

**SB**

**92**

SFIN

FILE

# SENATE FINANCE COMMITTEE REPORT

DATE: 3/14/01

NUMBER:

\* Bill not transmitted  
per Co-Chair Sen. Kelly

DATE JURNED  
IN TO OFFICE: 27 April 01

Finance Committee considered SENATE BILL NO. 92

### REMOVAL OF MEMBERS OF THE PF BOARD

"An Act relating to removal of members of the board of trustees of the Alaska Permanent Fund Corporation; and providing for an effective date."

and recommends:

- be replaced with CS SB 92 (FIN)
- adopt previous CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
Revenue	7/21/00		<input checked="" type="checkbox"/>	#1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	No REC	AMEND
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>		<input checked="" type="checkbox"/>		
<i>[Signature]</i>		<input checked="" type="checkbox"/>		
<i>[Signature]</i>		<input checked="" type="checkbox"/>		
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
COCHAIR: <i>[Signature]</i>			<input checked="" type="checkbox"/>	
COCHAIR: <i>[Signature]</i>			<input checked="" type="checkbox"/>	

APR 26 2001

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 92  
(S) Publish Date: 3/14/01

Revision Date/Time (Note if correction): 2/20/01 3:00 PM Dept. Affected: Revenue  
Title: Removal of Members of the BRU: APFC  
Permanent Fund Board Component: APFC  
Sponsor: Senate Rules (request of Leg Budget & Audit)  
Requester: Senate State Affairs 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>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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 SB 92 would not have any financial cost to the APFC operating budget.

Prepared by: Robert D. Storer Phone (907)465-2047  
Division: Alaska Permanent Fund Corporation Date/Time 2/20/01 3:00 PM  
Approved by: Larry Persily, Deputy Commissioner Date Feb. 21, 2001  
Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

SENATE FINANCE COMMITTEE  
2000 COMMITTEE ACTION

Bill Number	SB 92		
Amendment	25 amended		
Motion	move from Committee		
<u>Motion by</u>	D		
<u>Objection by</u>	ff		
Removed			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Green	✓		
Senator Hoffman			✓
Senator Leman	✓		
Senator Olson			✓
Senator Ward	✓		
Senator Wi'ken	✓		
Senator Austerman			✓
Co-Chair Donley	✓		
Co-Chair Kelly	✓		
<u>Tally</u>			
Yea	6		
Nay	3		
Absent			
<b>MOTION</b>	Pass		

Amend #1

22-LS0462VA

SENATE BILL NO. 92

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT  
COMMITTEE

Introduced: 2/14/01  
Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to removal of members of the board of trustees of the Alaska  
2 Permanent Fund Corporation; and providing for an effective date ~~X~~ of Jan. 1, 2004. ))

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

4 \* Section 1. AS 37.13.070(a) is amended to read:

5 (a) The governor may remove a public member of the board from office only  
6 for cause. A removal by the governor must be in writing and must state the reason for  
7 the removal. A member who is removed by the governor may not participate in board  
8 business and may not be counted for purposes of establishing a quorum after the  
9 member receives written notice of removal from the governor.

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

Jan 1, 2004

SENATE FINANCE COMMITTEE  
4 Feb 2001 COMMITTEE ACTION

Bill Number	SB 92		
Amendment	#1		
Motion	adopt		
<u>Motion by</u>	Donley		
<u>Objection by</u>	Austerman		
Removed			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Austerman			✓
Senator Green	✓		
Senator Hoffman			✓
Senator Leman	✓		
Senator Olson			✓
Senator Ward	✓		
Senator Wilken			✓
Co-Chair Donley	✓		
Co-Chair Kelly	✓		
<u>Tally</u>			
Yea	5		
Nay	4		
Absent			
<b>MOTION</b>	<b>PASS</b>		

CS FOR SENATE BILL NO. 92(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND  
AUDIT COMMITTEE

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to removal of members of the board of trustees of the Alaska  
2 Permanent Fund Corporation; and providing for an effective date of January 1, 2004." #1

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

4 \* Section 1. AS 37.13.070(a) is amended to read:

5 (a) The governor may remove a public member of the board from office only  
6 for cause. A removal by the governor must be in writing and must state the reason for  
7 the removal. A member who is removed by the governor may not participate in board  
8 business and may not be counted for purposes of establishing a quorum after the  
9 member receives written notice of removal from the governor.

