

SUR 4

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/1/92

FURTHER:

DATE TURNED INTO OFFICE: 4-16-92

The Finance Committee considered SENATE JOINT RESOLUTION NO. 4

Proposing an amendment to the Constitution of the State of Alaska requiring legislative confirmation for members of the governing boards of the Alaska Permanent Fund Corporation and the Alaska Railroad Corporation.

and recommends:

- replace with \_\_\_\_\_ CS \_\_\_\_\_ (FINANCE)
- or  adopt previous \_\_\_\_\_ CS SJR 4 (Tul)
- attaches amendment(s)

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

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES:** Dept/Date

zero fiscal notes \_\_\_\_\_

fiscal notes \_\_\_\_\_

appropriation--no fiscal note

DO PASS:

*[Signature]*

*[Signature]*

1. Co-Chair: Signature/Recommendation

**PREVIOUS FISCAL NOTES:** Dept/Date

zero fiscal notes \_\_\_\_\_

fiscal notes 2.2 Gov. Elections 1-13-92

OTHER RECOMMENDATIONS:

\_\_\_\_\_

*[Signature]*

2. Co-Chair: Signature/Recommendation

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Bill No. 1  
Bill Version: SJR 4  
(S) Publish Date: 4-1-92

Revision Date: 01/13/92 Department Affected: Office of the Governor-Elections  
Title: Amendment to the Constitution RE: Legislature to Confirm BRU: Division of Elections  
Railroad and Permanent Fund Boards Component: 11-Primary and General Elections  
Sponsor: Senator Kerttula  
Requestor: Senate Judiciary

COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	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	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	2.2*	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.) \* This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on this measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be: 53.4.

Changes in SJR 4 (JW) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.  
4/1/92 RC  
date Comte Aide (initial)

Prepared by: Elizabeth Ziegler, Deputy Director Phone: 465-4611  
Division: Elections Date: 01/13/92

Approved by Commissioner: Charles B. Thiel  
Agency: Office of the Governor Date: 01-13-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

## CS FOR SENATE JOINT RESOLUTION NO. 4 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/1/92  
Referred: Finance

Sponsor(s): SENATORS KERTTULA, Sturgulewski

## A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to  
2 appointment, confirmation, and removal of members of the governing entities of public  
3 corporations.

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

5 \* Section 1. Article III, sec. 26, Constitution of the State of Alaska, is amended to read:

6 SECTION 26. BOARDS AND COMMISSIONS. When a board or commission is at the  
7 head of a principal department or a regulatory or quasi-judicial agency, or is the governing  
8 entity of a public corporation established by law, its members shall be appointed by the  
9 governor, subject to confirmation by a majority of the members of the legislature in joint session,  
10 and may be removed as provided by law. They shall be citizens of the United States. The board  
11 or commission may appoint a principal executive officer when authorized by law, but the  
12 appointment shall be subject to the approval of the governor.

13 \* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state  
14 at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and  
15 the election laws of the state.

# Alaska State Legislature



Sen. Jay Kerttula, Co-Chairman  
Sen. Pat Pourchot, Co-Chairman

Sen. Al Adams  
Sen. Jim Duncan  
Sen. Lyman F. Hoffman  
Sen. Dick Shultz  
Sen. Rick Uehling

## Senate Finance Committee

### SPONSOR STATEMENT Senator Jay Kerttula

#### CSSJR 4 (Judiciary)

#### Legislative Confirmation of Public Corporation Boards

CS SJR 4(Judiciary) proposes a constitutional amendment which would require legislative confirmation for the boards of public corporations.

The Alaska Constitution currently provides for legislative confirmation of any board or commission which is the head of a principal department (Dept. of Education) or is a regulatory(Dept. of Fish and Game) or quasi-judicial agency. Public corporations, such as the Alaska Railroad and the Permanent Fund Corporation are not included in this provision.

Legislative counsel has provided an opinion that only those officers whom the constitution explicitly describes are subject to legislative confirmation; the legislature is not free to add to the list of boards and commissions which is it required to confirm. Our

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counsel cited Bradner v. Hammond as authority for this conclusion. The legal opinion is attached.

