

SCOMM

#18:18

Introduced: 3/20/79
Referred: Special Permanent
Fund Committee and Finance

1 IN THE HOUSE

BY THE SPECIAL PERMANENT
FUND COMMITTEE

2 HOUSE BILL NO. 414

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to income of the Alaska permanent
7 fund; and providing for an effective date."

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

9 * Section 1. AS 37.13 is amended by adding new sections to read:

10 Sec. 37.13.190. PERMANENT FUND INCOME. Income from investment of
11 the permanent fund becomes part of the permanent fund and shall be
12 deposited in the permanent fund annually. The income may be used to
13 provide for guarantees of indebtedness issued by governmental agencies
14 of the state for power projects.

15 Sec. 37.13.200. GUARANTEES OF INDEBTEDNESS. The Board of Trustees
16 of the Alaska Permanent Fund Corporation is authorized to enter into
17 agreements with any public authority of this state or any municipality
18 or other governmental agency of the state, providing for a guarantee of
19 the payment when due, whether at maturity or by sinking fund redemption
20 but not by acceleration of maturity, of the principal of and interest on
21 bonds, notes or other indebtedness issued to finance projects for con-
22 struction of electric generating and related transmission facilities,
23 this guarantee to be payable solely from the income derived from the
24 Alaska permanent fund established by AS 37.13.010 (other than income
25 derived from the Alaska enterprise development fund established by AS
26 44.55.010). The agreements shall contain such terms, provisions, and
27 covenants in furtherance of the purposes of AS 37.13.190 - 37.13.230 as
28 the board of trustees determines.

29 Sec. 37.13.210. LIMITATION ON INDEBTEDNESS. No bonds, notes or

1 other indebtedness may be guaranteed under AS 37.13.200 unless the board
2 determines that the debt service for any year for all bonds, notes and
3 other indebtedness guaranteed will not exceed the amount of annual
4 income estimated by the board to be derived during that year from the
5 Alaska permanent fund (other than income from the Alaska enterprise
6 development fund). The determination shall be made by resolution of the
7 board before the execution of a guarantee agreement under AS 37.13.200.

8 Sec. 37.13.220. GUARANTEE ENDORSED. A bond, note or other
9 indebtedness guaranteed under AS 37.13.200 shall have on its face an
10 endorsement of the guarantee by the chairman of the board or his
11 designee.

12 Sec. 37.13.230. LEGISLATIVE APPROVAL. No bond, note or other
13 indebtedness may be guaranteed by the board under AS 37.13.200 until the
14 facilities to be financed with the proceeds of the bonds, notes or other
15 indebtedness have been approved by the legislature by concurrent
16 resolution.

17 * Sec. 2. This Act takes effect upon the effective date of a version of
18 House Bill No. 281 establishing the Alaska Permanent Fund Corporation.



Alaska State Legislature

1976

Source:

SCS CSSS HJR 39(Resources) am S

HOUSE JOINT RESOLUTION NO. 39

Proposing an amendment to the Alaska Constitution, establishing an Alaska Permanent Fund for certain proceeds derived from non-renewable resources.

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

* Section 1. Article IX, sec. 7, Constitution of the State of Alaska, is amended to read:

SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

* Sec. 2. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 15. ALASKA PERMANENT FUND. At least twenty-five per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

* Sec. 3. The amendments proposed by this resolution shall be placed before the voters at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska,

and the election laws of the state.

* Sec. 4. The amendments proposed by this resolution if adopted by the voters at the next general election shall become effective 90 days after the certification of the election returns by the lieutenant governor.

SSHJR
39"JOINT CHAIRMANS' REPORT ON
CS SSHJR 39

The Finance and Judiciary Committees of the House have each considered individually SS HJR 39, transmitted to the House by the Governor on January 15, 1976. The House Judiciary Committee, in unanimously adopting and reporting out a Judiciary Committee Substitute, incorporated amendments adopted by both the Finance and Judiciary Committees. CS SSHJR 39 is addressed in this joint report so that the intent of the constitutional amendment proposed by the resolution is clear.