10 \* Sec. 2. This Act takes effect January 1, 2004. #1



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

DATE: 26 April 01 TIME: 5:30 pm

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 2

FROM: MINDY ROWLAND  
SENATE FINANCE COMMITTEE SECRETARY  
PHONE: 465-4935  
FAX: 465-2187

NOTES: Final Finance CS  
w/ ~~attached~~ following amendment.

---

---

---

---

---

# Journal Text



10/16/96  
SB 89

Senate Journal

Page 4390

Message of June 14 was received, stating:

Dear President Pearce:

Under the authority of art. II, sec. 15 of the Alaska Constitution, I have vetoed the following bill:

HOUSE CS FOR CS FOR SENATE BILL NO.  
89 (FIN)

An Act relating to the members of the board and staff of the Alaska Permanent Fund Corporation.

I have taken this action out of a strongly held belief that the trustees of the Alaska Permanent Fund Corporation must be answerable to Alaskans for the decisions they make in managing over \$18 billion of public money. This bill, among other things, would change existing law by making trustees removable only for very specific causes. Under existing law, the board serves at the pleasure of the governor and must answer to the governor for management decisions. The governor, in turn, must answer to the voters for the governors stewardship of the Alaska Permanent Fund. It is in this very basic way that the Alaska Permanent Fund Corporation will remain responsive to the will of the people.


Sincerely,  
/s/  
Tony Knowles  
Governor

Bill Root:

[Return to BASIS Main Menu\(19th Legislature\)](#)

[Return to the Legislature Home Page](#)

BASIS Last Updated 12/31/96

  
**Alaska Permanent Fund Corporation**  
P.O. Box 25500 Juneau, Alaska 99802-5500  
(907) 465-2047

**MEMORANDUM**

DATE: March 19, 2001

TO: Senator Pete Kelly, Co-Chair  
Other Members of the Senate Finance Committee

FROM: Robert D. Storer, Executive Director *(RDS)*

SUBJECT: **Senate Bill 92 – Removal of members of the Board of Trustees only for cause**

On behalf of the Board of Trustees of the Alaska Permanent Fund Corporation (APFC), I am requesting a hearing for Senate Bill 92. This legislation had two hearings in the Senate State Affairs Committee this session and passed out of that committee on March 13<sup>th</sup>.

SB 92 is an important improvement to current Permanent Fund law. This legislation changes AS37.13.070(a) to allow the Governor to remove a public member of the APFC Board "only for cause." 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.

Senate Bill 92  
March 19, 2001  
Page 2

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.

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."

---

<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

---

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.

## Board of Trustees

A six-person Board of Trustees sets policy for the Alaska Permanent Fund Corporation (APFC). The governor appoints four members from the public, and two - including the Commissioner of Revenue - from the cabinet. The public members serve staggered four-year terms.



Clark S. Gruening  
Chair



Melphine Evans  
Vice Chair



Wilson L. Condon



James A. Sampson



Bruce M. Botelho



Eric E. Wohlforth

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

ONE SEALASKA PLAZA, SUITE 300 • JUNEAU, ALASKA 99801

TELEPHONE: 907-586-1400 • FAX: 907-586-3065

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").

**Effect of amendments.** — The 1991 amendment, effective December 16, 1994, substituted "AS 37.13.010 — 37.13.190" for "this chapter" in the last sentence.

The 1992 amendment, effective July 1, 1992, re-wrote the last sentence.

**Effective dates.** — Under § 58(a), ch. 66, SLA 1991, as amended by § 37, ch. 5, FSSLA 1994 and § 2 ch. 1, SSSLA 1994, this section, as set out above, took effect December 16, 1994.