The Permanent Fund corporation invests extremely large sums of state funds and their activities have a tremendous impact on all Alaskans and on our state economy. As of January 1, 1992, the Permanent Fund was managing \$11.9 billion in state funds.

The Railroad Corporation is an agency which is virtually independent of any state control, while being vital to our statewide transportation system and which has received state capital funds (\$9 million for the purchase of locomotives for Wishbone Hill project - 1990). As of November 30, 1991, the total assets of the Railroad Corporation were \$98.6 million; while not as large as the Permanent Fund Corporation, this is still a substantial holding.

I am not generally in favor of revisions to our state constitution. I believe that the drafters of the constitution put a great deal of thought into the document and the citizens of Alaska had a large voice in its drafting. However, it appears clear that the drafters of the constitution intended that the boards of principal functions of the state be subject to legislative

confirmation. Public Corporations, such as the Permanent Fund and the Alaska Railroad Corporation are too important to the state to be exempted from legislative confirmation.

As originally introduced, SJR 4 proposed a constitutional amendment which specified legislative confirmation for the Alaska Permanent Fund and the Alaska Railroad Corporation.

The legislation was amended in Senate Judiciary to include all corporations and the title was amended accordingly.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

FEB 03 1992

### MEMORANDUM

February 3, 1992

**SUBJECT:** Alaska Public Corporations (Work Order No. 17-LS1927)

**TO:** Senator Jay Kerttula  
Attn: Paula

**FROM:** Jerry Luckhaupt *JEL*  
Legislative Counsel

You have requested a compilation of the public corporations and corporate authorities of the state of Alaska. In my review of the statutes I have found the following corporations and authorities:

- (1) Alaska Aerospace Development Corporation (AS 14.40.821)
- (2) Alaska Amateur Sports Authority (AS 05.40.010);
- (3) Alaska Energy Authority (AS 44.83.020);
- (4) Alaska Gas Pipeline Finance Authority (AS 44.82.010);
- (5) Alaska Housing Finance Corporation (AS 18.56.020);
- (6) Alaska Industrial Development and Export Authority  
(AS 44.88.020);
- (7) Alaska Medical Facility Authority (AS 18.26.010);
- (8) Alaska Municipal Bond Bank Authority (AS 44.85.020);
- (9) Alaska Permanent Fund Corporation (AS 37.13.040);
- (10) Alaska Railroad Corporation (AS 42.40.010);
- (11) Alaska Resources Corporation (AS 37.12.010);
- (12) Alaska Science and Technology Foundation  
(AS 37.17.010)
- (13) Alaska Seafood Marketing Institute (AS 16.51.010)
- (14) Alaska State Housing Authority (AS 18.55.020);
- (15) Alaska Tourism Marketing Council (AS 44.33.700);

In addition, the Commercial Fishing and Agriculture Bank (AS 44.81.010), appears to have some of the attributes of a public corporation in that the exercise of its powers "is considered to be for a public purpose." AS 44.81.010(a). Further, a cursory review of legislation that has been introduced during the 17th Legislature shows these additional public corporations have been proposed:

Senator Jay Kerttula  
February 3, 1992  
Page 2

- (a) HB 10 - Alaska Marine Highway Authority;
- (b) HB 59 - Alaska Mental Health Trust Corporation;
- (c) HB 71 - Alaska State Health Resources Authority;
- (d) HB 358 - Alaska State Salmon Marketing Association;
- (e) SB 18 - Alaska State Pension Corporation;
- (f) SB 73 - Health Insurance Authority.

Gubernatorial appointees to the boards of public corporations are apparently not subject to confirmation by the legislature as the public corporations are not "at the head of a principal department or a regulatory or quasi-judicial agency" as provided in art. III, § 26 of the Alaska Constitution. See also, Bradner v. Hammond, 553 P.2d 1 (Alaska 1976)(only section 26 boards subject to confirmation); Walker v. Alaska State Mortgage Authority, 416 P.2d 245 (Alaska 1966)(ASMA not a section 26 board).

