

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

2933 HSA HB 11 - HB 20

2933

JUN 5 1982 *REE*

## Alaskans may receive a bonanza

*4/11*  
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But an Anchorage couple, Ron and Patricia Zobel, filed suit on grounds that the program discriminated against newcomers. The state Supreme Court rejected their arguments, and they have appealed to the U.S. Supreme Court.

Faced with the delay caused by the suit, the state Legislature approved Gov. Jay Hammond's "backstop" program to take effect if the U.S. Supreme Court strikes down the first plan or if it fails to rule by July 15, an arbitrary deadline.

The backstop plan calls for the \$1,000 payments this year and future annual payments to all Alaskans regardless of length of residency. The size of the payments would depend on income earned by the Alaska Permanent Fund, a savings account that collects about 10 per cent of the revenue from oil production on state lands.

State officials estimated payments at \$356 in 1983 and \$247 in 1984.

The fund, which now stands at \$3 billion, was established by voters in 1976. Half of its annual earnings are earmarked for payments.

Sen. Bill Kay voted against the backstop plan, saying it is premature because the court has yet to rule.

Another opponent, Sen. Tim Kelly, said, "Every American in the Lower 48 states who is in a depressed zone or a high unemployment zone is going to resent Alaska's wealth and put tremendous pressure on their congressmen to take that wealth from the state of Alaska."

JUN 5 1982 *Spiller*

## Alaskans to share oil wealth

### Each resident may get \$1,000

*4/11*  
Associated Press

JUNEAU, Alaska — Every man, woman and child who has lived in Alaska for six months could pocket \$1,000 in cash this summer under a new plan aimed at sharing the state's oil wealth with its citizens.

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A program enacted two years ago called for annual payments to residents of \$50 for each year they had lived in Alaska since statehood in 1959. But an Anchorage couple sued, arguing that the program discriminated against newcomers. The state Supreme Court rejected their arguments, and an appeal is pending before the U.S. Supreme Court.

Faced with the delay caused by the suit, the legislature approved Gov. Jay Hammond's new program, which will take effect if the Supreme Court strikes down the first plan or if it fails to rule by July 15.

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JUN 15 1982

*B. H. H.*

## Dividend

(Continued from Page One)

violated equal protection provisions of the U. S. Constitution.

"This is the way we were certain it would turn out," said the Zobel's who have put up with such local disapproval as "Zobel's Drop Dead" bumper stickers.

"The Constitution has been vindicated," said Zobel. "Alaska is part of the United States and must start acting that way . . . Hopefully, the governor and the Legislature will realize there are no loopholes in the equal protection clause of the U. S. Constitution."

The case was appealed to the U. S. Supreme Court after the Alaska Supreme Court ruled against the Zobel's 3-2.

Gov. Jay Hammond, who conceived the plan, said the ruling was "by far and away the greatest disappointment to me in my almost 20 years in political office."

Reluctantly, Hammond said he would have to go along with the "backstop bill" passed by the 1982 legislature. Under that plan, awaiting the governor's signature, each resident of at least 60 days will receive \$1,000, provided proper application has been made.

Writing for the majority, Supreme Court Chief Justice Warren Burger noted: "If the states can make the amount of a cash dividend depend on length of residence, what would preclude varying university tuition on a sliding scale based on years of residence?"

He added, "Alaska's reasoning could open the door to state apportionment of other rights, benefits and services according to length of residency. It would permit the states to divide citizens into expanding numbers of permanent classes. Such a result would be clearly impermissible."

Alone in dissent, Justice William Rehnquist argued, "Alaska's distribution of (its) wealth is in substance no different from any other state's allocation of economic benefits."

Under another act of the 1980 Alaska Legislature one-fourth of the revenues gained from oil and mineral leasing is kept in a permanent fund.

The principal of the fund cannot be spent — only invested — and one-half of the earnings from the investments were to be paid to citizens in the form of "dividends."

Much of the wealth comes from the millions of barrels of oil pumped out of the frigid Prudhoe Bay oil field, north of the Arctic Circle.

## Alaska dividend plan is invalid

WASHINGTON — The United States Supreme Court has voided the State of Alaska's plan to distribute millions of dollars in state oil revenue dividends to residents based upon their length of time as residents.

The justices ruled 8-1 against the distribution plan approved by the Alaska Legislature in 1980 and aimed at giving residents \$130 million in oil and mineral wealth revenues.

The amount any one Alaska resident could receive from the program was directly related to his time of residence in the state dating from statehood in 1959. A resident over 18 would receive a dividend of \$50 for each year in the state up to a maximum amount of \$1,050.

In Anchorage, Ron and Patricia Zobel, two attorneys who came to Alaska in 1978, brought suit against the plan on grounds it

(Continued on Page 9, Column 3)

*Cyber*

# Backlash Seen on Alaska Oil Plan

JUNEAU, Alaska, June 5 (AP)—A new plan to pay \$1,000 in state oil money to every man, woman and child who has lived in Alaska at least six months could spur "very adverse publicity" in less fortunate states, according to Gov. Jay Hammond.

"That's the negative downside" of trying to share Alaska's oil wealth with residents, Hammond said Friday after the legislature passed a plan that could put the payments into pockets of Alaskans this summer.

The share-the-wealth plan was approved Thursday at the urging of Hammond, who argued that if Alaska's 419,600 residents have a personal stake in the state's wealth, they will pay closer attention to how it is invested.

Hammond said there will be an "enormous reaction" for state officials to explain the program to other Americans, because people in de-

pressed areas of the country may feel Alaskans are flaunting their state's wealth.

State Sen. Bill Ray, who voted against the plan, also said he is worried about a backlash. "Alaska's image is that we're a bunch of spendthrift, blue-eyed Arabs," he said.

The \$1,000 payments will be made if the U.S. Supreme Court strikes down an existing distribution program, or if the court has not ruled by July 15. If the high court has not ruled, the program will begin July 15 with a four-month period which Alaskans may apply for the payments. They may apply any time during that period, in order to be eligible for the money, they must have been residents for at least six months when they apply.

That means only people who have lived in Alaska since May 15 would be eligible for the payments.

