

**HB**

**126**






**Alaska Permanent Fund Corporation**  
P.O. Box 15500 Juneau, Alaska 99802-5500  
(907) 465-2047

## MEMORANDUM

**DATE:** February 20, 2001

**TO:** Representative Norm Rokeberg, Chair  
House Judiciary Committee

**FROM:** Robert D. Storer,   
Executive Director

**SUBJECT:** House Bill 126 – Removal of members of the Board  
of Trustees only for cause

This is to request a hearing at your earliest convenience on House Bill 126, "An Act relating to removal of members of the board of trustees of the Alaska Permanent Fund Corporation; and providing for an effective date."

HB 126 is an important improvement to current Permanent Fund law. The enhanced continuity of Board membership that this legislation provides is identical to that currently enjoyed by the Alaska State Pension Investment Board (ASPIB). Note: I have attached a memorandum prepared by our legal counsel which provides some helpful background on this issue.

The Board is unanimous in its support for this proposal because the members know, first hand, that it takes a great deal of time to gain sufficient knowledge of the Fund's operations and investment policies to be able to make informed decisions. As an investment professional working with public funds in Alaska for the past 18 years, I can attest that the Permanent Fund is a mature fund and that overseeing its complex investment structure is necessarily a demanding task. The institutional memory and experience of longer-serving members is definitely helpful to new members in fulfilling their fiduciary responsibilities.

In short, we believe this bill serves the best interests of the Fund and the people of Alaska.

Here is one example of why continuity is important. The Trustees recently decided not to invest in private equities even though over time we believe this asset class would provide superior returns to those provided by public equities. Because returns from private equities typically underperform in the short term and only generate their expected higher returns over time, investing in this asset class requires patience and an institutional commitment on the part of the Board.

Part of why the Board decided against investing in private equities was because of its collective concern that the next Governor might replace the entire Board at one time, thereby wiping out the Board's history with - and understanding of - this asset class, including memory of the careful deliberative process this Board followed in considering alternative investments. Worse, new, inexperienced Trustees might simply choose to liquidate those investments at a time when returns are low, rather than staying the course for the longer term.

With removal only for cause, the next Governor will appoint two cabinet members to the Board of Trustees shortly after he or she takes office. A third (public) member will then be appointed in July of the first year of the Governor's term. In July of the following year, roughly one and one-half years after taking office, the Governor will appoint a second public member, with his or her appointments at that time constituting a majority of the members of the Board. This more deliberate schedule for filling Board seats would provide important continuity for the APFC that would likely not occur under the present appointment scheme by which a new Governor could summarily replace all Trustees at one time.

I look forward to discussing this issue with you further, and thank you for your consideration.

Attachment

LAW OFFICES OF  
SIMPSON, TILLINGHAST, SORENSEN & LONGENBAUGH, P.C.

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MEMORANDUM

To: Trustees, Alaska Permanent Fund Corporation

From: Ron Lorensen, STS&L

Date: January 11, 2001

Re: "For cause" standard for removal of public officers  
Our File No.: 846.14

In response to the Board's request at its December 8, 2000 meeting, I have researched court decisions that articulate standards for the "for cause" removal of both public and private officers and employees. In addition, to determine whether and how the term is defined in the Alaska statutes, I have also attempted to identify all instances in which removal of a public officer or employee is statutorily provided for on a "for cause" basis. The majority of "for cause" removal statutes in Alaska do not provide any standards beyond the "for cause" requirement.

I. Judicial Approach to "Cause/For Cause".

The Alaska statutes dealing with the removal of public officers and employees use three different terms to state the standard for removal--"for cause," "good cause," and "just cause." There is no apparent significance to the choice of the term used, and courts have recognized that the terms are interchangeable.<sup>1/</sup> The focus of each term is whether "cause" for removal exists.

The following excerpts from two court cases and one law review article reflect that there is no single, widely accepted definition of "cause" in the cases. Nonetheless, they do reflect a common theme:

"Good cause" cannot be just any reason the Board deems sufficient for the discharge of the teacher. ... Not only must there be "good cause" and substantial evidence in support of the charge, but in order for the facts to sustain such a charge they must bear reasonable relationship to the teacher's fitness or capacity to perform his duties in that position. . . . We find the test of good cause with respect to public officers generally to be facts which are related to the office and affect the administration thereof. Lucero v. Mathews, 901 P.2d 1115, 1122 (Wyoming 1995) (citations omitted).

<sup>1/</sup> See, for example, Lockhart v. Cedar Rapids Community Sch. Dist., 577 N.W. 2d 845 (Iowa 1998), at 846-47 (equating "proper cause" with "just cause" and "for cause").

There is no all-encompassing definition of "just cause." This term does encompass, however, reasons that relate to an employee's performance in his or her job and the impact of that performance on an employer's ability to attain its reasonable goals. "Just cause" also includes reasons based on an employer's legitimate budgetary or personnel requirements, unrelated to employee fault. "Just cause" does not include "reasons which are arbitrary, unfair, or generated out of some petty vendetta." Lockhart v. Cedar Rapids Community Sch. Dist., 577 N.W. 2d 845, 847 (Iowa 1998) (citations omitted)

In years of exposure and study and thought, both to and of the bad as well as the good, some conclusions have inevitably emerged, and one of them is a definition of what "just cause" probably is, for here and now. It seems to be that cause which, to a presumably-reasonable determiner ... appears to be (not necessarily is), fair and reasonable, when all of the applicable facts and circumstances are considered, and are viewed in the light of the ethic of the time and place. That's a mouthful, in words, but it really is only, bottom-line, another expression of the now-common expression, "fair shake." Hill & Westhoff, "No Song Unsung, No Wine Untasted," 47 Drake Law Review 399, 411 (1999).