GPL:pl  
92-064.plm

MEMORANDUM

June 22, 1990

SUBJECT: Confirmation of the members of boards  
and commissions (Work Order No. 7-0029)

TO: Senator Jay Kerttula

FROM: Richard A. Bradley  
Legislative Counsel

Kathy Hathaway has asked that we comment on an opinion of the attorney general regarding the power of the legislature to confirm members of boards and commissions. The only opinion that we could find on that subject goes back to 1975; it addresses the "Constitutionality of CSSB 98 (Legislative Confirmation Bill)".

I have checked with Ron Lorensen and Jim Baldwin in the attorney general's office on the question whether anything more recent has been issued; neither could recall any more recent opinions. The index of opinions published by the Department of Law contains no such opinion.

Jim Baldwin suggested that the Bradner case represents the authoritative statement on the question; we agree that Bradner v. Hammond, 553 P.2d 1 (Alaska 1976) represents a more informed statement of the law than the attorney general's opinion, particularly as the Bradner decision is a year later than the opinion.

We have enclosed a copy of the 1975 attorney general's opinion as well as the Bradner decision.

I. Discussion of the Attorney General's opinion.

The opinion concludes that it would be beyond the power of the legislature to require the confirmation of the members of boards and commissions except for that confirmation

contemplated by art. III, sec. 26 of the Alaska Constitution. The provision states, in pertinent part:

SECTION 26. BOARDS AND COMMISSIONS. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. . . .

While the opinion also addresses the authority of the legislature to require the confirmation of sub-cabinet officers--and finds the power to require their confirmation also lacking-- the essential point of the opinion regarding confirmation is that the "power to confirm [executive] appointments is an executive function." The logic of concluding that the power to confirm constitutes an executive function leads to the corollary of that conclusion: that legislative incursions into executive functions are construed against the legislature. The result is that only those officers whom the Constitution has required the legislature to confirm are subject to confirmation; the legislature is not free to add to (or subtract from) the list of executive officers serving as members of boards or commissions whom it is required to confirm-- or not.

While I have not sought to review our opinions from this era, my assumption is that we may have disagreed with the attorney general's opinion at that time. I note that Billy Berrier, director of the division of legal services at that time was counsel for the legislative officers and members in the Bradner litigation. But because of the Bradner decision, discussed below, we now agree that the conclusion reached by the attorney general represents the law of the state.

## II. Discussion of Bradner.

The court starts out by noting that the members of the constitutional convention that drafted the Alaskan Constitution intended that the state have a "strong executive." The court quoted the chairman of the executive committee at the convention, Victor Rivers: "We are all strongly agreed on the principle of the strong executive." Bradner, supra, at 3.

The court then stated that the sole question before the court is whether secs. 25 and 26 of art. III describe the outer limits of the legislature's confirmation authority or whether the legislature may, by statute, require the confirmation of other high-level, policy-making officials within the executive branch. The legislative officers had argued that no provision of the constitution prohibited the legislature from requiring confirmation of other executive officers.

The governor had argued, on the other hand, that the power of confirmation is an executive function that may be exercised by the legislature only to the extent that the Constitution grants the power to the legislature.

Viewed in this manner, appellee [Hammond] analyzes the power to confirm executive officers as part of the appointment process, incapable of existence independent of the power of appointment, and characterizes this confirmation authority as a power "super-added" to the legislature's general legislative powers. Thus, appellee would find that Sections 25 and 26 set the maximum rather than the minimum parameters of the legislature's power to confirm appointments of executive officers. This follows, according to appellee, from the fact that legislative confirmation is a delegated function taken from executive function, and thus the breadth of this delegated authority must be strictly construed.  
Bradner, at 4.

The court affirmed the superior court's judgment that the law requiring legislative confirmation of certain sub-cabinet officers was in excess of legislative power.

In its decision, the court agreed with decisions of the U.S. Supreme Court concluding that confirmation is a power "super added" to those possessed by the legislature. Myers v. United States, 272 U.S. 56 (1926). Confirmation is not a distinct legislative power but is a part of the executive power of appointment, some part of which in specific instances was delegated to the legislative branch.

