

SB 213

SENATE FINANCE COMMITTEE REPORT

DATE: 3/18/91

FURTHER:

Date of 5-Day Notice: 3-20-91  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/27/91  
(actually delivered 4/4/91)

Finance Committee considered SB 213

Transfers to the dividend fund; efd.

and recommended:

- replace with \_\_\_\_\_ CS SB 213 (FW)
- or adopt \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- \_\_\_\_\_ letter of intent adopted

- same title
- new title
- technical title change (HB only)

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

- fiscal note(s) \_\_\_\_\_ Dept/Date: \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_
- SFC. 0 4/3/91

APPROVES PREVIOUS:

- fiscal note(s) \_\_\_\_\_ Dept/Date: \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_

appropriation-no fiscal note

SIGNING DO PASS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

1. \_\_\_\_\_ 2. \_\_\_\_\_ Do pass  
 Co-Chairs: Signatures and Recommendations

F I S C A L N O T E

REQUEST:

Revision Date: \_\_\_\_\_ Affected Agency: Ak. Perm. Fund Corp  
Title: Act relating to transfers  
to dividend fund BRU: Ak. Perm. Fund Corp  
Sponsor: Rules/Gov. Components: Ak. Perm. Fund Corp  
Requestor: Senate Finance

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE	*					
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FUNDING: (THOUSANDS OF DOLLARS)

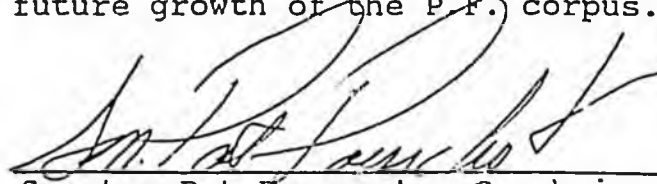
General Fund						
Federal Fund						
Other	*					
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

\* Provisions of this bill will reduce the Permanent Fund Dividends and retain monies within the corpus of the fund. See attached sheets on P.F.D. and future growth of the P.F. corpus.



Senator Pat Fournot, Co-chairman  
Senate Finance Committee

Phone: 465-3879  
Date: 3-Apr-91

DISTRIBUTION (BY PREPARER)  
LEGISLATIVE FINANCE  
LEGISLATIVE SPONSOR

REQUESTOR  
OFFICE OF MANAGEMENT AND BUDGET  
AGENCY(IES)

CS FOR SENATE BILL NO. 213 (FINANCE)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE RULES/GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to State v. Amerada Hess with respect to transfers to the dividend fund;  
2 and providing for an effective date."

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

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

5 (b) Notwithstanding any contrary provision of law, each year the commissioner shall  
6 transfer to the dividend fund 50 percent of the income of the Alaska permanent fund earned  
7 during the fiscal year ending on June 30 of the current year and available for distribution.  
8 However, income earned on money awarded [AFTER TRIAL] in, or received as a result of,  
9 State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior Court, First Judicial District), including  
10 settlement, summary judgment or adjustment to a royalty-in-kind contract that is tied to  
11 the outcome of this case, or interest earned on the money, or on the earnings of the money  
12 shall be treated in the same manner as other income of the Alaska permanent fund, except that  
13 it is not available for distribution to the dividend fund, and shall be annually deposited into the  
14 principal of the Alaska permanent fund.

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

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: SB 213

Page 1, line 1, after "relating to":

Insert "State v. Amerada Hess with respect to"

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_  
 Title: An Act relating to transfers to dividend fund; and providing for an effective date.  
 Sponsor: Senate Rules Committee  
 Requestor: by request of the Governor

Department Affected: Alaska Permanent Fund Corp.  
 BRU: Alaska Permanent Fund Corporation  
 Component: #109 AK Permanent Fund Corporation

COMPONENT SERIAL NO. 

0	1	0	9
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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-
LAND & 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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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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-

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Jim Kelly, Research & Liaison Officer Phone: (907) 465-2047

Division: Alaska Permanent Fund Corporation Date: 3/18/91

Approved by Commissioner: *Mark C. Howe*

Agency: Alaska Permanent Fund Corporation Date: 3/18/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



**Alaska Permanent Fund Corporation**

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


(907) 465-2047

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**MEMORANDUM**

**DATE:** March 29, 1991

**TO:** Senator Pat Pourchot  
Co-Chair, Senate Finance

**FROM:** Jim Kelly   
Research & Liaison Officer

**SUBJECT:** Analysis of Senate Bill No. 213

Attached are two financial projections prepared by the Alaska Permanent Fund Corporation at your request.