The proposed constitutional amendment, which both committees view as of vital importance to the state, would establish an Alaska Permanent Fund into which 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments, bonuses and all mineral production taxes would automatically be placed.

The committee substitute raises from 15 to 25 the percentage of nonrenewable resource revenue to be dedicated. This change was made after the committees' concurrence with the Governor that the 25 percent level of funding would allow flexibility in future budgeting of state expenditures even if the most conservative case for future state revenue projections proves true. On the other hand, sufficient income would be accumulated in the Alaska Permanent Fund to allow diversification of Alaska's economy and to insure that future generations receive benefits from development of the State's nonrenewable resources.

The word "all" has been added before the words "mineral production taxes" in sec. 11 of the proposed constitutional amendment so that it is clear that all future taxes measured by mineral production or severance are included in this provision of the Constitution. The addition of the word "all" does not include property taxes. Examples of taxes included under sec. 15 include Oil and Gas Property Production Tax, AS 43.55 and the Oil and Gas Regulation and Conservation Tax, AS 43.57. Taxes which are not included are Oil and Gas Exploration, Production and Pipeline Transportation Property Taxes, AS 43.56 and Oil and Gas Reserves Ad Valorem Tax, AS 43.58.

In regard to both mineral leasing and mineral production taxes, the amount to be placed in the Fund would be based upon the gross amount to be received by the state. Accordingly, twenty-five percent of the gross amount of these revenues would be paid into the fund even though a portion of these revenues will be paid into the Alaska Native Fund as required by law.

In the event royalties are taken in kind, 25 percent of the proceeds from their sale would be placed in the fund. Also, revenue sharing payments which the state receives from federal mineral leasing would be dedicated.

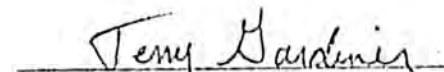
The principal of the Fund would be used only for investment in income-producing investments which the legislative would establish and change from time to time to meet the needs of the state. The Fund would come into existence and accumulate 25 percent of all nonrenewable source revenues received by the state 90 days after the certification of the 1976 election returns by the lieutenant governor. It is the purpose of the delayed effective date to allow the legislature to provide by law for an investment structure for the Alaska Permanent Fund.

The purpose of the language in the last sentence of the resolution is to give future legislatures the maximum flexibility in using the Fund's earnings -- ranging from adding to Fund principal to paying out a dividend to resident Alaskans.

The fiscal note provides for an interim study and development of alternative investment goals and structures of the Fund to be performed jointly by executive and legislative staff under the direction of the State Investment Advisory Committee.



HUGH MALONE
Chairman House Finance Committee



TERRY GARDINER
Chairman House Judiciary Committee

The State Affairs Committee has had HOUSE JOINT RESOLUTION NO. 41 (Requesting the Secretary of the United States Department of Transportation to transfer Southeast Alaska from the Pacific Standard Time Zone to the Yukon Standard Time Zone) under consideration and a majority of the members of the Committee recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 41 (Requesting the Secretary of the United States Department of Transportation to revise the standard time zones in which Alaska is located) and that it do pass. The report was signed by Mr. McKinnon, Chairman, and concurred in by Parker, Wallis, Fischer and Miller. Not concurring was McKinnon who has no recommendation.

Mr. Malone moved and asked unanimous consent that the Finance Committee referral on HOUSE JOINT RESOLUTION NO. 41 be waived. There being no objection, it was so ordered and the resolution was referred to the Rules Committee for placement on the calendar.

FIRST *Southwest* COMPANY

INVESTMENT BANKERS

MERCANTILE BANK BUILDING

DALLAS, TEXAS 75201

March 19, 1979

(214) 742-6461

The Honorable Terry Gardiner
Speaker
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

In response to your request, we have summarized below certain options for tax-supported financing of small hydroelectric projects.