Moreover, the court stated, "[t]he lack of ambiguity in Sections 25 and 26 of Article III of the Alaska Constitution mandate that this court interpret these express provisions as embodying not only the maximum parameters of the delegation of the executive appointment authority through the

legislative confirmation function but, further, that they delineate the full extent of the constitution's express grant to the legislative branch of checks on the governor's power to appoint subordinate executive officers. In our view, the separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision."

### III. Comments.

The Bradner decision did not explicitly discuss the application of sec. 26 to members of boards and commissions the Bradner decision construed AS 39.05.020, as enacted in 1975, required the confirmation only of deputy commissioners and certain division directors. The logic of the decision makes clear, however, that the court believes that only those members of the boards and commissions described in sec. 26 would be subject to legislative confirmation. Sec. 26 states that legislative confirmation is required for members of a board or commission when the board or commission is "at the head of a principal department or a regulatory or quasi-judicial agency". I believe that the phrase describes most state boards or commissions-- but not all. For example, advisory commissions are not among those described in sec. 26. The board recently established in the Forest Practices Act, ch. 34, SLA 1990, appears only to have advisory functions and its members are not subject to legislative confirmation under that Act; in my view, they are similarly not subject to confirmation under Sec. 26. See AS 41.17.041 as enacted in Sec. 3 of ch. 34.

Other boards or commissions that seem not to fall under sec. 26 include the Alaska Women's Commission [AS 44.19.165], the Alaska Public Broadcasting Commission [AS 44.21.256], and the Older Alaskans Commission [AS 44.21.200]. Others probably exist.

If I may be of further assistance, please advise.

RAB:gc  
G15/002

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU 99811

February 3, 1977

Honorable Jay S. Hammond  
Governor  
State of Alaska  
Pouch A  
Juneau, Alaska 99811

Re: Confirmation of Members  
of Boards and Commissions

Dear Governor Hammond:

You have asked us for an opinion as to the propriety under the State Constitution of the Legislature's confirming your appointments to State Boards and Commissions.

Under the Constitution, Article 3, Sections 25 and 26, the Legislature's power to confirm your appointments to executive positions is limited to those positions specified by the Constitution, that is, heads of the principal departments and the members of boards and commissions which are at the head of principal departments or quasi-judicial or regulatory agencies. Bradner vs. Hammond, 553 P.2d 1 (Alaska 1976).

We have accordingly prepared an alphabetical listing of all the State boards and commissions in Alaska and have indicated for each the statute under which its members are appointed, whether that statute requires legislative confirmation, and whether the Constitution requires or permits legislative confirmation. The list follows:

Administration of Justice, Governor's Commission on the.  
AS 44.19.746. Confirmation is not required by statute or the Constitution.

Aging, Governor's Advisory Committee on.  
There is no statute on this one and no confirmation would be required by statute or Constitution.

Alcoholic Beverage Control Board.  
AS 4.05.010 and 39.05.050. This is a regulatory board and requires confirmation under the statutes and the Constitution.

Alcoholism, Advisory Board on.  
AS 47.37.070. Confirmation is not required under either statute or the Constitution.

Arts, Alaska State Council on the.  
AS 44.19.900. This board is made expressly not subject to legislative confirmation under the statute, and of course, is not subject to confirmation under the Constitution.

Assessment Review Board, State.

AS 43.56.040. This is a quasi-judicial agency and must be confirmed under both the statute and the Constitution.

Athletic Commission.

AS 05.05.010. This is a regulatory board and is subject to confirmation under both the statute and the Constitution.

Barber Examiners, Board of.

AS 08.12.010. This is a regulatory board and must be confirmed under the Constitution, even though not required by statute.

Bristol Bay Regional Development Council.

Chapter 4, SSSLA 1974, and Chapter 209, SLA 1976. No confirmation is required under either the statute or the Constitution.

Capital Site Selection Committee.

AS 44.06.110. Confirmation is not required under either the statute or the Constitution.

Chiropractic Examiners, Board of.

AS 08.20.010. This is a regulatory board and confirmation is required under the Constitution, even though not required under the statute.

Code Revision Commission.

AS 24.20.075. Confirmation is not required by either the statute or the Constitution.

Collection Agency Board.