BOSTON, MASS.  
HERALD AMERICAN  
D. 226,000 S. 274,690

*Cyber*

## Equal Bonuses For Alaskans

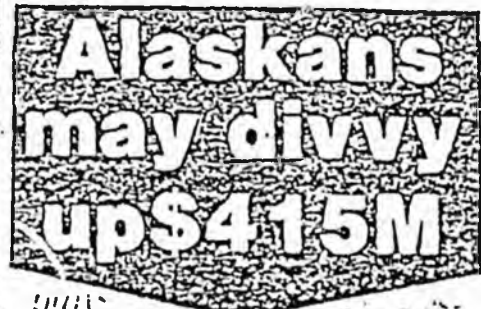
Longtime Alaska residents may deserve something for sticking it out, but it's not extra money, the Supreme Court said last week. The Court invalidated Alaska's plan to distribute its oil revenue windfall among citizens on the basis of how long they have lived in the state — \$50 for each year of residence retroactive to 1959, when Alaska became the 49th state.

But on this schedule, 23 percent of the state's population of 416,000 would receive the maximum \$1,050 per person. The plan was challenged by a couple who moved to the state in 1978.

Alaska's rationale for such a reward "was not a legitimate state purpose," the Court said, for "if the states can make the amount of a cash

dividend depend on length of residence, what would preclude varying university tuition on a sliding scale based on years of residence, or even limiting access to finite public facilities, eligibility for student loans, for civil service jobs or for government contracts by length of domicile?"

Alaska now plans to grant \$1,000 to anyone who has lived in the state at least six months, with no distinctions based on age or state seniority.



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But an Anchorage couple, Ron and Patricia Abel, filed suit on grounds that the program discriminated against newcomers. The state Supreme Court rejected their arguments, and they have appealed to the U.S. Supreme Court.

Faced with the delay caused by the suit, the state Legislature on Thursday approved Gov. Jay Hammond's "backstop" program to take effect if the U.S. Supreme Court strikes down the first plan or if it fails to rule by July 15, an arbitrary deadline.

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# \$1,000 Checks for Everyone Fail to Make Alaskans Happy

By Jay Methews  
Washington Post Staff Writer

ANCHORAGE, Alaska—On this northernmost frontier of American political science, a state government has decided to see if money really will buy happiness.

One thousand dollar checks have been going out for a month to every man, woman and child in this oil-rich state. So far few of the recipients have even bothered to say thank you.

"I almost feel that I'm on welfare," grumbled Ron Moore, a 36-year-old realtor from Soldotna. "I've lived here 30 years and I don't see why I should rely on the state for subsistence." The giveaway "was very poorly planned," said Kathy Potter, an office supply sales supervisor here who plans to buy drapes with her

money. "There should have been a better way to do it."

In the state Revenue Department at Juneau, Colleen Brown reported the givers are not blessed by the receivers, who only call to complain if their checks have not arrived. "We have received enraged and irate calls from just about everybody," Brown said. "You've never seen so many greedy people in your life."

So go the early days of Alaska's revolutionary scheme to share its oil taxes and royalties with its people, not through new roads or deeper harbors or any of the other pork barrel projects Washington is familiar with, but with blue and yellow checks instantly cashable at any bank. They are called "permanent fund dividends" and Alaska's expe-

See CHECKS, A4, Col. 1

Washington Post 8/22/82  
was also printed in the Chicago Paper

122/1-

# \$1,000 Checks Failing to Bring

## CHECKS, From A1

ience with the idea so far may frighten away any future leaders elsewhere so bold and so rich as to attempt such generosity.

The giveaway has sent many Alaskan brains churning, not with sweet thoughts for Gov. Jay M. Hammond and the state legislature but with schemes to separate other Alaskans from their money. Police have reported several checks stolen from mail boxes. A full-page ad for the Alaska Bank of Commerce in the Anchorage Daily News said: "ONE THOUSAND DOLLARS! We'll help you make the most of it." A furniture store announced a "CHECK'S IN THE MAIL" sale: "Turn your permanent fund dividend into a water bed that you will enjoy for years to come."

Anchorage Times political reporter Ralph Nichols concluded after many discussions with his fellow Alaskans that, "With few exceptions they think it's the dumbest thing in the world, the only thing dumber being not to apply for it as long as they are giving it away."

This philosophy extends to the young and the unborn. The state's vital statistics bureau has been swamped with 1,000 requests a day for certified copies of birth certificates, necessary if parents are to claim \$1,000 for each of their children. Any resident's child born up to midnight Oct. 15 may claim a check, prompting speculation that women with babies due about that time will flood hospital maternity wards and induce labor in order to make sure.

So far the Revenue Department has sent out 87,901 checks, each decorated with the state flag, which shows, appropriately enough, the stars forming the "Big Dipper." Brown said the state expects to send a total of \$415 million in checks to the state's estimated 415,000 residents.

Alaskans don't seem quick to ladle out their new riches. Automobile and snowmobile dealers say there has been little upturn in business so far. Few charities claim to have benefited from the giveaway, though in some cases not for lack of trying.

The Fairbanks Environmental Center asked its members some time ago to donate all or part of their checks to the center, but so far fewer than 10 contributions have come in. The University of Alaska Foundation estimated it has received between 15 and 20 dividend checks.

Instead, with each check in the

**THE CHECK'S IN THE MAIL SALE**  
Turn your permanent fund dividend into a water bed that you will enjoy for years to come.

**ONE THOUSAND DOLLARS!**

**INVEST YOUR DIVIDEND DOLLARS IN A Capitol DIAMOND!**

By Gail McCrory—The Washington Post

her daughter Sacha, 11, was quick to object when she learned her \$1,000 was going into savings. According to her mother, Sacha said, "So and So gets to spend \$200 of her's on school clothes and this one's going to camp and that one's going to Hawaii and why can't I have it in cash?"

Alaskan politicians who conceived the giveaway years ago wanted to demonstrate their faith in the people's ability to decide themselves how their money should be spent rather than building the usual political pet projects. The permanent fund has been created with about 25 percent of the state revenues from the Prudhoe Bay oil fields and other mineral resources. The giveaway checks were to come from half of the interest on the fund.

Hammond wants to give away even more. He has argued that all of the oil money, now about \$4 billion a year, ought to go into the permanent fund. He said people ought to be paid from the interest and the amount of their checks reduced whenever state representatives voted for a large pork barrel project that drained money from the fund. Since the state income tax has been abol-

The checks sent out this year were originally due in 1980. But Ron and Patricia Zobel, married lawyers who arrived in the state in 1978, objected to the original plan to distribute payments on a sliding scale—\$50 for newcomers and up to \$1,050 for old timers. The Zobels successfully sued to stop that plan on the ground that it discriminated unconstitutionally against new residents. The leg-

# Happiness

islatore decided to go ahead and give the same amount to everyone who had been in the state at least six months; adding the dividends that had not been paid since 1980. That brought the payment for everyone this year up to \$1,000.