**Financial Projection #1:** This is the status quo case as of February 28, 1991. It provides the benchmark against which to compare and contrast any changes to current law.

**Financial Projection #2:** This projection depicts the impacts of enacting SB 213. The State Constitution mandates that the Fund receive at least 25 percent of all royalty-in-kind (RIK) payments received by the State. SB 213 would add the stipulation that all income earned on the Fund's share of the RIK claims which are awarded after trial in State v. Amerada Hess forever be excluded from Permanent Fund dividend calculations and instead be deposited to Fund principal. For the purpose of this analysis, it is assumed, in accordance with the Department of Law's most recent estimates, that the RIK payment will be made on January 1, 1992 and will total \$52.5 million (25 percent of \$250 million).

You specifically asked for an analysis which reflects the positive impact on Permanent Fund principal of SB 213. Included on the following page is a chart which provides that information in tabular form. By the year 2005,

the difference in principal would total \$223 million which is derived from the following sources:

- \* initial deposit of \$62.5 million;
- \* subsequent annual deposits of income earned on that deposit totaling \$165 million;
- \* the \$4.5 million difference between \$223 million and \$227.5 million (\$62.5 million plus \$165 million) is accounted for by the increased inflation-proofing shortfall in the case of SB 213. If there were no inflation-proofing shortfalls in future years, the positive impacts on principal under SB 213 would be even greater.

(in millions of \$)			
FY	Principal Status Quo	Principal SB 213	Difference
91	10,890	10,890	
92	11,674	11,742	69
93	12,675	12,754	79
94	13,757	13,849	92
95	14,912	15,018	106
96	16,141	16,262	121
97	17,386	17,490	105
98	18,587	18,702	115
99	19,831	19,957	127
0	21,125	21,264	139
1	22,465	22,618	153
2	23,858	24,026	168
3	25,300	25,484	185
4	26,796	26,998	203
5	28,357	28,580	223



## Alaska Permanent Fund Corporation

### FINANCIAL PROJECTIONS (in millions)

as of February 28, 1991

GROWTH OF FUND PRINCIPAL						
FY	FY Begin Balance	Appropriations	Dedicated		FY End Balance	Inflation Proofing Shortfall
			State Revenues*	Inflation Proofing		
78	0		54		54	
79	54		84		139	
80	139		344		483	
81	483	900	385		1,769	
82	1,769	800	400		2,969	
83	2,969	400	421	231	4,021	
84	4,021	300	336	151	4,838	
85	4,838	300	363	235	5,741	
86	5,741		323	216	6,281	
87	6,281	1,264 **	170	148	7,864	
88	7,864		418	303	8,585	
89	8,585		228	360	9,173	
90	9,173		267	454	9,894	
91	9,894		437	659	10,890	
92	10,890		228	556	11,674	
93	11,674		284	718	12,675	
94	12,675		304	779	13,757	
95	13,757		311	844	14,912	
96	14,912		315	914	16,141	
97	16,141		310	936	17,386	51
98	17,386		307	894	18,587	168
99	18,587		292	952	19,831	181
00	19,831		282	1,012	21,125	195
01	21,125		266	1,074	22,465	209
02	22,465		255	1,139	23,858	225
03	23,858		236	1,205	25,300	240
04	25,300		221	1,275	26,796	257
05	26,796		215	1,347	28,357	274
Cumulative Totals Projected For FY 1991 - 2005:			3,824	14,202		1,799

USE OF FUND INCOME					
Net Income	Distributions			Reserves	
	Dividend's	Inflation Proofing	General Fund	Add (Delote)	FY End Balance
2			1		
8			7		
32	12		12		
150	28		28	59	59
368	71		71	185	244
471	108	231	110	110	354
530	175	151		203	557
658	217	235		206	763
1,021	303	216		501	1,264 **
1,069	391	148		529	529
789	424	303		62	591
868	460	360	4	44	635
916	487	454	4	(30)	605
928	481	659		(112)	493
1,021	477	556		(13)	480
1,159	514	718		(72)	408
1,247	553	779		(85)	323
1,342	598	844		(101)	222
1,441	652	914		(125)	98
1,545	707	936		(98)	
1,653	759	894			
1,765	813	952			
1,882	870	1,012			
2,003	929	1,074			
2,129	991	1,139			
2,260	1,054	1,205			
2,395	1,120	1,275			
2,535	1,189	1,347			
25,305	11,708	14,202			

#### REALIZED RATE OF RETURN ASSUMPTIONS:

	Nominal	Inflation	Real
FY 91:	8.50%	5.41%	3.09%
FY 92:	8.50%	5.00%	3.50%
FY 93-05:	9.00%	6.00%	3.00%

\* SOURCE: Dedicated State oil revenue estimates are from the Department of Revenue (DOR) Fall 1990 Low-Case Revenue Forecast.