In general, public projects are financed through the use of general obligation bonds, revenue bonds, or a combination thereof. General obligation bonds are backed by the "full faith and credit" of the issuer, the revenues used to pay the bonds being derived principally from taxes. Revenue bonds are usually secured solely by the net revenues (after operation and maintenance expenses) of the project being financed. Revenue bonds with a full or partial tax or general obligation pledge are a hybrid which, if used properly, can achieve the advantages of both bond types.

General obligation bonds generally sell at interest rates approximately 1 1/2% lower than revenue bonds of equal credit quality (rating). Nevertheless, the indiscriminate use of general obligation bonds in lieu of revenue bonds to achieve lower interest costs can be detrimental to the credit of the issuer in that the bond credit rating agencies critically examine the issuer's total debt burden payable from general funds. Careful use, however, of a general obligation bond or combination tax and revenue bond to finance a revenue project should not adversely affect the issuer's credit if the project produces net revenues sufficient to pay the debt, thus relieving the general fund of the debt burden.

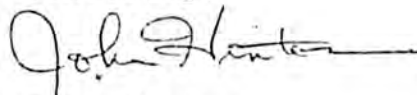
All of the above points out the critical elements for financing small hydroelectric projects with general obligations of the State of Alaska. The concept is financially workable from a State viewpoint if feasible projects are funded and professionally managed. The projects, if feasible, would thus gain the benefit of a much lower interest rate, and the State's general fund would not be burdened with repaying the debt. The difference between the interest rate for the State's bonds and marginal-quality project revenue bonds is in excess of 2%. The differential alone will have a significant feasibility impact on the projects.

The Honorable Terry Gardiner
March 19, 1979
Page Two

One vehicle presently in place that could be used to assist small hydroelectric projects is the Alaska Power Authority Revolving Fund. The Authority would issue, pursuant to a vote of the people, revenue bonds with a full or partial general obligation guarantee of the State. The funds could be deposited in the Revolving Fund for loans to local communities or cooperatives, the loans being secured by the revenues of the project and possibly by a local tax. In addition, interest during the project construction period could be funded from bond proceeds, as well as a reasonably required bond reserve fund equal to a year's debt service to further reduce the possibility of the State having to contribute to the Revolving Fund to pay principal and interest on the Authority bonds.

I hope this memorandum is responsive to your needs. If you have any further questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Hinton", with a long horizontal flourish extending to the right.

John Hinton
Assistant Vice President

157
WHITE, WELD & Co.
INCORPORATED

ONE LIBERTY PLAZA
91 LIBERTY STREET, NEW YORK, N. Y. 10006

THEODORE P. SWICK
FIRST VICE PRESIDENT
212/285-2153

CABLE ADDRESS "WHITEWELD"

December 9th, 1977

Mr. Clark Gruening, Chairman
House Permanent Fund Committee

Since the House Special Committee on the Permanent Fund is in the final stages of structuring legislation for consideration by the 1978 legislature, it is time to consider the use of the income of this "Permanent Fund".

The provisions of the Permanent Fund Constitutional Amendment include that "the income from the Permanent Fund shall be deposited in the General Fund unless otherwise provided by law". According to the best estimates of the Department of Revenue, the minimum amount (25%) of the funds received as mineral lease rentals, royalties and other payments will result in an accumulation by 1985 of some \$1.8 billion. The investment income from that amount, at an average 7% rate of return, would produce approximately \$126,000,000 any one year. As the Permanent Fund continues to grow, its increased capital will provide additional annual income in excess of the aforementioned figure, however, for the sake of perspective, the ensuing discussion will be confined to the \$126,000,000 projected income.

If the estimates are correct as to the principal accumulated in the Permanent Fund by 1985 at a 25% rate, the remaining balance accumulated in the General Fund should amount to some \$5.4 billion. The effect of the addition of \$126,000,000 to such an accumulation would increase the 1985 accumulation by approximately 2%. Such an increase is minimal in relation to a General Fund accumulation of the magnitude as anticipated.