Ron Zobel said that like many of his fellow Alaskans he was never very happy with the idea of the government giving away cash. But now that the checks are arriving, the hate mail and threatening phone calls that accompanied his original suit have tapered off. The checks coming to himself, his wife, and their 15-month-old son will be invested in Alaska-oriented stock, he said.

Politicians here worry about what the giveaway will do to the state's relationship with the lower 48 states. They say they fear a mass inflow of American jobless, already a problem because of the widespread and somewhat erroneous impression that Alaska is full of job opportunities.

Under the current plan, Alaskans will each get \$350 in 1983, \$500 in 1984, and then the annual payments will begin increasing again at an unknown rate. Nearly every politician in the state expects the legislature to change the plan in some way next year. But the Revenue Department's Brown said, "They may find it very hard to get people to give up" the yearly dividend, no matter how ungrateful most have seemed for the money.

The checks have allowed a number of people to realize old dreams. Brown said her office received a letter from an elderly Eskimo man living in one of the coldest regions of the state's northern bush. "After thanking us profusely," Brown said, "He said that he was going to use the money to buy a refrigerator. I don't know if he was ribbing us or not."

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WRITTEN TESTIMONY BY SENATOR FERGUSON

PRESENTED TO HOUSE FINANCE AND

STATE AFFAIRS COMMITTEES

CONCERNING HOUSE BILL 85 AND HOUSE BILL 11

THESE BILLS WILL ELIMINATE THE PERMANENT FUND DIVIDEND PAYMENTS. I HAVE CONCERNS OVER HOW THE FUND EARNINGS WILL BE DISTRIBUTED IF THE DIVIDEND PAYMENTS ARE REPEALED.

THE INTENT OF THE PERMANENT FUND DIVIDEND LAW WAS AND CONTINUES TO BE DISTRIBUTION OF INDIVIDUAL PAYMENTS TO ALL RESIDENTS OF ALASKA. THE ADMINISTRATION HAS DESIGNED PROPOSALS TO USE THE PERMANENT FUND EARNINGS. THE ATTORNEY GENERAL'S OFFICE HAS ATTEMPTED TO JUSTIFY THE ADMINISTRATION'S PROPOSALS BY INDICATING THE VOTER APPROVED SPENDING LIMIT EXCLUDED PERMANENT FUND DIVIDENDS AND THAT DIVIDENDS MEAN SOMETHING OTHER

THAN INDIVIDUAL CASH PAYMENTS. TO DATE, THE  
ADMINISTRATION'S PROPOSALS WILL NOT GIVE DIVIDENDS  
TO INDIVIDUALS THROUGH CASH PAYMENTS. LEGISLATIVE  
INTENT OF THE LAW CANNOT BE CHANGED THROUGH  
PERSUASION OR ANY OTHER MEANS. ASK ANY ALASKAN  
WHAT THE DIVIDEND PAYMENT MEANS TO THEM AND THEY  
WILL TELL YOU INDIVIDUAL CASH PAYMENTS. OTHERWISE,  
WHY HAVE THEY FILLED OUT FORMS FOR THE LAST THREE  
YEARS TO RECEIVE THE PAYMENTS.

THE SPENDING LIMIT APPROVED BY THE VOTERS IN  
THE NOVEMBER 2, 1983 ELECTION HAD SEVEN EXCEPTIONS.

ONLY SEVEN SPECIFIC ITEMS ARE RESTRICTED FROM  
THE SPENDING LIMIT.

1. AN APPROPRIATION FOR ALASKA PERMANENT  
FUND DIVIDENDS;

2. AN APPROPRIATION OF REVENUE BOND  
PROCEEDS;

3. AN APPROPRIATION TO PAY PRINCIPAL AND INTEREST ON STATE GENERAL OBLIGATION BONDS;

4. AN APPROPRIATION OF MONEY RECEIVED FROM NON-STATE SOURCES IN TRUST FOR SPECIFIC PURPOSES;

5. AN APPROPRIATION TO THE ALASKA PERMANENT FUND;

6. AN APPROPRIATION FOR CAPITAL PROJECTS IF THE APPROPRIATIONS BILL IS CONFINED TO PROJECTS OF THE SAME TYPE;

7. AN APPROPRIATION TO MEET A STATE OF DISASTER.

THE EFFECT OF REPEALING THE DIVIDEND PROGRAM WILL BE THAT ANOTHER PROGRAM WILL BE OFFERED TO TAKE ITS PLACE IN ORDER TO RETURN SOME OF THE EARNINGS BACK TO THE PEOPLE.

WHEN THE EARNINGS FROM THE DIVIDEND FUND EXCEED THE AMOUNT THAT CAN BE EXPENDED FOR CAPITAL AND OPERATING ITEMS UNDER THE VOTER APPROVED

SPENDING LIMIT, THEN THAT EXCESS AMOUNT OF REVENUES AVAILABLE FOR APPROPRIATION MUST GO BACK TO A VOTE OF THE PEOPLE.

ALL OPERATING AND CAPITAL BUDGET ITEMS ARE INCLUDED WITHIN THE SPENDING LIMITATION.

THE TERM "PERMANENT FUND DIVIDEND" WAS INCLUDED WITHIN THE TEXT OF THE CONSTITUTIONAL AMENDMENT, AND WAS USED TO COVER THE PERMANENT FUND DIVIDEND PAYMENTS PROGRAM.

IF THE DIVIDEND PAYMENT PROGRAM IS REPEALED, THEN THE EARNINGS FROM THE PERMANENT FUND CAN ONLY BE USED FOR:

1. FURTHER CAPITALIZATION OF THE FUND; OR
2. TRANSMITTAL OF EARNINGS TO THE GENERAL FUND, WHICH IS THEN GOVERNED BY THE SPENDING LIMITATION.

ARGUMENTS AND OPINIONS TO DATE INDICATE THAT THE LEGISLATURE CAN MAKE DIRECT APPROPRIATIONS FROM THE EARNINGS FROM THE PERMANENT FUND FOR SPECIFIC OPERATING OR CAPITAL PURPOSES, THEN THESE EXPENDITURES WOULD FALL WITHIN THE SPENDING LIMIT. TO INDICATE OTHERWISE WOULD BE A CIRCUMVENTION OF THE CONSTITUTIONAL LIMITATION AND THE VOTE OF THE PEOPLE.