\*\* The FY 86 Earnings Reserve Account end balance was appropriated by the legislature to the principal of the Permanent Fund effective July 1, 1986.

STATUS QUO

3/28/91



## Alaska Permanent Fund Corporation

### FINANCIAL PROJECTIONS (in millions)

as of February 28, 1991

GROWTH OF FUND PRINCIPAL						
FY	FY Bgn Balance	Appropriations	Dedicated		FY End Balance	Inflation Proofing Shortfall
			State Revenues*	Inflation Proofing		
78	0		54		54	
79	54		84		139	
80	139		344		483	
81	483	900	385		1,769	
82	1,769	800	400		2,969	
83	2,969	400	421	231	4,021	
84	4,021	300	366	151	4,838	
85	4,838	300	368	235	5,741	
86	5,741		323	216	6,281	
87	6,281	1,264 **	170	148	7,864	
88	7,864		418	303	8,585	
89	8,585		228	360	9,173	
90	9,173		267	454	9,894	
91	9,894		437	559	10,890	
92	10,890	65	228	559	11,742	
93	11,742	6	284	722	12,754	
94	12,754	7	304	784	13,849	
95	13,849	8	311	850	15,018	
96	15,018	9	315	921	16,262	
97	16,262	10	310	909	17,490	86
98	17,490	11	307	894	18,702	175
99	18,702	12	292	952	19,957	189
0	19,957	13	282	1,012	21,264	203
1	21,264	14	266	1,074	22,618	219
2	22,618	16	255	1,138	24,026	235
3	24,026	17	236	1,205	25,484	252
4	25,484	19	221	1,274	26,998	270
5	26,998	21	215	1,346	28,580	288
<b>Cumulative Totals Projected:</b>						
FY 1991 - 2005:	227		3,824	14,198		1,916

USE OF FUND INCOME					
Net Income	Distributions			Reserves	
	Dividends	Inflation Proofing	General Fund	Add (Delete)	FY End Balance
2			1		
8			7		
32	12		12		
150	28		28	59	59
368	71		71	185	244
471	108	231	110	110	354
530	175	151		203	557
658	217	235		206	763
1,021	303	216		501	1,264 **
1,069	391	148		529	529
789	424	303		62	591
868	460	360	4	44	635
916	487	454	4	(30)	605
928	481	559	RIK income	(112)	493
1,024	477	559	3	(16)	477
1,165	514	722	6	(76)	400
1,254	553	784	7	(90)	310
1,349	593	850	8	(107)	203
1,450	652	921	9	(132)	72
1,554	707	909	10	(72)	
1,663	759	894	11		
1,777	813	952	12		
1,895	870	1,012	13		
2,017	929	1,074	14		
2,144	991	1,138	16		
2,276	1,054	1,205	17		
2,413	1,120	1,274	19		
2,556	1,189	1,346	21		
25,465	11,708	14,198	165		

#### REALIZED RATE OF RETURN ASSUMPTIONS:

	Nominal	Inflation	Real
FY 91:	8.50%	5.41%	3.09%
FY 92:	8.50%	5.00%	3.50%
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\* SOURCE: Dedicated State oil revenue estimates are from the Department of Revenue (DOR) Fall 1990 Low-Case Revenue Forecast.

\*\* The FY 86 Earnings Reserve Account end balance was appropriated by the legislature to the principal of the Permanent Fund effective July 1, 1986.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 27, 1991

WALTER J. HICKEL, GOVERNOR

REPLY TO:

1031 W 4th AVENUE SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550  
FAX: (907) 276-3697

KEY BANK BUILDING  
100 CUSHMAN ST. SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 452-1568  
FAX: (907) 456-1317

P.O. BOX K— STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

The Honorable Pat Pourchot  
Alaska State Senate  
Co-Chairman Senate Finance Committee  
P. O. Box V  
Juneau, AK 99811-3100

Re: Requested information  
regarding SB 213

Dear Senator Pourchot:

This letter is in response to your request this morning respecting the fiscal impact of SB 213 on the permanent fund dividend. The following chart, based on the Alaska Permanent Fund Corporation's model for calculation of dividends, sets forth the approximate impact on individual dividends, were all of the state's RIK claims (which SB 213 would exclude from the dividend stream) paid on January 1, 1992.