AS 8.24.011. This is a regulatory board and confirmation is required under the Constitution, even though not required by the statute.

Commercial Fisheries Entry Commission.

AS 16.43.020. This is a regulatory commission and confirmation is required under both the statute and the Constitution.

Comprehensive Health Advisory Council.

AS 18.07.020. Confirmation is required by the statute; however, this is not a quasi-judicial or regulatory agency, and confirmation is not permissible under the Constitution.

Commission for Northern Operations of Rail Transportation and Highways.

AS 44.19.704 and 39.05.060. Confirmation is required under the latter statute but cannot be required under the Constitution.

Dental Examiners, Board of.

AS 8.36.010. This is a regulatory board, and confirmation is required under both the statute and the Constitution.

Developmental Disability Planning and Advisory Council.

This is created under federal law and confirmation is not required.

Development Corporation, Alaska State.

AS 44.59.010. Confirmation is required by the statute; however it cannot be required under the Constitution.

Dispensing Opticians, Board of.

AS 08.71.010. This is a regulatory board, and while not required by statute, confirmation is required under Constitution.

Drug Abuse, Advisory Board on.

AS 44.29.030. Confirmation is not required under either the statute or the Constitution.

Education, Board of.

AS 14.07.075. This is head of a principal department, and confirmation is required under both the statute and the Constitution.

Educational Broadcasting Commission, Alaska.

AS 14.40.700. Confirmation is not required under either the statute or the Constitution.

Electrical Examiners, Board of.

AS 08.40.010. This is a regulatory board, and confirmation is required under the statute and the Constitution.

Employment of the Physically Handicapped, Governor's Committee on.

AS 23.15.220. Confirmation is not required under either the statute or the Constitution.

Environmental Advisory Board.

AS 44.46.030. Confirmation is not required under either the statute or the Constitution.

Equal Employment Opportunity Committee.

This board is created by administrative order, and confirmation is not required.

Fisheries, Board of.

AS 16.05.221(a). This is a regulatory board and confirmation is required by both the statute and the Constitution.

Fisheries Council.

This board was created by administrative order, and confirmation is not required.

Fishermen's Fund Advisory and Appeals Council.

AS 23.35.010. Confirmation is not required by the statute or the Constitution.

Game, Board of.

AS 16.05.221(b). This is a regulatory board, and confirmation is required by the statute and the Constitution.

## Geographic Board, State.

AS 44.19.360. Confirmation is not required by the statute or the Constitution.

## Growth Policy Council, Alaska.

This board was created by administrative order and confirmation is not required by statute or the Constitution.

## Guide Licensing and Control Board.

AS 08.54.010. This is a regulatory board, and confirmation is required by both the statute and the Constitution.

## Hair Dressing and Beauty Cultural Examiners, Board of.

AS 08.28.010. This is a regulatory board, and while confirmation is not required by the statute, it is required by the Constitution.

## Historical Commission, Alaska.

AS 41.19.461. Confirmation is not required by the statute or by the Constitution.

## Historic Site Advisory Committee.

AS 41.35.110. Confirmation is required by the statute; however, confirmation is not permissible under the Constitution.

## Housing Authority, Alaska State.

AS 18.55.020; 39.05.060. Confirmation is not required by the former statute but it is by the latter. Confirmation is not permissible under the Constitution.

## Housing Finance Corporation, Alaska.

AS 18.56.010. Confirmation is not required by the statute or by the Constitution.

## Human Rights, State Commission for.

AS 18.80.010. This is a quasi-judicial agency, and confirmation is required by the statute and by the Constitution.

## International Development Commission, Alaska.

AS 44.19.400. Confirmation is not required by the statute or by the Constitution.

## Investment Advisory Committee.

AS 37.10.010(f). Confirmation is not required by the statute or the Constitution. (The presence of legislators on this committee is probably not permissible under the constitutional prohibition against dual office holding. Alaska Constitution, Art. 2, Sec. 5).

Judicial Council.

Alaska Constitution, Art. 4, Sec. 8. The non-attorney members, and solely the non-attorney members, are subject to legislative confirmation.

Judicial Qualifications, Commission on.