Therefore, the income of the Permanent Fund should be dedicated to doing more than just adding a small increment to the General Fund. Even though it may eventually return to the Permanent Fund, it should be channeled into projects with revenue producing capability that provide benefits for the majority of Alaskans, and simultaneously allow for long-term financings at the lowest possible interest rate.

The House Special Committee, during the conduct of public hearings, has received many proposals for the use of Permanent Fund's income. Many of these proposals appear to be meritorious from numerous points of view. However, in turn, many of these same proposals would seem to be better responded to through

the actions of the legislature and addressed through the General Fund as opposed to the Permanent Fund's income.

Essential to the lifestyle of all modern societies is the availability of electric power. Advocates of no growth, modest growth, rapid growth or controlled growth all share a need for power. The availability of power often determines whether desirable economic growth can take place. The cost of such power is of course, an important element. All other things considered, the cost of power influences the future direction in any modern society.

Whether power generation occurs through capital-intensive projects (hydro-electric) or fuel-intensive projects (coal or gas-fired) its financing is generally through issuance of long-term debt. Production costs of hydro are generally stable since the fuel (water) costs are practically non-existent. Production costs of coal or gas-fired facilities are subject to continually escalating costs of the fuel necessary for the electric generation.

Long-term debt sold for the construction of either type of facility, without regard to the operation and maintenance expense of each, must be amortized through the service of debt; principal and interest payments annually until the debt is extinguished. The total cost of the debt service is affected by the rate of interest which investors demand for the long term loan of money.

A 40 year debt instrument in the amount of \$100,000,000, bearing an interest rate of 6½% will require a level debt service (principal and interest) of \$7,069,400 annually to liquidate the debt. If the interest rate is 5½%, the annual debt service requirement is \$6,232,000. This represents a difference of \$837,400 per year and over a 40 year period involves a saving of \$33,496,000.

Since debt service is a major factor in determining the rates users must pay for electric usage, the rate of interest at which a debt instrument is financed is a significant element in the total cost to the consumer. Bonds payable solely from the revenues of the utility are judged by investors on their credit-worthiness. The more credit-worthy, the lower the interest rate, the less credit-worthy, the higher the interest rate.

Alaska possesses many sites which are suitable for hydro-electric generating facilities. However, in some instances, these sites are not located near the population centers which require the power generated. Due to its topography, long-range transmission lines bringing power to the load-centers are often not feasible. In other instances, the best development of such capital-intensive projects may require large-scale projects which in the near-term, produce a surplus of power. Smaller scale generation facilities using coal or gas-fired power production are required in those areas without large load demands or without good potential hydro sites. The fact that the latter use a precious commodity which is non-renewable is not the point. If the power is needed, it must be produced. Nevertheless, if the project can be financed at a lower interest cost, a benefit will accrue to the user through a lower cost of service.

It is suggested that the future power needs of Alaskans can be delivered at a lower cost whether such power is provided through hydro or fossil fuels. The ability to affect the interest rate on whatever long-term project is financed, can accomplish this. The following paragraphs suggests how this can be done without depriving the Permanent Fund of other uses of its income.

The income from the Permanent Fund will be derived from "investment grade" securities and as such represents a highly reliable and secure cash flow. This annual cash flow can be dedicated to assuring that principal and interest requirements on bonds issued to construct revenue producing power projects are met in the event of a revenue short-fall from the revenue producing project. The effect will make it possible for the revenue bonds to receive a high credit rating and high evaluation in the market place which will result in a significantly lower cost of borrowing for the project construction. At the end of a given period, (debt service year or monthly), income from the Permanent Fund dedicated to the revenue bonds debt service requirements not needed is released to the General Fund or for any other purpose directed by law.