1991	\$ 0.00
1992	0.19
1993	1.52
1994	2.79
1995	4.01
1996	5.19
1997	6.32
1998	6.55
1999	6.77
2000	7.13
2001	7.33
2002	7.51
2003	7.69
2004	8.01
2005	8.16

With adoption of SB 213 the 15-year total loss to a permanent fund dividend recipient is approximately \$79.17, having a net present value of \$37.65.

The Honorable Pat Pourchot  
Alaska State Senate

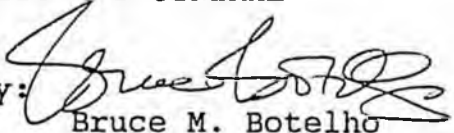
March 27, 1991  
Page 2

Should you wish further information, please do not  
hesitate to contact my office.

Sincerely,

CHARLES E. COLE  
ATTORNEY GENERAL

By:

  
Bruce M. Botelho  
Assistant Attorney General

BMB:tg



**CAPTAIN COOK CHAPTER**

an affiliate of

The Retired Officers Association  
 P.O. BOX 772  
 Elmendorf AFB, Alaska 99506-0772



24 March 1991

The Honorable Jay Kerttula  
 Co-Chairman  
 Senate Finance Committee  
 P.O. Box V  
 Juneau, Alaska 99811

Dear Senator Kerttula,

The members of the Captain Cook Chapter of The Retired Officers Association (TROA) would like to take this opportunity to thank you for your continuing fine work in support of veterans needs. In particular, we would like to thank you for sponsoring Senate Bills 44 and 45.

The Retired Officers Association is a national organization comprised of retired members of the officer corps from the seven uniformed services of the United States (Army, Navy, Air Force, Marine Corps, Coast Guard, NOAA and NHS). There are nearly a half million members nationally and some 400 in Alaska. The Captain Cook Chapter is the single TROA chapter in the state. Those TROA members who are not truly retired include a large number of managers and professionals working at second careers. We have in our chapter men and women who fill positions in the community varying from Deans of Colleges to Engineers and Doctors.

TROA members are only the tip of the iceberg, however. Records show 5000 plus DoD retirees in Alaska with approximately 300 listed as disabled. Your records show between 63 and 73 thousand total veterans in the state retired and simply separated. That is a sizable clientele no matter how it is classified.

The Retired Officers Association serves the needs of our members in a variety of ways. TROA acts in political support or opposition to issues of concern on both the national and state levels. In the past, we have been more active at the national level than here in Alaska. The proposed veteran's home in SB 44 and 45 is a project which the Captain Cook Chapter has had as a long term objective since its inception. We recognize the great need for an extended care facility in Alaska for veterans.

SERVICE TO COUNTRY AND OUR MEMBERS

Monthly Magazine :: Insurance - Champus and Medicare Supplements :: Employment Service :: Retirement Advice and Assistance :: Survivor Administrative Assistance Service (SAAS) :: Financial Services :: Travel Service

At our bi-monthly meeting held last Saturday, SB 44 and 45 were discussed. The membership present voted unanimously to support the passage of both bills. Further, I was directed to make that support a matter of record through this letter.

Alaskan Veterans have always had to go "outside" for care in their declining years and when they were in ill health. As has been noted in correspondence provided by your office on the subject, the 90 day limitation imposed by the VA precludes the long term care which is often needed. There well may be unused beds available in state health care facilities as noted by those objecting to the bills. The problem is the cost of these facilities if, in fact, beds do exist in the quantities necessary to solve the problem of veterans in need. When we were looking into the problem actively last year, it became apparent that even on the retired pay of O-5's and O-6's (LTCOL and COL) we could not cover the costs over a long haul. That problem is multiplied several-fold for the enlisted retiree and even more acute for those without pension income.