# STATE OF ALASKA

FIB 11  
Bill Sheffield, Governor

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

February 7, 1983

Gene Dusek, Director of Budget  
Office of Management & Budget  
Pouch AM  
Juneau, AK 99811

Re: Appropriation limit  
questions  
Our file: 366-374-83

Dear Mr. Dusek:

You have asked for our opinion concerning issues relating to the appropriation limit imposed by Alaska Constitution, article IX, section 16. These issues are as follows:

- (1) Are appropriations to reimburse a municipality for payment of the principal and interest on general obligation school construction bonds subject to the appropriation limit? We believe they are not.
- (2) If the permanent fund dividend law (AS 43.23) is amended or repealed and another plan for the distribution of permanent fund income is enacted, will appropriations to finance the new distribution program be included in the appropriation limit or will those appropriations be outside the limit? Generally, we believe that other distribution plans could qualify as dividends. However, certain limitations should be observed to make sure that the new plan satisfies the intent of the appropriation limit.
- (3) How will the appropriation limit be implemented if

anticipated state revenues are less than the limit for a fiscal year? We assume that the appropriation limit will be applied with common sense to empower the legislature to act without regard to allocations imposed by the appropriation limit when economic conditions deplete the state treasury.

(4) How will multi-year appropriations be counted for purposes of the appropriation limit? We believe a multi-year appropriation will be counted against the appropriation limit for the first year in which it could be expended.

(5) What is the definition of "capital project" as that term is used in the appropriation limit? There is some history which supports a liberal interpretation of the term "capital project."

#### I. BACKGROUND

The appropriation limit, Alaska Const. art. IX, sec. 16, was drafted during a period of anticipated high revenue yields from oil and gas production. In June 1981, the Alaska Department of Revenue forecast that the state would earn approximately \$4,895,300,000 during FY 82. Revenue Sources, Alaska Department of Revenue (June 1981). That forecast did not include the revenue dedicated to the Alaska permanent fund under AS 37-13.010. The revenue actually earned by the state during FY 82, less the permanent fund contribution, was \$4,108,400,000. Reve-

nue Sources, Alaska Department of Revenue (Jan. 1983). The legislature had exhibited a proclivity for appropriating all available revenue and more. 1/ Former Governor Jay S. Hammond introduced SJR 4 during the first session of the Twelfth Alaska Legislature. However, the legislature failed to enact a version of SJR 4 during the first regular session and on June 25, 1981, Governor Hammond called a special session of the legislature to consider SJR 4. In his address to the legislature, Governor Hammond cited the following circumstances which required the enactment of SJR 4:

- (1) the FY 82 operating budget increased 32 percent over the FY 81 operating budget;
- (2) the FY 82 capital budget increased 127 percent over the FY 81 capital budget; and,
- (3) for FY 82, the legislature appropriated an amount equal to 59 percent of the total spent for capital projects since statehood. 1981 S. Jour., FSS Jour. Supp. No. 1, p. 3.

A second free conference committee (FCC) initially appointed during the regular session met to continue consideration of SJR 4 during the special session. 1981 S. Jour., p. 1744. A

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1/ The \$1.8 billion contribution to the Alaska permanent fund (sec. 2, ch. 61, SLA 1981 as amended by sec. 68, ch. 92, SLA 1981 and sec. 16, ch. 101, SLA 1982) is a continuing operating appropriation which literally causes total unobligated appropriations to exceed available state revenues for each fiscal year since enactment.

transcript of the open meetings of the FCC exists and forms a part of the history of the appropriation amendment (the transcript). However, it is evident from review of the transcript that other discussions concerning the intent of the amendment were conducted outside of open committee meetings. While the transcript is helpful, it presents only a partial record of the deliberations of the drafters of the amendment.

The FCC purported to adopt a letter of intent to accompany its report to the house and senate. 1981 S. Jour., FSS, p. 5. However, the letter of intent is not set out in the journal. A search of the bill files of the Department of Law yielded a copy of the missing letter of intent. See Ex. 1.

The campaigns for and against adoption of the appropriation limit began in September of 1982. The Anchorage Daily News criticized the proposed amendment for the following reasons:

(1) the ceiling is too high, revenues will exceed the limit only once before the year 2000; and

(2) the one-third reservation for capital projects and loan appropriations was included because the legislature "failed to make the distinction between a wise public agenda -- on which capital projects and loans surely would appear -- and an effectively timeless state constitution -- in which no such spending demands should be dictated.

Anchorage Daily News, Sept. 3, 1982, at A14, "opinion." The

Daily News based its opinion concerning revenue forecasts on a report made public by the legislative finance division of the Legislative Budget and Audit Committee. Anchorage Daily News, Sept. 2, 1982, at 1. On September 17, 1982, the Daily News urged Governor Hammond to oppose the adoption of the appropriation limit. The Anchorage Times basically took no position on the amendment. However, on October 19, 1982, the Times reported the results of a poll sponsored by supporters of the amendment. The poll, conducted the week of September 16-23, 1982, showed that the amendment was recognized and favored by the public as a "spending limit." The pollsters asked if the respondents had heard of the proposed amendment to the state constitution which sets a limit on increases on state appropriations. By a three-to-one margin, respondents said they were not familiar with the amendment when it was described as an "appropriation limit." Anchorage Times, Oct. 19, 1982, at A-4. On October 26, 1982, the Juneau Empire editorialized in favor of adoption of the amendment. Juneau Empire, Oct. 26, 1982, at 4.

During the week of October 24, 1982, the major dailies of the state published articles on the amendment. Governor Hammond received coverage in most of those stories by saying "It [the adoption of the appropriation limit] may be our last chance to control the juggernaut which otherwise will likely crush us into bankruptcy." Anchorage Daily News, Oct. 29, 1982, at B3.

On Sunday, October 31, 1982, the Daily News in its forum section, published an article by Governor Hammond in which he again strongly advocated adoption of the amendment because revenue projections and the growing vulnerability of the permanent fund compelled him to plead for the support of the people. Anchorage Daily News, Oct. 31, 1982, at K3. On the preceding Friday, the Daily News quoted Governor Hammond as follows: "Don't let anyone tell you that passage of Proposition 4 won't limit spending." Under recently revised revenue estimates, passage of the ballot issue would bar the legislature from appropriating between \$80 million and \$380 million in fiscal 1984 alone. Anchorage Daily News, Oct. 29, 1982, at B3.

At the 1982 general election, the voters approved the adoption of SJR 4 by a vote of 110,669 for the amendment and 70,831 opposed to the amendment. State of Alaska Official Returns by Election Precinct General Election Nov. 2, 1982, Div. of Elections, Office of the Governor.

