act relating to certain revenue from mineral sources and to the oil and gas properties production tax

SB 284 would amend the Economic Limit Factor of the state's oil severance tax structure in the same manner the Senate Judiciary CS for HB 118 (the "ELF bill") would. The additional tax revenue would effectively be deposited in the Permanent Fund through increasing from 25% to 43% the statutory percentage of mineral proceeds deposited in the fund. The increase would apply only to payments received by the state after July 1, 1989 from mineral leases issued prior to December 1, 1979.

It is my intent that the State Affairs Committee focus its attention on SB 284's impact on the Permanent Fund, rather than on the ELF provisions. According to the Permanent Fund Corporation, passage of SB 284 would result in the fund principal being \$1.3 billion larger in the year 2000, net income being \$115 million larger, per capita dividends being \$73 larger, and the inflation proofing transfer being \$66 million larger. The projections prepared by the corporation are attached.

SB 295, An Act relating to transfers to the dividend fund

SB 295 would exclude potential revenue from the State v. Amerada Hess case from the Permanent Fund earnings available for distribution as dividends. The fund's legally mandated share of money awarded after trial would be credited to the principal of the fund at the time of receipt. Income earned on that money could not be distributed to the dividend fund.

SB 295 is intended to eliminate certain due process arguments currently advanced by the defendants. Standard Alaska Petroleum, Exxon, and Chevron USA filed suit in federal court to prevent the case from being tried in Alaska on the grounds that any judge and jury would be biased because they have a financial stake (through the Permanent Fund Dividend) in the outcome. The U.S. District Court ruled in the State's favor; the matter is currently under appeal to the Ninth Circuit Court of Appeals.

Trial in the Amerada Hess case is scheduled for April 4, 1990. If the State prevails, we could receive from \$400 million to \$2.6 billion.

HB 34, An Act establishing durational residency requirements, not to exceed two years, for receipt of the permanent fund dividend and receipt of benefits under the longevity bonus program

HB 34 would increase the durational residency requirement for the permanent fund dividend program from 6 months to 2 years, and for the longevity bonus program from 1 year to 2 years. The bill provides that if a court rules the 2-year requirement invalid, the requirement is one year; if a court rules 1-year invalid, the requirement is the longest duration permitted by law. Current recipients would be "grandfathered in".

HB 34 raises constitutional questions. The Department of Law fiscal note (\$30,000) anticipates legal challenge of the bill. The Department of Administration fiscal note indicates annual savings based on fewer persons being eligible.

Recent court rulings on Alaska's residency requirements include the Vest decision which struck down the Longevity Bonus requirement of residency since statehood, the Zobel decision which struck down the Permanent Fund Dividend disbursement mechanism based on number of years of residency, and the Andress decision which upheld the Alaska Student Loan requirement of residency for 2 years.

A summary of current statutory residency provisions is attached.

MEMORANDUM

SB 295
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