It has been suggested that it might be possible to get additional support from the VA for home care or more funds for community service programs. Retired LTCOL Webster, our chapter president, just returned from a National TROA Conference in Washington. Long term care facilities were not discussed, per se, but the general tenor of commentary from our TROA representatives who work directly with the people on the hill is that any extensions in veterans care are very unlikely. In fact, we are trying to hold the line on what we have, nationally. The position we are taking nationally is that we will pay our way, but don't ask for more than our share. COLA is a case in point which has been addressed in Alaska Senate Joint Resolution 15 this session.

The single largest item in the federal budget is debt service - interest on existing loans. Under these conditions, extended care for veterans is at best unlikely. Further, I understand that if home care is expanded, it would have to be expanded in 22 other states to remain equatable. This simply is not going to happen.

The one thing which we see as not being addressed in the proposal outline supplied by your staff is the problem of spouses. If the veteran occupying a residential or nursing bed in the home has a surviving spouse, will he or she be able to share the facility? Very often the presence of a spouse or her or his absence will make the difference between survival and not for an infirm person. We firmly believe that the issue should be addressed and that provisions for spouses included.

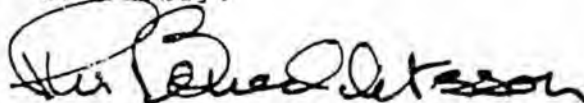
We have no problems with the veteran paying his or her own way, subject to availability of resources. Given the specific availability of total resource vs need, individual payments can and should be made. This area needs clarification in either bill or regulation, however.

TROA members while on active duty were professionals. We served as your regular forces and, in wartime, very often bought the time necessary for the nation to gear up. For this we receive a pension. Our situation is no different, however, from the VietNam ex-draftee with two years active duty in The Saint Francis Shelter in Anchorage, when either of us is ill, old or just beyond our capability to cope.

We paid our dues. We thank you and like-minded legislators for your support in planning a veterans home - a haven for those less fortunate than we - who also paid their dues.

I have copied this letter to all members of the State Senate and, on behalf of all Alaska Veterans, and Alaskan members of TROA ask that SB 44 and 45 be supported in committee and passed on the floor.

Sincerely,



P.W. Benediktsson  
CDR USN Ret.  
Chairman Legislative Committee

cc: Members of The Alaska Senate  
State Director of Veterans Affairs

WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 18, 1991

The Honorable Richard I. Eliason  
President of the Senate  
P.O. Box V  
Juneau, AK 99811

Dear President Eliason:

Under the authority of Article III, section 18, of the Alaska Constitution, I am transmitting a bill relating to transfers to the permanent fund.

The bill has one purpose: to prevent any monies related to the North Slope Royalty case from entering the permanent fund dividend stream. This measure is necessitated by a court ruling that the current statute, AS 43.23.045(b), does not sufficiently eliminate the risk of unconstitutional bias. Failure to eliminate it would require Alaska courts to be disqualified from hearing the North Slope Royalty case (more popularly known as the Amerada Hess case).

This issue was first raised in 1987 when three oil company defendants filed a lawsuit in federal district court to enjoin the Amerada Hess case from proceeding to trial in any court in Alaska. They claimed that they could not receive a fair trial in Alaska because every judge and juror had a financial interest in the outcome of the case by reason of their respective annual permanent fund dividends which would be increased by the earnings derived from any damages awarded to the state in Amerada Hess.

In June, 1988, the federal district court dismissed the action, ruling that the due process issue must be addressed in the state court before it may be asserted in the federal court. The companies appealed. At oral argument in March, 1989 the Ninth Circuit Court of Appeals encouraged the parties to seek a legislative solution. Governor Cowper immediately sought corrective legislation, ultimately adopted as ch. 38, SLA 1989, and signed into law on May 12, 1989. It provided that:

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 fund, and shall be annually deposited into the principal of the Alaska permanent fund.

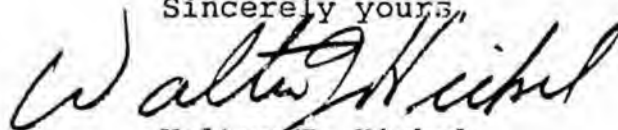
Independently, on April 12, 1989, the Ninth Circuit affirmed the district court's disposition of the matter, requiring the oil companies to raise the issue of disqualification in the state superior court. The companies sought further review by the United States Supreme Court, but their petition was denied.