## II. EXCEPTIONS FROM THE LIMIT

The appropriation limit contains seven express exceptions. Five of those exceptions are for appropriations which are completely outside the limit and do not require voter approval. They include:

- (1) an appropriation for Alaska permanent fund divi-

dends;

(2) an appropriation of revenue bond proceeds;

(3) an appropriation to pay principal and interest on general obligation bonds;

(4) an appropriation of money received from nonstate sources in trust for a specific purpose, including revenues of a public corporation that issues revenue bonds; and

(5) an appropriation to meet a state of disaster declared by the governor.

You have requested our interpretation of exceptions (1) and (3) set out above.

A. Alaska Permanent Fund Dividend Exception

The appropriation limit provides: "Except for appropriations for Alaska permanent fund dividends ... appropriations from the state treasury made for a fiscal year shall not exceed \$2,500,000,000...." A question obviously arises as to whether "Alaska permanent fund dividends" means only those cash payments provided to individuals under AS 43.23 or if the word "dividend" encompasses other concepts for the distribution of income earned by the Alaska permanent fund.

We believe the answer to your question concerning appropriations for permanent fund dividends depends on whether the exceptions will be construed strictly or liberally. Usually,

provisions in a state constitution are construed liberally using the same rules of construction prescribed for other laws with regard given to the broader object and scope of the constitution as a charter of popular government. Eghert v. Dunseith, 24 N.W.2d 907 (N.D. 1946); 168 A.L.R. 621. Professor Sutherland explains the modern view for construing express exceptions as follows:

The older rule strictly interpreted both exceptions and provisos but today the prevailing view favors determining the effects of such provisions according to the usual criteria of decision applicable to other kinds of provisions as well without the use of any artificial presumptions to the effect that qualifying language should be strictly construed.

SUTHERLAND STATUTORY CONSTRUCTION § 47.11 (4th ed. 1974)(footnotes omitted). The FCC did not express an intent to limit this exception to only appropriations to finance cash payments to individuals under AS 43.23.

The appropriation limit must be interpreted consistently with the permanent fund amendment contained in article IX, section 15. Section 15 provides that the legislature may dispose of the income of the Alaska permanent fund "as provided by law." Each legislature may reexamine existing law and enact different laws providing for the use of income earned by the Alaska permanent fund. If section 16 were interpreted so that the exception to permanent fund dividends applied only to appropriations to finance cash dividends under AS 43.23, the legislature would essentially be denied the flexibility to adjust to changing philoso-

phies concerning the propriety of making cash payments directly to residents which section 15 expressly reserves to it. 2/ In interpreting and applying the constitution, it must be remembered that the constitution is not a lifeless or static instrument whose interpretation is confined to conditions and outlooks which prevailed at the time of its adoption. Yakus v. United States, 321 U.S. 414 (1944); Warwick v. State, 548 P.2d 384 (Alaska 1976).

The word "dividend" has no precise legal meaning. Trustees of University v. North Carolina R. Co., 13 WORDS AND PHRASES 107 (Permanent ed.); 22 Am. Rep. 671. Webster defines "dividend" as follows: "an individual share of something distributed among a number of recipients." We are not aware of any legal principle which would preclude the characterization of other distribution programs as "dividends." Rather, the words used

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2/ The Thirteenth Legislature may reject direct cash distribution in favor of a plan which it determines will promote public purposes more effectively. During the period of consideration and adoption of the appropriation limit, the permanent fund dividend law was undergoing considerable scrutiny and change by both the legislature and the courts. The legislature adopted the proposed appropriation limit amendment on July 15, 1981. At that time the question of the constitutionality of the permanent fund dividend program as it was then structured was on appeal to the United States Supreme Court. On June 14, 1982, the United States Supreme Court issued an opinion which found the method established for determining the amount of dividends under that program void because the method promoted discrimination based on length of residence in the state. On August 13, 1982, amendments to the dividend law took effect. The people were undoubtedly aware that the dividend law in effect on election day in 1982 was not chiseled in marble.

by the drafters of the amendment afford broad latitude to the legislature to enact new distribution programs which will not be impaired by the appropriation limit.

It is well-settled law that a provision of a state's constitution must receive a liberal, practical construction to meet changed conditions and growing needs of the people. County of Alameda v. Sweeney, 312 P.2d 419, 424 (Cal. 1957). Under the permanent fund amendment, the discretion granted to the legislature to enact, amend, or repeal the present dividend program under AS 43.23 to meet the growing needs of the people is unfettered. However, the operation of exceptions from the appropriation limit must be interpreted consistent with the intent of the framers of the organic law and of the people adopting it. State v. Lewis, 559 P.2d 630, 637 (Alaska 1977).

One important consideration should be carefully observed. The Alaska Supreme Court has found that the purpose of the existing dividend program is to force the legislature to consider the reimposition of taxes when the decline of oil revenue encourages resort to permanent fund income to finance state government. Williams v. Zobel, 619 P.2d 448, 454 (Alaska 1981), rev'd 451 U.S. 905 (1982). The people can be expected to vigilantly protect their dividends by forcing the legislature to seek sources other than the permanent fund to finance state government. If a substitute distribution program accomplishes the same

purpose, it will more likely qualify under the exception in section 16 than if it fails to achieve that purpose. If the constituency benefitted by a dividend is narrow, the dividend may not be a dividend in the sense intended by the drafters of section 16 and the people who adopted it. Proposals soon to be considered by the legislature include replacing the existing distribution to all residents with a distribution of part of the permanent fund income to municipalities and as a substitute for the existing longevity bonus, and use of a part of the income to finance large capital projects.

A vast majority of the population of the state resides in or is served by municipal governments. It is also a fact that we all seek security for our "golden years." The constituents of these proposals seem broad enough to satisfy the purpose of the current dividend law. The use of permanent fund income to finance large capital projects presents a closer question. The character of each project must be considered to determine if it serves a state public purpose, rather than a local special purpose. Additionally, if the project is viewed as merely an alternate way of financing state government operations, the basic intent of the dividend law might not be served.

We cannot advise with certainty whether the financing of large capital projects with permanent fund income would constitute a dividend of the Alaska permanent fund for purposes of

the appropriation limit. Some may argue that the benefits provided by "public works" projects are too localized to approximate the benefits provided by the existing dividend law. However, in State v. Lewis, 559 P.2d 630 (Alaska 1977), the Alaska Supreme Court decided that "[l]egislation need not operate evenly in all parts of the state to avoid being classified as local or special." Lewis at 643. A definite answer will come only when the courts interpret article IX, section 16 of the Alaska Constitution. However, we believe that if the legislature enacts a distribution program which is consistent with the intent of the permanent fund dividend law, any appropriation to implement that program will be exempt from the appropriation limit.