Alaska Constitution Art 4. Sec. 10. The two members who are non-lawyers and non-judges are subject to legislative confirmation.

Juvenile Justice and Delinquency Commission.

This board is created under federal law and no confirmation is required.

King Crab Marketing and Quality Control Board, Alaska.

AS 18.90.040. This board has regulatory powers and confirmation is required by the statute and the Constitution.

Land Use Planning Commission, Joint Federal-State.

AS 41.40.020. Confirmation is not required by statute or by the Constitution.

Law of the Sea, Commission on the Conference of the.

AS 44.19.789. Confirmation is not required by the statute or by the Constitution.

Libraries, Advisory Council on.

This board is the creature of federal law, and no confirmation is required.

Local Boundary Commission.

AS 44.19.250; 39.05.060. The former law does not require confirmation, but the latter does; however, that is not permissible under the Constitution.

Manpower Planning Council, State.

This is also a creature of federal law, and no confirmation is required.

Manpower Services Council, State.

This group is also a creature of federal law and no confirmation is required.

Marine Pilots, Board of.

AS 08.62.010. This is a regulatory board and confirmation is required by the statute and the Constitution.

## Medical Board, State.

AS 08.64.100. This is a regulatory board and confirmation is required by the statute and the Constitution.

## Medical Indemnity Corporation of Alaska (MICA).

AS 21.88.030. Confirmation is required by statute but is not permissible under the Constitution.

## Mental Health Advisory Council.

AS 47.30.605. Confirmation is not required by statute or the Constitution.

## Municipal Bond Bank Board.

AS 44.58.010. Confirmation is required by statute; however, confirmation is not permissible under the Constitution.

## Nursing, Board of.

AS 08.68.010. This is a regulatory board, and while not required by statute, confirmation is required by the Constitution.

## Nursing Home Administrators, Board of.

AS 08.70.010. This is a regulatory board, and while not required by statute, confirmation is required by the Constitution.

## Occupational Safety and Health Review Board.

AS 18.60.057. This is a quasi-judicial board, and confirmation is required by the statute and the Constitution.

## Optometry, Board of Examiners in.

AS 08.72.010. This is a regulatory board, and while not required by statute, confirmation is required by the Constitution.

## Pacific Marine Fisheries Commission.

AS 16.45.020. Confirmation is required by the statute; however, confirmation is not permissible under the Constitution.

## Parole, State Board of.

AS 33.15.010. Confirmation is required by the statute; however, confirmation is not permissible under the Constitution.

## Personnel Board (also acts as Public Employees Retirement Board and Labor Relations Board).

AS 39.25.060. This is a regulatory board and also a quasi-judicial agency, and confirmation is required by the statute and the Constitution.

## Pharmacy, Board of.

AS 08.88.010. This is a regulatory board, and confirmation is required by the statute and the Constitution.

Physical Therapy Board, State.

AS 08.84.010. This is a regulatory board, and while not required by statute, confirmation is required by the Constitution.

Pioneers Home Advisory Board, Alaska.

AS 44.21.100. Confirmation is not required by the statute or the Constitution.

Pipeline Commission, Alaska.

AS 46.06.020. This is a regulatory board and confirmation is required by the statute and the Constitution.

Police Standards Council, Alaska.

AS 18.65.140. Confirmation is not required by the statute or by the Constitution.

Post-Secondary Education, Alaska Commission on.

AS 14.40.903. Confirmation is required by the statute; however, confirmation is not permissible under the Constitution. (The presence of legislators on this Commission is highly questionable under the separation of powers doctrine and the prohibition against dual office holding).

Professional Teaching Practices Commission.

AS 14.20.380. This commission has quasi-judicial powers, and confirmation is required by the statute and by the Constitution.

Psychologist and Psychological Associate Examiners, Board of.

AS 08.86.010. This is a regulatory board, and confirmation is required by the statute and by the Constitution.

Public Accountancy, Alaska State Board of.

AS 08.04.010. This is a regulatory board, and while not required by the statute, confirmation is required by the Constitution.

Public Offices Commission, Alaska.

AS 15.13.020(b). This is a quasi-judicial commission, and while not required by statute, confirmation is required by the Constitution. (The method of appointment to this commission is highly suspect under the Constitution Art 2. Secs. 25 and 26).