The dedication of Permanent Fund income to revenue bond debt service would not be accomplished in the legislation itself, but rather in a "guarantee agreement" between the Permanent Fund and the entity issuing the revenue bonds and the "guarantee agreement" would actually appear on the face of the debt instrument. From the investor and rating agency point of view, if the guarantee is in the legislation it is legally subject to change by succeeding legislatures. If the guarantee is in an agreement as part of the revenue bond issue it is dedicated for as long as the bonds are outstanding.

It must be assumed for the purpose of this guarantee arrangement that the Permanent Fund will receive 25% of the oil and gas income because of the terms of the Constitutional Amendment. Based on that assumption, estimates (by the State) of the size of the Permanent Fund in 1985 will be \$1,800,000,000.

A reasonable assumption of 7% income from investment produces an annual cash flow available for guarantees of \$126,000,000. An annual cash flow of this magnitude, assuming a 6% interest cost on guaranteed bond issues, will support approximately \$1,800,000,000 of bonds.

The various projects to be supported by the guarantee would be financed by revenue bonds of any state agency or any subdivision of government in Alaska for electric generation and transmission. Each bond issue would capitalize interest during construction and fund its own debt service reserve to conform to the demands of the market for such bonds at the time of financing.

The act providing for a guarantee should be broad in form. The covenants relating to, and provisions of, each project will be structured into each bond issue.

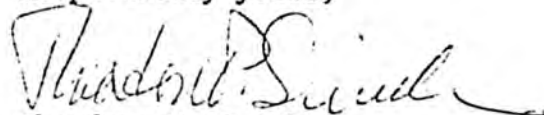
There might be some merit in including in the act certain findings and directives to the Board of the Permanent Fund, but it probably is more appropriate for the Board to outline its own guidelines as it relates to such guarantee on bonds of projects to be financed in its administrative rules and regulations. By this is meant, for example, considerations by the legislature in its deliberations leading to the approval of a project such as economic need, economic feasibility, geographic locations, social benefit, impact on locality, etc.

A draft of a bill has been provided to your committee which would, subject to redraft to conform to custom, constitutional requirements, the Permanent Fund Act and language usage in Alaska, creates the mechanism for such a debt guarantee program. A brief analysis of this draft follows.

- Section 1. Creates the mechanism by authorizing the Board of the Permanent Fund to enter into guarantee agreements. Limits the guarantee to income only. Provides for agreements with any entity of state or local government. Provides guarantee of principal payments, sinking fund payments and interest but prevents use of Permanent Fund income for optional early retirement of guaranteed debt. Limits the guarantee to electric generation and transmission. Leaves the details of guarantee agreements to the Board of Trustees.
- Section 2. In effect limits the amount of debt that can be guaranteed. This adds to the credit-worthiness of the guarantee from the lenders point of view. Depending somewhat on the actual portfolio of investments in the Permanent Fund, it is important to consider whether or not to limit the total of guarantees to something less than 100% of the Fund income. This could be done in the Act, which does not happen in this draft, or it could be a policy matter of the Board of the Fund.
- Section 3. Provides that the guarantee article appear on the debt instrument which clearly establishes that it survives as long as the bonds are outstanding. This definitely is stronger and distinguishes the guarantee from any similarity to the so called "moral-obligation" pledge.
- Section 4. Provides that a guarantee agreement can be entered into on the debt of projects only after approval by the legislature. Part of the thrust of this section is in contemplation of a centrally controlled State-wide power development plan that considers the needs and best interest of all of Alaska.
- Sections 5 & 6 These sections are simply "boiler-plate" provisions.

The draft bill clearly does not contemplate any subsidy of electric costs to energy consumers. However, there is no prohibition that any subsidy to energy users deemed to be appropriate by the State can be accomplished by the legislature through appropriation from the General Fund or other sources which would not interfere with the value of this guarantee program to finance the capital costs of meeting the power needs of Alaska.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Theodore P. Swick". The signature is written in dark ink and is positioned above the printed name.

