

SJR

4

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERENCE

DATE: 1/21/91

FURTHER: Finance

Date of 5-Day Notice: 3/19/92  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4/1/92

Judiciary 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 recommended:

- replace with  CS SJR 4 (Jud)  same title
- attached amendment(s)  new title
- \_\_\_\_\_ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) \_\_\_\_\_  
Elections 1/13/92

zero fiscal note(s) \_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

[Signature]  
[Signature]  
[Signature]

OTHER RECOMMENDATIONS:

[Signature]  
\_\_\_\_\_  
\_\_\_\_\_

[Signature] do pass  
Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SJR 4

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: II-Primary and General Elections  
 Sponsor: Senator Kerttula  
 Requesstor: Senate Judiciary

COMPONENT SERIAL NO.

|   |   |   |   |
|---|---|---|---|
| 0 | 0 | 2 | 2 |
|---|---|---|---|

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 |
|---------|---|---|---|---|---|---|

|                      |   |   |   |   |   |   |
|----------------------|---|---|---|---|---|---|
| REVENUE FUND SOURCE: | 0 | 0 | 0 | 0 | 0 | 0 |
|----------------------|---|---|---|---|---|---|

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.

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

Approved by Commissioner: *Charles E. Thichstuen*  
 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).

Rev 10/07/91  
SJR4.FN2

Page 1 of 1

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SJR 4

Revision Date: \_\_\_\_\_ Department Affected: AK Permanent Fund Corporation  
 Title: Amending the Constitution BRU: Alaska Permanent Fund Corporation  
 requiring legislative confirmation for Permanent Fund Corporation board members  
 Sponsor: Kertulla Component: AK Permanent Fund Corporation  
 Requestor: Judiciary Committee COMPONENT SERIAL NO. 

|   |   |   |   |
|---|---|---|---|
| 0 | 1 | 0 | 9 |
|---|---|---|---|

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRANTS, CLAIMS    |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |

|         |     |     |     |     |     |     |
|---------|-----|-----|-----|-----|-----|-----|
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
|---------|-----|-----|-----|-----|-----|-----|

|                         |  |  |  |  |  |  |
|-------------------------|--|--|--|--|--|--|
| REVENUE<br>FUND SOURCE: |  |  |  |  |  |  |
|-------------------------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

|                       |     |     |     |     |     |     |
|-----------------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND          |     |     |     |     |     |     |
| FEDERAL FUNDS         |     |     |     |     |     |     |
| OTHER<br>FUND SOURCE: |     |     |     |     |     |     |
| TOTAL                 | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

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

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: *David A. Rose* Phone: (907) 465-2047  
 Division: David A. Rose, Executive Director  
Alaska Permanent Fund Corporation Date: 2/3/92  
 Approved by Commissioner: *David Rose*  
 Agency: Alaska Permanent Fund Corporation Date: 2/3/92



# Alaska State Legislature

SENATE

Official Business

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

## MEMORANDUM

TO: Senator Rick Halford  
Chairman, Senate Judiciary Committee

FROM: Senator Jay Kerttula

SUBJECT: SJR 4 - Legislative Confirmation of Permanent Fund  
and Railroad Boards

DATE: February 19, 1992

I would appreciate it if you would reschedule SJR 4, proposing a constitutional amendment to require legislative confirmation of the members of the boards of the Permanent Fund Corporation and Railroad Corporation.

Thank you for your attention to this request.

JK:pt



Official Business

# Alaska State Legislature

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

## MEMORANDUM

TO: Senator Rick Halford  
Chairman, Senate Judiciary Committee *Rick*

FROM: Senator Jay Kerttula *Jay*

SUBJECT: SJR 4 - Legislative Confirmation of Permanent Fund  
and Railroad Boards

DATE: January 15, 1992

I would appreciate it if you would schedule SJR 4, proposing a constitutional amendment to require legislative confirmation of the members of the boards of the Permanent Fund Corporation and Railroad Corporation.

I am attaching my previous request of February 1, 1991, together with some additional back-up and hope you will give favorable consideration to this request.

JK:pt



# Alaska State Legislature

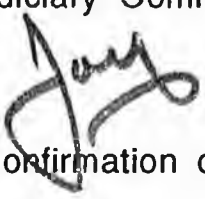
SENATE

Official Business

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

## MEMORANDUM

TO: Senator Rick Halford  
Chairman, Senate Judiciary Committee

FROM: Senator Jay Kerttula 

SUBJECT: SJR 4 - Legislative Confirmation of Permanent Fund  
and Railroad Boards

DATE: January 14, 1992

I would appreciate it if you would schedule SJR 4, proposing a constitutional amendment to require legislative confirmation of the members of the boards of the Permanent Fund Corporation and Railroad Corporation.

I am attaching my previous request of February 1, 1991, together with some additional back-up and hope you will give favorable consideration to this request.

JK:pt



Official Business

# Alaska State Legislature

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

## MEMORANDUM

**TO:** Senator Rick Halford, Chairman  
Senate Judiciary Committee

**FROM:** Senator Jay Kerttula

**SUBJ:** SJR 4 -- Legislative Confirmation  
of Permanent Fund and Railroad Boards

**DATE:** February 1, 1991

I would appreciate it if you would schedule SJR 4, proposing a constitutional amendment to require legislative confirmation of the members of the boards of the Permanent Fund Corporation and Railroad Corporation.