Public Offices Salary Commission.

AS 39.23.010. Confirmation is not required by statute or by the Constitution.

Public Utilities Commission, Alaska.

AS 42.05.010. This is a regulatory board, and confirmation is required by the statute and by the Constitution.

Real Estate Commission.

AS 08.83.011. This is a regulatory board, and confirmation is required by the statute and the Constitution.

Regents Board, University of Alaska.  
Alaska Constitution. Art. 7 Sec. 3; AS 14.40.120.  
Confirmation is required by the Constitution.

Royalty Oil and Gas Development Advisory Board.  
AS 38.06.010. Confirmation is required by the statute; however,  
confirmation is not constitutionally permissible.

Rural Affairs Commission.  
AS 44.19.720. Confirmation is not required by the statute or  
by the Constitution.

Small Business Corporation of Alaska.  
AS 44.60.020. Confirmation is not required by the statute or  
by the Constitution.

Soil Conservation Board, Alaska.  
AS 41.10.040. Confirmation is required by the statute; however,  
confirmation is not permissible under the Constitution.

Teacher's Retirement Board, Alaska.  
AS 14.25.035. Confirmation is not required by the statute or  
by the Constitution.

Tourism Advisory Board.  
AS 44.33.190; 39.05.060. Confirmation is not required by the  
former, but it is required by the latter. However, confirmation  
is not permissible under the Constitution.

Transportation Commission, Alaska.  
AS 42.07.011. This is a regulatory board, and confirmation is  
required by the statute and the Constitution.

Transportation Planning Committee.  
Administrative Order No. 33. No confirmation is required by  
statute or the Constitution.

Veterinary Examiners, Board of.  
AS 8.99.010. This is a regulatory board, and confirmation  
is required by the statute and by the Constitution.

Violent Crimes Compensation Board.  
AS 18.67.020. This is a quasi-judicial agency, and while not  
required by the statute, confirmation is required by the  
Constitution.

Vocational Education Advisory Council, Alaska State.  
This is a creature of federal law, and confirmation is not  
required by statute or by the Constitution.

Water Resources Board.  
AS. 46.15.190. Confirmation is required by the statute; however,  
confirmation is not permissible under the Constitution.

Welding Examiners, Board of.

AS 8.99.101. This is a regulatory board, and while not required by the statute, confirmation is required by the Constitution.

Western Interstate Commission for Higher Education.

AS 14.40.690. Confirmation is required by the statute; however, confirmation is not permissible under the Constitution.

Workman's Compensation Board, Alaska.

AS 23.30.005. This is a quasi-judicial agency, and confirmation is required by the statute and by the Constitution.

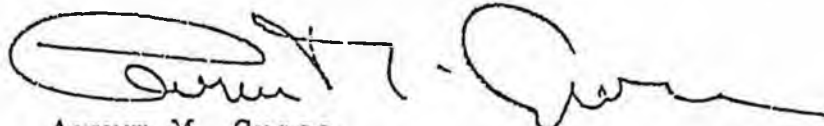
Yukon-Taiya Commission.

AS 44.20.010. Confirmation is not required by the statute or by the Constitution.

Summarizing the above, there are 41 boards which do not require confirmation under the applicable statutes and the Constitution. There are 27 boards that require confirmation under both the applicable statutes and the Constitution. There are 13 regulatory or quasi-judicial boards which must be confirmed by the legislature under the Constitution but which are not required to be by the applicable statutes. There are 14 boards which require confirmation under the applicable statutes, but which are not subject to confirmation under the Constitution.

It is our opinion that you should submit the names of your appointees to the boards and commissions which are subject to confirmation under the Constitution. You need not submit appointees for confirmation that under the Constitution are not subject to that requirement. You are, of course, free to do so as an advisory matter relying upon the legislative vote as an indication of the legislature's views on the appointment, but under the Constitution, if the appointee is not required to be confirmed, a legislative decision not to confirm the appointee would be of no legal effect. The appointment would be valid in any event.

Yours very truly,



Avrum M. Gross  
Attorney General