Theodore P. Swick

TPS/vmr

STATE
of ALASKA

MEMORANDUM

*Singer*TO: Frances A. Ulmer, Director
Div. of Policy Development & Planning

DATE: April 11, 1979

FILE NO: J-66-614-79

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERALSUBJECT: Use of Permanent
Fund income as debt
guarantee, HB 414

By:

Rodger W. Pegues
Assistant Attorney General*RWP*

You have asked us to review HB 414, and to advise whether the legislature may provide for the use of the income from the Permanent Fund to guarantee bonds, notes, and other indebtedness issued to finance public power projects.

While HB 414 will require substantive amendment, the income from the permanent fund probably can be used for this purpose.

The constitutional amendment establishing the permanent fund provides in pertinent part that "[a]ll income from the permanent fund shall be deposited in the general fund unless otherwise provided by law." Alaska Const., art. IX, § 15. */ The concluding clause: "unless otherwise provided by law" was intended to give the legislature maximum flexibility in using the fund. 1976 H. Jour. 684-685. It may be that the record of proceedings before the several committees which considered the amendment and of proceedings on the floor of the legislature would show its purpose in more detail. Its purpose is not discussed in the ballot summary or voter's pamphlet. Both simply advised the electorate that the income would go into the general fund and be available for appropriation unless otherwise provided by law. The title of the joint resolution by which the legislature proposed the amendment makes no reference to the disposition of the Permanent Fund's income. Disposing of it so as to establish still another dedicated fund probably encompasses a whole new and different subject from establishing the

*/ The clause, "unless otherwise provided by law" was added to the proposed constitutional amendment by a House Judiciary Committee Substitute. Compare SSHJR 39, 1/15/76, with CSSS HJR 39, 3/24/76. It was dropped by SCS CSSS HJR 39, 4/7/76 (which would have authorized additional dedications), and restored by SCS CSSS HJR 39 (Res), 5/21/76. It remained in SCS CSSS HJR 39 (Res) am S, 5/21/76, the final version.

Frances A. Ulmer
April 11, 1979
Page #2

Alaska Permanent Fund. As a general rule, separate subjects must be treated separately in adopting constitutional amendments, and each must be summarized for the voters. Our conclusion is, therefore, that the clause does not exempt the fund's income from the prohibition against dedicated funds.

We turn to the question of whether the clause permits the legislature to provide for the Permanent Fund's income to be pledged as a guarantee for financing public power projects. While we doubt that the clause exempts the fund's income from the prohibition against dedications for a special purpose, we believe that neither repaying debts nor guaranteeing their repayment comes within the constitution's prohibition against dedicated funds and that, therefore, the income can be used as a security to repay or guarantee the repayment of a debt for a given capital improvement. */

The next question is whether an appropriation is required to make payments on the debt as may become necessary.

The relevant provisions of the constitution provide as follows:

No money shall be withdrawn from the treasury except in accordance with appropriations made by law.

Alaska Const., art. IX, § 13. **/

It appears that an appropriation would be necessary either to make the guaranty at the outset or subsequently to make payments. A guaranty is a promise that payment will be made in accordance with its terms. ~~Aside from those cases~~

*/ This conclusion is based on a reading of the Minutes of the Constitutional Convention and the files of the Convention's Committee on Finance and Taxation. The wording, "proceeds of any tax or license," in article IX, section 7, of the constitution was intended to allow exemptions for pension fund payments, bond proceeds, sinking fund receipts, and the like. 1975 Op. Atty. Gen. No. 9, 6-9.

**/ A related provision, article II, § 13, requires appropriations to be made in bills that are confined to appropriations.

Frances A. Ulmer
April 11, 1979
Page #3

the promise is unconditional. However, any promise to pay made by the state is necessarily conditioned on the appropriation of the monies to be paid. Id. In order to meet this constitutionally imposed condition, an appropriation is necessary. It can be made at the outset as a conditional appropriation, e.g., "\$x million is appropriated annually to pay the guaranty on the condition that it becomes due." It can be made, as is done for general obligation bonds, as the payments become due, i.e., in the case of a guaranty, an annual, conditional appropriation.