Here's my own shot at a definition of "cause": Fair minded people will know it when they see it, taking into account the needs of the office and the performance and conduct of the incumbent.

## II. "Cause" for Removal in the Alaska Statutes.

Of the terms "for cause," "good cause," and "just cause," "for cause" is used most frequently in the Alaska statutes to express a "cause" standard for removal of a public officer or employee. That term appears in a total of 15 different provisions. The "good cause" standard comes in second with a total of three provisions. "Just cause" appears only once. Twelve of these 19 "cause" provisions state only the simple standard, without either definition or example. Six provisions include multiple examples of "cause," such as AS 31.05.007(d) which provides that the governor may remove a member of the Alaska Oil and Gas Conservation Commission "for cause including but not limited to incompetence, neglect of duty or misconduct in office" or AS 47.30.663(c) which provides for removal of a member of the Alaska Mental Health Board "only for cause, including, but not limited to, poor attendance or lack of contribution to the board's work."<sup>2/</sup> One provision, AS 08.04.030, provides only a single example of "cause."

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<sup>2/</sup> The most comprehensive listing appears at AS 43.05.414(c), which provides examples of "good cause" for removal of the state's administrative law judges. That provision states:

- (c) In this section, "good cause" includes
- (1) violation of the Alaska code of judicial conduct adopted by the Alaska Supreme Court;
  - (2) conviction of a crime of moral turpitude;

Under that section a member of the Board of Public Accountancy may be removed by the governor "for neglect of duty or other just cause." No statute attempts to set out a comprehensive definition of "cause."

It should be noted that, within the 19 provisions that require "cause" for removal of a public officer or employee, seven condition the standard with the word "only" (i.e., "may be removed only for cause"). The other 12, including AS 37.10.210(d) which establishes a "for cause" standard for removal of members of the Alaska State Pension Investment Board (ASPIB),<sup>3/</sup> do not use "only" or any similar word of limitation. Because the role and responsibilities of the APFC Board are so similar to those of ASPIB, I did not use the word "only" in the accompanying draft bill amending AS 37.13.070(a) to provide a "for cause" standard for removal of the public members of the APFC Board. Although the use of "only" in some "for cause" provisions appears to make a somewhat stronger statement about the applicable standard for removal, from a legal point of view I believe that omitting that word from the bill does not have any substantive effect. The appropriate standard for removal of a public officer is either "at will" or "for cause"--it can't be both.

I hope the preceding information is helpful.

cc: Robert D. Storer, Executive Director, APFC  
Jim Baldwin, Assistant Attorney General, Department of Law

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- office; (3) unjustified failure to handle the caseload assigned or similar nonfeasance of  
office; and (4) failure to meet the requirements of AS 43.05.425 relating to qualification for  
confidentiality of taxpayer information. (5) unreasonable failure to comply with the statutes or regulations regarding the

<sup>3/</sup> As suggested at the December 8 Board meeting, I went back through the legislative history materials on the bill that created ASPIB to see whether there was any discussion of the intended meaning of "for cause" removal of ASPIB members. From the written record, it does not appear that there was.

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 126  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title: Removal of Members of the BRU: Permanent Funr/ Corporation  
Permanent Fund Board Component: Permanent Fund Corporation  
Sponsor: House Rules  
Requester: House Judiciary Component Number: 109

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

The provisions of HB 126 would not have any financial cost to the APFC operating budget.

Prepared by: Robert D. Storer, Executive Director Phone (907)465-2047  
Division: Alaska Permanent Fund Corporation Date/Time 4/23/01 10:00 AM  
Approved by: Larry Persily, Deputy Commissioner Date 04/23/2001  
Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 126  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Office of the Governor  
Title: "An Act relating to removal of members of the BRU: Executive Operations  
board of trustees of the Alaska Permanent Fund Corporation.." Component: Executive Office  
Sponsor: House Rules (LB&A)  
Requester: House Judiciary Component Number: 6

## Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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## FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

## POSITIONS

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

HB 126 has no fiscal impact on the Office of the Governor.

Prepared by: Michael A. Nizich, Administrative Director Phone 465-3876  
Division: Administrative Services Date/Time 4/19/01 12:00 AM  
Approved by: David Ramseur Date 04/20/2001  
Agency: Office of the Governor

For distribution information, call the Governor's Legislative Office

**Sec. 37.13.050. Composition and qualifications of board of trustees.**

(a) The Board of Trustees of the Alaska Permanent Fund Corporation consists of six members appointed by the governor. Two of the members must be heads of principal departments of state government, one of whom shall be the commissioner of revenue. Four members shall be appointed by the governor from the public and may not hold any other state or federal office, position or employment, either elective or appointive, except as a member of the armed forces of either the United States or of this state.

(b) The four public members of the board must have recognized competence and wide experience in finance, investments, or other business management-related fields.

(c) The board shall annually elect a chairman from among its members.

(§ 5 ch 18 SLA 1980; am § 1 ch 81 SLA 1982)

**Sec. 37.13.060. Term of office.**

The public members of the board shall be appointed for terms of four years, and they may be reappointed. The terms of the public members shall be staggered so that no more than one term of a public member expires each year.

(§ 5 ch 18 SLA 1980; am § 2 ch 81 SLA 1982)