B. Appropriations Required to Pay the Principal and Interest on General Obligation Bonds?

Under AS 43.18.100 -- 43.18.135 the state, subject to available appropriations, reimburses municipalities for the payment of a percentage of principal and interest to retire general obligation bonds issued by the municipality to finance school construction costs. Although they have been amended from time to time, these statutes have been in effect since 1971. You have asked whether appropriations to retire municipal general obligation debt are within the exception stated to the appropriation limit.

The exception reads as follows: "Except for ... appro-

priations required to pay the principal and interest on general obligation bonds...." The wording of the exception does not specify whether the bonds must be issued by the state to qualify. Later in section 16, the drafters carefully identified "appropriations of money received from a nonstate source...." Since the drafters could easily have expressly limited this exception to state general obligation bonds, an implication can be drawn that a strict construction limiting the exception to state general obligation bonds was not intended.

The purpose of the exception recognizes that appropriations to retire general obligation bonds may be to the state's "great advantage." Governor's transmittal letter, 1981 FSJ S. Jour., p. 16. Presumably the advantage accrues from the state's enhanced credit rating which results in lower debt service charges for subsequent bond issues. It is probable that the existence of the school construction debt assistance provisions of AS 43.18 have the same effect upon the bond rating assigned to municipalities. The identical purpose is achieved by appropriations made to finance the reimbursement program. Less state assistance will be necessary in the future if local bond ratings remain favorable.

There are some considerations which weigh against this construction. Debt service for general obligation bonds is financed by a continuing appropriation. AS 37.15.012. General.

obligation bonds are debts of the state secured by contracts (trust indentures); the impairment of contracts is prohibited by the state and federal constitutions. The reimbursement program under AS 43.18 does not transform municipal general obligation bonds into debts of the state. AS 43.18.130(a). However, the financial burden imposed on municipalities, if their local tax effort were increased to compensate for the loss of assistance under AS 43.18, could be devastating to the local taxpayer. According to the Department of Education, for fiscal year 1984 the estimated total entitlement for school debt retirement is \$36,900,000. This total is estimated to increase to \$44,300,000 by fiscal year 1988.

Accordingly, we believe that appropriations to retire municipal general obligation school bond indebtedness under AS 43.18 are "required" and qualify as an exception to the spending limit. We believe that the appropriation for school bond indebtedness can be represented as a moral obligation of the state for the following reasons:

- (1) the appropriation is made under a statute of general application;
- (2) the statute has been in effect since 1971; and
- (3) the reimbursement program is heavily relied upon by municipalities when they establish the local tax effort necessary to support local bonded indebtedness.

III. REVENUE SHORTFALL

You have also asked how to interpret the appropriation limit if the amount of state revenues subject to the limit is less than the amount determined to be the limit for a fiscal year, as provided in section 16. You wish to know specifically how the allocations within the limit for operating expenses and capital projects would be interpreted. As we have indicated, section 16 imposes an appropriation limit rather than a spending limit. We have earlier advised that the legislature may make appropriations which exceed available revenues. 1981 Inf. Op. Att'y Gen. (June 24; J77-159-81). However, obligations may not be paid under those appropriations unless there is enough surplus money available in the treasury.

Theoretically, the amount of anticipated state revenue should have no effect on the operation of the appropriation limit. However, under AS 37.07.020(c), the governor's proposed budget may not exceed estimated revenues for the succeeding fiscal year. Also, the amount of surplus revenues anticipated to be received by the state was an issue hotly publicly debated before adoption of section 16. The newspaper articles written about the appropriation limit before the election commonly referred to the amendment as a "spending limit." These articles were undoubtedly instrumental in forming the voters' understanding of the effect of the proposed amendment.

Section 16 provides, in part: "Within this limit, at least one-third shall be reserved for capital projects and loan appropriations." This wording is ambiguous when applied for a year in which revenue available for appropriations falls short of the adjusted limit for that year. Under those circumstances, it is not clear whether the reservation for capital projects and loan appropriations is calculated based on the total amount actually appropriated for that fiscal year (i.e., less than the limit) or on the limit amount (\$2.5 billion) for that fiscal year adjusted for population and inflation. Apparent ambiguities contained in the state constitution may be resolved by the contemporaneous construction by law or by the administrative agency charged with implementation of the provision. Amador Valley Joint Union High School District v. State Board of Equalization, 583 P.2d 1281 (Cal. 1978).

A review of the FCC transcript reveals no discussion of the intention of the drafters when they used the phrase "within this limit." Revenue projections at the time painted a rosy picture for the future. No history is available to indicate that the FCC even considered the effect of the amendment if the state suffers a sharp decline in revenue. Former Governor Hammond was clearly concerned by the possibility of a spendthrift legislature with an overflowing treasury at its disposal.

Under the circumstances, we believe it would be unwise

to blindly apply the allocations imposed by the appropriation limit when conditions impose an even more stringent limit than intended by the FCC. 3/ The appropriation limit drastically alters the most significant power of the legislature: the power to appropriate. The power to enact general law is largely nullified unless the money to finance enforcement or implementation of the law is appropriated. Consequently, we believe that an interpretation which restricts the legislature's power to respond to the needs of the state during unanticipated periods of revenue decline will not be endorsed by the courts. See State ex rel. Columbus v. Keterer, 189 N.E. 252 (Ohio 1934). Rather, we believe that the courts will recognize that the evil which the appropriation limit was designed to remedy does not exist when revenues are below the limit. Under those circumstances, a court would probably affirm an interpretation that restores the full lawmaking powers of the legislature to make appropriations in the best interests of the state. We believe the best way to resolve the ambiguity is to disregard the one-third allocation reserved for

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3/ The reservation for capital projects and loan appropriation effectively restricts appropriations to finance the operating budget without restricting the relative share for capital projects. The operating budget finances all manner of essential programs for the preservation of the public health, safety, and welfare. Some of these expenditures are for so-called entitlement programs (aid for families with dependent children, for example) which for fiscal year 1982 comprised 42 percent of the operating budget.

capital projects and loan appropriations when economic conditions impose a limit which is more restrictive than that set out in section 16. 4/ The literal language of the constitution may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers. Sturges v. Crowninshield, 17 U.S. 122, 202 (1819). Where the general welfare is involved, constitutional questions should be approached from the pragmatic, rather than from a legalistic point of view. State v. Board of Administration, 25 So. 2d 880 (Fla. 1946).