The Alaska Constitution requires legislative confirmation of the members of any board or commission which is the head of a principal department or a regulatory or quasi-judicial agency. Legislative Counsel issued an opinion this interim that only those officers expressly mentioned in the Constitution are subject to legislative confirmation. Citing Bradner v. Hammond, counsel concluded that the legislature is not free to add to the list of boards of commissions subject to confirmation.

The Permanent Fund Corporation invests extremely large amounts of state funds, and the corporation's decisions have a tremendous impact on the Alaska economy, as well as on individual Alaskans. As of January 31, 1990, the permanent fund corporation was managing over \$11 billion in state funds. The Alaska Railroad Corporation, which is a vital link in our statewide transportation system, is an agency which is virtually independent of any state

control. Legislative oversight regarding the Alaska Railroad Corporation is limited to budget determinations. I believe it is a telling point that the most recent information available to Legislative Finance is an annual report from December 31, 1989. At that time, the railroad's total assets were \$83.6 million.

While I do not favor many revisions to our Constitution, I believe that the amendment proposed in SJR 4 is a necessary addition. It is clear that the drafters of Alaska's Constitution intended that the boards of principal state functions be subject to legislative confirmation. Both the Permanent Fund Corporation and the Railroad Corporation are vitally important to Alaska, and their board members should be confirmed by the legislature.

## SPONSOR STATEMENT

Senator Jay Kerttula

### SJR 4 - Legislative Confirmation of Railroad and Permanent Fund Boards

The Alaska Constitution currently provides for legislative confirmation of any board or commission which is the head of a principal department or a regulatory or quasi-judicial agency.

Legislative counsel has provided an opinion that only those officers whom the constitution expressly mentions 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 counsel cited Bradner v. Hammond as authority for this conclusion.

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 receives state capital and operating funds. 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 is clear that the drafters of the constitution intended that boards of principal functions of the state be subject to legislative confirmation. Both the Permanent Fund Corporation and the Railroad Corporation are too important to the state to be exempted from legislative confirmation.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

*Paul  
sent to Riv  
2.17*

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

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

MEMORANDUM

March 17, 1992

MAR 17 1992

**SUBJECT:** Confirmation of Governing Boards of Public Corporations  
(Work Order No. 17-LS0038\D)

**TO:** Senator Jay Kerttula

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

You have requested a new version of SJR 4, a resolution proposing an amendment to the constitution requiring the confirmation of the governing bodies of the Alaska Railroad and the Permanent Fund Corporation. In this new version you asked that I attempt to provide for the confirmation of certain public corporations in a more generic manner, such as, by requiring confirmation of the boards of public corporations that operate outside of the normal legislative appropriations process. The reason for this approach was to sort the big public corporations, for which confirmation was desired, from the little public corporations, for which confirmation was not desired, and to ensure that public corporations created after the constitutional amendment would be included.

I did not use that specific approach in this draft as I was unsure that it would apply to any public corporations, including the railroad and the permanent fund. The reason that a distinction based upon certain public corporations operating outside the legislative appropriations process would not apply to the railroad and the permanent fund and would not work is that it is the opinion of this office that the Alaska Railroad Corp., and the Alaska Permanent Fund Corp., are subject to the legislative appropriations process and they only operate outside the normal process because the legislature, intentionally or by oversight, permits these corporations to do so.

This opinion is based upon the superior court decision in Kelley v. Hammond, No. 77-4, First Judicial District Court, decided May 30, 1978. In that case the superior court held that art. IX, § 13 of the Alaska Constitution, requires an appropriation for any expenditure of public funds even from trust or custodial funds received from the federal government or for special purposes. The decision of the court would seem to be broad enough to include and therefore require an appropriation for any expenditure of funds from dedicated funds of the Alaska Railroad Corporation and

Senator Jay Kerttula

March 17, 1992

Page 2

the Alaska Permanent Fund Corporation. Therefore, an attempt to distinguish on this basis may result in our not catching any fish (public corporations) in our net (the constitutional amendment).

As a result, after talking with Senator Halford as you requested, I drafted a new version to distinguish between big and small public corporations on the basis of whether they manage significant state assets, a term which may be defined by the legislature generally.

GPL:pl

92-185.plm

Enclosure

cc: Senator Rick Halford

# 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 *JER*  
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:

Alaska Public Corporations

- (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

7-LS0038D  
Luckhaupt  
3/17/92

CS FOR SENATE JOINT RESOLUTION NO. 4 ( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

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 that manage significant state assets.

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 that manages significant state assets as  
9 defined by law, its members shall be appointed by the governor, subject to confirmation by a  
10 majority of the members of the legislature in joint session, and may be removed as provided by  
11 law. They shall be citizens of the United States. The board or commission may appoint a  
12 principal executive officer when authorized by law, but the appointment shall be subject to the  
13 approval of the governor.

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

M E M O R A N D U M

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