**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)

**Sec. 37.13.070. Removal and vacancies.** (a) The governor may remove a member of the board from office. A removal by the governor must be in writing and must state the reason for the removal. A member who is removed by the governor may not participate in board business and may not be counted for purposes of establishing a quorum after the member receives written notice of removal from the governor.

(b) A vacancy on the board shall be promptly filled by appointment by the governor. An appointee to a vacancy shall hold office for the balance of the term for which the appointee's predecessor on the board was appointed.

(c) A vacancy on the board does not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board. (§ 5 ch 18 SLA 1980; am § 3 ch 81 SLA 1982)

**Sec. 37.13.080. Quorum and voting.** Four members of the board constitute a quorum for the transaction of business and the exercise of the powers and duties of the board. Action may be taken only upon affirmative vote of a majority of the membership of the board. (§ 5 ch 18 SLA 1980; am § 6 ch 134 SLA 1992)

**Effect of amendments.** — The 1992 amendment, effective July 1, 1992, added the second sentence.

**Sec. 37.13.090. Compensation of board members.** Public members of the board receive an honorarium of \$400 for each day spent at a meeting of the board or at a meeting of a subcommittee of the board or at a public meeting as a representative of the board. Members of the board are entitled to per diem and travel allowances as provided by law for members of state boards and commissions. (§ 5 ch 18 SLA 1980; am § 4 ch 134 SLA 1992)

**Sec. 37.13.100. Corporation staff.** The board may employ and determine the salary of an executive director. The executive director may, with the approval of the board, select and employ additional staff as necessary. An employee of the corporation, including the executive director, may not be a member of the board. The executive director and


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

ONE SEALASKA PLAZA, SUITE 300 • JUNEAU, ALASKA 99801

TELEPHONE: 907-586-1400 • FAX: 907-586-3065

MEMORANDUM

TO: Robert D. Storer  
Executive Director, APFC

FROM: Ronald W. Lorensen, STS&L 

DATE: March 7, 2001

RE: SB 92--"For cause" removal of public members of APFC Board of Trustees in light of Bradner v. Hammond

Our File No. 846.14

In my recent testimony to the Senate State Affairs Committee on SB 92 ("for cause" removal of public members of the Alaska Permanent Fund Corporation Board of Trustees), I explained why I thought that the Alaska Supreme Court's decision in Bradner v. Hammond<sup>1</sup> did not mean that the bill would be unconstitutional if enacted. I thought it might be helpful to put those thoughts in writing, along with some further discussion of the Bradner decision.

In Bradner, the Court was presented with a legislative enactment<sup>2</sup> that, in addition to confirmation of the head of each principal department (i.e., commissioners), required legislative confirmation of all departmental deputy commissioners and of the directors of a number of named divisions within state government. The Alaska constitution (Article III, Section 25) expressly provided for legislative confirmation of the heads of each principal department, but it was silent regarding the confirmation of subordinate departmental officers. Governor Hammond challenged the enactment on grounds that it violated the doctrine of separation of powers by impermissibly interfering with the executive's power of appointment.

After discussing the purpose and importance of the separation of powers doctrine (and the "complementary doctrine" of checks and balances), the Court agreed with the governor's position. In that discussion, the Court made some observations about those doctrines that are important to keep in mind, generally, when analyzing the effect of a legislative enactment that is

<sup>1</sup> 553 P.2d 1 (Alaska 1976)

<sup>2</sup> Section 1, Chapter 82, SLA 1975

Robert D. Storer  
March 9, 2001  
Page 2

challenged for encroaching on the powers of either (or both) the executive or judicial branch. In particular, the Court pointed out that:

Both doctrines address and are designed to resolve the problem of efficient government and have as their goal the protection of the electorate from tyranny.