#### IV. ATTRIBUTION OF CAPITAL APPROPRIATION TO A FISCAL YEAR

Another question you have raised is how the words "appropriation ... made for a fiscal year" should be applied to appropriations for capital projects. AS 37.25.020 provides "An appropriation made for a capital project is valid for the life of the project and the unexpended balance shall be carried forward to subsequent fiscal years." This provision recognizes that capital projects often span more than one fiscal year before completion. The balance of the appropriation remains available in sub-

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4/ Another possible interpretation would limit the operating budget allocation for a fiscal year to two-thirds of the total limit (\$2.5 billion) adjusted for inflation and population. This interpretation is consistent with our earlier observation that there may be no relationship between appropriations and revenue. However, even under this interpretation, in a fiscal year with depressed revenues, the one-third reservation for capital projects is meaningless.

sequent fiscal years and is carried forward to those succeeding fiscal years. According to the Department of Administration, as of June 30, 1982, the total of all "carry forward" capital appropriations was: approximately \$1,591,000,000, and the total of all "carry forward" operating appropriations was \$1,862,000,000.

The FCC debated the intent of the limit concerning this issue. Transcript at 47-55. It is clear that the FCC was aware that multi-year appropriations are made. There was an attempt by Representative Hugh Malone to amend the proposal so that a legislature could not appropriate for a fiscal year subsequent to the upcoming fiscal year. This amendment was not adopted. Senator Bill Ray observed that the intent of the amendment was to include only those appropriations which are expended during the fiscal year. According to Senator Ray, appropriations which remain unexpended at the end of a fiscal year should lapse. Transcript at 52. Representative Rick Halford interpreted the proposed amendment to make multi-year appropriations count against the limit each year because each succeeding legislature could amend or repeal these appropriations at will. During all of these discussions, no distinction was made between operating and capital appropriations. However, these comments probably referred only to multi-year operating appropriations. See Transcript at 65-66.

The debate on this issue discloses that the FCC was confused about the operation of carry forward appropriations.

They formulated the \$2.5 billion base by taking the fiscal year 1982 appropriation total and reducing that amount by \$60 million. Transcript at 2-5. However, 1982 appropriations were made based on forecasts of anticipated surplus for that fiscal year, reduced by expected expenditures for "carry forward" appropriations. We assume, therefore, that the drafters did not intend to count carry forward appropriations in the limit established for each fiscal year.

We believe that a commonsense way to interpret the appropriation limit, which is supported by past practice, is to count appropriations that are available for expenditure in a fiscal year only against the limit for the first fiscal year during which they could be completely expended. This should be done even if an unexpended balance is carried forward into the next fiscal year. That balance must be considered obligated for the purposes of the appropriation limit. Unexpended balances of a prior year appropriation should not be counted with the current year appropriations in complying with the limit for the current year. If the legislature provides that an appropriation may not be expended until a later fiscal year, the appropriation should be counted only against the limit for that later fiscal year.

VI. DEFINITION OF THE TERM "CAPITAL PROJECT"

The appropriation limit amendment introduces the term

"capital project" to the glossary of words used in the Alaska Constitution. This new term causes some concern because a similar term, "capital improvement," is used in other sections of article IX setting out the general obligation bonding authority for local governments and the state. There are two Alaska Supreme Court cases which address the meaning of "capital improvement." See City of Juneau v. Hixon, 373 P.2d 743 (Alaska 1962); Wright v. City of Palmer, 468 P.2d 326 (Alaska 1970). The supreme court did not adopt an all-inclusive definition of capital improvement in those cases. Rather, the court concluded that there was nothing in the history of municipal bonding in Alaska or in the minutes of the constitutional convention that indicates that the term "capital improvement" was intended to denote projects radically different than those for which municipalities had been permitted to incur bonded indebtedness in the past.

When former Governor Hammond first introduced SJR 4, the proposed amendment consistently used the term "capital improvement." It was not until the second FCC took up consideration of the proposal that the term capital project was used. Senator Ray defined capital projects to be "what the definitive judgment of a majority of the legislature determines they are." Transcript at 22. This was in response to an observation by Representative Malone that many appropriations designated as capital differ little from items set out in the operating budget. Tran-

script at 21. Former assistant attorney general Rodger W. Pegues explained to the FCC that "we're using the term capital project which pretty much means the capital budget - areas where you are dealing with capital investment or long-term financing and the bulk of your spending. That's a broader term than 'capital improvement.'"

There appears to be support in the history for an interpretation of "capital project" which includes more objects of expenditure than "capital improvement," which traditionally has been limited to public works of a permanent nature. 5/ It is possible, though, that the two terms will be construed to have the same meaning. The supreme court left room for the term "capital improvements" to acquire new meanings to accommodate the changing activities of state government. However, the appropriation limit implies that a general obligation bond may be issued for capital projects. 6/ It is probable that a court would find that not all capital improvements may be characterized as capital

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5/ In recent years, opinions of the attorney general have somewhat broadened this interpretation to permit the use of bond proceeds to finance some unique activities under the Village Safe Water Act, see Inf. Op. Att'y Gen. (April 2; J-99-078-81); and to rehabilitate a leased jail facility. See Inf. Op. Att'y Gen. (Mar. 19; A66-398-78).

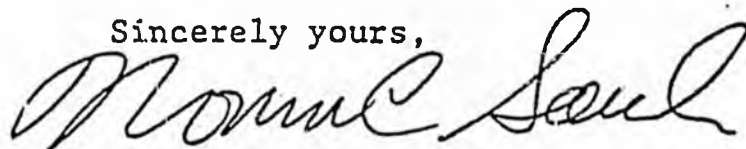
6/ Article IX, section 16 provides: "The legislature may exceed this limit in bills for appropriations to the Alaska permanent fund and in bills for appropriations in capital projects, whether of bond proceeds or otherwise, . . ." (Emphasis added.)

projects. A distinguishing factor may be that the constitution requires some permanent thing of value to show for the public debt incurred. A more liberal construction may be warranted when public debt is not incurred.

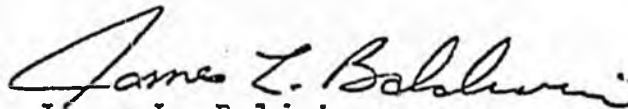
VI. CONCLUSION

The wording of the appropriation limit does not begin to live up to the high standards of clarity and simplicity adopted by the original framers of the Alaska Constitution. There are many who will regard this opinion as mere justification to exploit "loopholes" woven into the fabric of the amendment. However, we hope this opinion will provide the impetus to either adopt amendments to clarify the ambiguities noted or to enact legislation which interprets the amendment so that the ambiguities are avoided. We hope this opinion has answered your questions.