Finally, last October the companies filed the long awaited motion to disqualify the Alaska courts. Oral arguments were heard on February 21. On March 14, Judge Carpeneti issued his ruling in which he held that AS 43.23.045(b) removes most, but not all, of the sources of revenue flowing to the permanent fund dividend fund that creates the bias. He also found, however, that the statute failed to prevent additional monies from going to the fund as a result of the so-called Amerada Hess price adjustment clauses in royalty-in-kind (RIK) contracts. According to Judge Carpeneti, this failure to deal with RIK recoveries would require the Alaska court to disqualify itself. The court concluded:

The court's decision will become final, unless, within 75 days of the date of this order, the legislature enacts curative legislation; that is, legislation which clearly and explicitly precludes Alaska Permanent Fund monies realized by the state as a result of "Amerada Hess contract adjustments" in RIK contracts, or interest earned on such monies, or on the earnings of such monies, from being placed in the dividend fund.

The attached bill specifically addresses Judge Carpeneti's ruling respecting the RIK adjustments, but also affirms the breadth of coverage Judge Carpeneti explicitly found already existed in AS 43.23.045(b), thus eliminating a potential appeal by the companies. Early action on this bill will again guarantee that Alaska courts will decide this case. It is slated for trial in Juneau beginning November 4, 1991.

Sincerely yours,



Walter J. Hickel  
Governor

# Judge steps aside in state's suit for oil royalties

Effect of decision on permanent fund brings up conflict of interest for Alaska jurists, Carpeneti rules

By DAVID POSTMAN  
Daily News reporter

JUNEAU — The judge who has been hearing the state's royalty lawsuit against Alaska oil producers for eight years says he must disqualify himself because a victory for the state could mean bigger permanent fund dividends for him and his family.

In fact, Superior Court Judge Walter Carpeneti said in a ruling released Friday, "The impartiality of any Alaska judge in this litigation

might reasonably be questioned, requiring disqualification."

Carpeneti agreed with the oil companies in the \$580 million royalty case that if the state wins a judgment against the companies, some of the money would go to the Alaska Permanent Fund and trickle down to each Alaskan who receives an annual dividend from the oil revenue savings account.

In the lawsuit, filed in 1977, the state claims North Slope oil producers shorted

it \$902 million in royalties from the Prudhoe Bay and Kuparuk River oil fields between 1977 and 1986.

"We are pleased with the decision," said Jim Palmer, spokesman for BP Exploration (Alaska). The state claims BP owes \$321 million, the largest remaining claim.

Attorney General Charlie Cole said the oil companies have a double standard.

"I'm disappointed the major producers use the Alaska judicial system for the prosecution of their claims

against the state and others but, when the state sues them, they claim they can't get treated fairly," Cole said.

"The state is every bit prepared to carry on the litigation against them in Coos Bay, Oregon, or Bozeman, Montana, or anywhere else."

The oil companies have been trying to get the case, known as Amerada Hess, out of Alaska for four years. In 1987, the oil producers went to federal court to ar-

gue that Alaska judges and juries would be prejudiced against their case because a judgment would boost permanent fund dividends.

The federal courts said it was a matter for the state courts to deal with. But the problem appeared to go away in 1989 when the legislature passed a bill that would keep money won in the suit from going to permanent fund dividends.

But the legislature did not

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address all the implications of a state victory.

During the period covered in the suit, the state took part of its royalties from the oil companies in cash and part in oil. The state in turn sold its royalty oil to refin-

eries and a Fairbanks electrical utility.

The oil companies argued that if the state won and the court agreed the royalty oil was underpriced, the refineries and the utility who bought from the state would be required to make up the difference on their contracts.

And that, according to court testimony, would amount to \$300 million flowing to the state, part of which would make its way into the Alaska Permanent Fund.

That would mean a per-person increase of \$81 in the total of permanent fund dividends paid over the next 15

years, according to oil company testimony. That would be worth about \$35.87 in today's dollars, according to Carpeneti's decision.

Carpeneti has held off making his decision final for 75 days to give lawmakers a chance to pass a new bill which would fix the prob-

## from oil royalties case

lem. If lawmakers can keep the money from going to permanent fund dividends, Carpeneti will stay on the case.

Gov. Wally Hickel is expected to submit legislation Wednesday to do that, Assistant Attorney General Bruce

Botelho said Monday.

But Botelho said the state may also appeal the ruling because of what it might mean for future cases. He said it could be a bad precedent if every company with a royalty dispute with the state claimed the case could not be heard in Alaska.

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RE: SB 213