Bradner, at 6 - 7. It then went on to quote with favor a statement by former U.S. Supreme Court Justice Brandeis in which he said the purpose of the doctrine of separation of powers was "not to promote efficiency but to preclude the exercise of arbitrary power."<sup>3</sup>

The legislature's attempt in Bradner to throw a wider confirmation net around the governor's appointees than allowed by the constitution directly and clearly implicated the concerns identified by the Court. Confirmation necessarily requires that the legislature become involved in each and every one of the governor's appointments that is subject to confirmation. History (both in Alaska and elsewhere) has shown that the confirmation process can all too easily become politicized, frequently turning into debates (and compromises) over issues that are unrelated to the merits of the appointment, itself. Those situations exemplify the "tyranny" and the "exercise of arbitrary power" that the separation of powers doctrine was designed to protect against.

On the other hand, the effect on the workings of government of a general law that defines the conditions under which certain public officials, once appointed, may be removed from office is different by several orders of magnitude. Unlike the confirmation process where absolutely no objective standards for legislative approval exist, the "for cause" removal standard proposed by SB 92 sets out a very specific standard<sup>4</sup> that is uniform in its application and for which relief can be obtained by an aggrieved official through the judicial branch if it is not properly applied. Further--and perhaps even more importantly--under a "for cause" removal standard, the legislature plays no role in individual removal decisions: there is no opportunity for inter-branch "tyranny" or "exercise of arbitrary power" to arise.

When I described these important differences at the committee's hearing, Senator Therriault asked if they weren't just a matter of degree, rather than raising different legal principles. I think he was correct in making that point, since our courts would almost certainly say that removal of a public official is an integral aspect of the executive's power of appointment. However, in my experience the resolution of many constitutional questions has ultimately boiled down to one of degree.

---

<sup>3</sup> *Id.* at 6, n. 11, quoting dissenting opinion of Brandeis, J., in Myers v. United States, 272 U.S. 52, at 293 - 95.

<sup>4</sup> See my January 11, 2001 memo to the APFC Trustees discussing the "for cause" standard.

Robert D. Storer  
March 9, 2001  
Page 3

Take, for example, AS 37.13.050(b) which sets out certain specific qualifications for the public members of APFC Board.<sup>5</sup> Because that provision imposes those qualifications for appointment to the Board, it has the direct effect of limiting the governor's appointment power: he cannot simply appoint any person he chooses. Yet I doubt that even the most ardent supporter of the primacy of the executive's appointment power would seriously argue that such legislatively imposed qualifications violate our constitution.

A "for cause" removal requirement for a public member of the APFC Board falls somewhere between the appointment qualifications of AS 37.13.050(b) (clearly constitutional) and a requirement that those members be subject to legislative confirmation (clearly unconstitutional). I don't know precisely where the line between what's permissible and what's not might ultimately be drawn, but I do think that SB 52's proposed "for cause" requirement would fall on the permissible side of that line.

cc: Jim Baldwin, Assistant Attorney General  
Jim Kelly, APFC

---

<sup>5</sup> That provision states: "The four public members of the board must have recognized competence and wide experience in finance, investments, or other business management-related fields."

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 2/14/01

FURTHER: Finance

Date of 5-Day Notice: 2/15/01  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 3-14-01

State Affairs Committee considered SENATE BILL NO. 92

"An Act relating to removal of members of the board of trustees of the Alaska Permanent Fund Corporation;" and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

- Senate Bill:**  
 same title  
 new title  
**House Bill:**  
 same title  
 technical title  
 new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
Revenue	2/21		✓	1

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note



SIGNATURES AND RECOMMENDATIONS:	Do PASS	DO NOT PASS	No REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
CHAIR: <i>[Signature]</i>			X	

SENATE FINANCE COMMITTEE

SIGN-IN

SB 92-REMOVAL OF MEMBERS OF THE PF BOARD

NAME: Ron Lorenson Subject/Bill No: # SB 92  
Co./Dept./Title: attorney for APFC Phone: 463-3007  
Address: One Sealecks Place, Ste 301, Tiverton Zip: 99801  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: Bob STOREE Subject/Bill No: SB 92  
Co./Dept./Title: APFC Phone: 465-2047  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