While there is authority that no money can be paid from the treasury even on a judgment, United States v. Commonwealth, 288 S.W.2d 664 (Ky. 1956), the better view is that the provisions of a state constitution requiring an appropriation to be made by law must give way under the combined effect of the federal constitution's contracts and supremacy clauses. */ Cf., Virginia v. West Virginia, 246 U.S. 565 (1918). A guaranty is a contract and cannot be impaired. The legislature's refusal to honor it would constitute its impairment. A court would render judgment for the debtor and levy on the fund's income to enforce the judgment. Therefore, no appropriation would be required in order to enforce payment. Nevertheless, to avoid the necessity for obtaining a judgment, an appropriation should be made.

It appears that the concluding clause of the 1976 amendment authorizes the legislature to make an appropriation from the income on a continuing basis for the purpose of paying or guaranteeing payment of a debt for a public power project, i.e., provide in a single Act for a given sum of monies to be expended annually from the income of the fund. Thus, a conditional appropriation could be made at the time the guaranty is made, and no further appropriations would be required. With respect to a guaranty, our best guess is that a continuing appropriation would probably be upheld. The guaranty would probably include a promise not to repeal the appropriation so long as the guaranteed debt remains outstanding. Any repeal would then be invalidated by a court.

*/ U.S. Const., art. VI, cl. 2; Amend. V, XIV, § 1.

Frances A. Ulmer
April 11, 1979
Page #4

The next question is whether the guaranty must be made by law and approved by the voters. Because the guaranty would be a contract for a conditional debt which could result in the state's being, in effect, in debt to the creditor, it appears that the approval of the electorate would be required to make the guaranty. Article IX, section 7, of the Alaska Constitution prohibits contracting debt unless it is for a capital improvement and is ratified by the electorate. The court places a great premium on this ratification. Thomas v. Rosen, 522 P.2d 1120 (Alaska 1974). The constitutional exceptions from the requirement of ratification do not expressly apply to a guaranty. Alaska Const., art. IX, § 11. Our best guess is that the requirement, therefore, applies to guaranties and that any proposed guaranty would have to be presented to the voters as a ballot proposition. It would almost certainly, therefore, require as well that, as with a bond issue, the guaranty be authorized by law in the first instance and then submitted to the voters. Enactment of a law in what the language of the 1976 amendment requires on its face.

We do not believe that a one-time-only ratification by the voters of an Act generally authorizing the Permanent Fund's managers to guarantee debts for public power projects would satisfy the constitutional requirement for contracting debt. However, it might aid the court in deciding that those requirements do not apply to a guaranty which is based solely on the Permanent Fund's income. There is a line of cases which hold that debt restrictions similar to those contained in article IX, section 8, of the Alaska Constitution apply solely to debts which the state's full faith and credit is pledged to pay. The likelihood that the rationale of these cases would be applied by the Alaska Supreme Court to a guaranty based solely on the income from the Permanent Fund could possibly be increased by the voter's having ratified the concept. Nothing prevents the legislature from making the statutory authorization for guaranties contingent on voter approval. Accordingly, while we do not believe it will be valid, a general authorization for the Permanent Fund managers to make guaranties could be enacted and then tested in court.

Finally, the constitution provides that the "public credit [cannot] be used except for a public purpose." Alaska Const., art. IX, § 6. We believe that only the most

Frances A. Ulmer
April 11, 1979
Page #5

irrational of power projects would be barred under this provision. E.g., Wright v. City of Palmer, 468 P.2d 326 (Alaska 1970). We assume that the projects would be public works. Whether the income from the Permanent Fund could be used to guarantee financing for private works is an entirely different question which involves entirely different issues.

RWP/pjg

cc: Jerry Reinwand
Office of the Governor

Ron Lind
Div of Budget & Management

Keith Specking
Office of the Governor

bcc: Tom Singer
Div of Policy Development
& Planning