Sincerely yours,



Norman C. Gorsuch  
Attorney General



James L. Baldwin  
Assistant Attorney General

## LETTER OF INTENT

### 2nd Free Conference Committee on SJR 4

The basic problem faced by Alaska is runaway growth in spending for state government operations and for capital projects. This growth is generated by revenues from resources which are nonrenewable and finite. Some limitation is therefore essential. The constitutional amendment proposed by the 2nd Free Conference Committee will provide a realistic limitation and yet allow, by popular approval, for expenditures in excess of the limitation for capital projects and for contributions to the permanent fund. Those who favor such expenditures can have no reasonable objection to the voters determining which capital projects and contributions are worthwhile and which are not.

The term "capital project" is used rather than the term "capital improvement" in order to have a broader reach. Capital improvements are pretty much limited to public facilities having a more or less permanent nature. Highways, airports, buildings, and ferries are examples. Capital projects include capital improvements and also other expenditures which require a multi-year investment or otherwise tend to fall into the category of capital costs as opposed to day-to-day expenses. Computers, large-scale resources inventories, and high-cost special equipment and instruments for libraries, schools, and museums are some examples.

In addition to limiting the excess appropriations to capital projects and contributions to the permanent fund, the proposed amendment requires bills for capital projects to be confined to capital projects of the same type. This is somewhat more narrow than the single-subject rule. It will require projects in a bill to be parts of an overall system. This will inhibit the packaging of diverse projects into one bill. As a further restraint on logrolling, the bills for excess appropriations are subject to the item veto, including the appropriation of general obligation bond proceeds which are in excess of the limit. Bond proceeds which are not in excess of the limit are not subject to an item veto.

There are three exclusions from the limitation. Debt service is necessarily excluded. An additional exclusion is provided for appropriations for permanent fund dividends. Non-state money, that is, money received from the United States or others to be used for specific purposes, is also excluded. This exclusion includes revenue bond proceeds, the revenues generated by the international airports, and other public enterprises which operate on revenue bonds. The first exclusion is required by the federal constitution's prohibition against impairing contracts. The other exclusions are provided because the use of the money for those purposes is not a part of the problem.

The proposed amendment requires the governor to cause any unexpended and unappropriated balance to be invested

so as to yield competitive rates to the treasury. The words "as prescribed by law" were not included so that the clause will be self-executing. However, the governor performs all executive functions in the manner prescribed by law, and the statutes on loan programs and investments will control here so long as they are consistent with the constitution's requirements.

Additionally, so as to eliminate any reasonable grounds for opposition by those who wish to relocate the capital, the resolution includes a transitional measure to exclude relocation costs, if they are approved at the 1982 general election, from the requirement of additional voter approval under the amendment. Another transitional measure provides for the amendment to take effect beginning with the budget for fiscal year 1984.

Finally, still another transitional measure places the amendment on the ballot again at the 1986 general election to allow it to be repealed by the electorate should it prove to be unworkable. If it is unworkable, the people will repeal it. If it works, they will not.

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Sen. Bill Ray

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Rep. Richard W. Halford

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Sen. Donald E. Gilman

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Rep. Robert H. Bettisworth

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Sen. Frank R. Ferguson

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Rep. Hugh Malone

- 3 -

Exhibit 1 - p. 3 of 3

FISCAL NOTE

LEGISLATIVE FINANCE

I. REQUEST

Bill/Resolution No. HB 11

Title An act repealing the permanent fund dividend program

Requested by House State Affairs & Finance Date 01-28-83

II. FISCAL DETAIL

Agency Affected Department of Revenue

Program Category Affected General Government

BRU, Program, Or Subprogram(s) Affected Enforcement Division

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>			

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

*Marilla L. Gemmer*

IV. DATE 01-28-83 PREPARED BY Marilla L. Gemmer, Director

AGENCY Department of Revenue

Original: Legislative Finance PHONE (907) 465-2366

cc: Budget and Management  
Priority Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

OMB Reviewed by: Glen Price *GP*

II. FISCAL DETAIL

Agency Affected Department of Administration

Program Category Affected General Government

BRU, Program, or Subprogram(s) Affected \_\_\_\_\_

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	<b>(11.0)</b>	<b>(11.5)</b>	<b>(12.1)</b>			

FUNDING (Thousands of Dollars)

GENERAL FUND	(11.0)	(11.5)	(12.1)			
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 1/24/83

PREPARED BY Tom Haas

AGENCY Administration - Finance

PHONE 455-2240

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named) RB

FISCAL NOTE

LEGISLATIVE FINANCE

REQUEST BY HB 11  
Bill/Resolution No. \_\_\_\_\_  
Title repealing the permanent fund dividend program  
Requested by House State Affairs Committee Date 1/21/83

II. FISCAL DETAIL

Agency Affected \_\_\_\_\_ Revenue \_\_\_\_\_  
Program Category Affected \_\_\_\_\_ Revenue Operations \_\_\_\_\_  
BRU, Program, Or Subprogram(s) Affected Public Services

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-			

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Repeal of the permanent fund dividend program is already reflected in the Executive Budget.

IV. DATE 1/27/83 PREPARED BY P A Wall  
AGENCY Revenue  
PHONE 465-2393

Original: Legislative Finance  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

OMB Reviewed by: Glen Price

Bill/Resolution Number: HB 11  
 Title: "An act repealing the permanent fund dividend program; and providing for an effective date."  
 Requested by: House State Affairs Committee Date: 1/21/83

II. FISCAL DETAIL

Agency Affected: Department of Revenue  
 Program Category Affected: Revenue Collection and Management  
 BRU, Program, or Subprogram(s) Affected: Administrative Services Div.  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC	-	-	-	-	-	-
TOTAL	-0-	-0-	-0-			

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME	-	-	-	-	-	-
PART TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-
TOTAL	-0-	-0-	-0-			

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The repeal of the Permanent Fund Dividend program has already been reflected in the Governor's FY84 Executive Budget.

IV. DATE: 1/24/83 PREPARED BY: *Ervil B. Jones*  
 AGENCY: Revenue  
 PHONE: 465-2313  
 Original: Legislative Finance  
 cc: Office of Management and Budget  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 01/83)

OMB Reviewed by: Glen Price *GP*

I. REQUEST

Bill/Resolution Number: HB 11

Title: An Act repealing the permanent fund dividend program.

Requested by: House State Affairs Committee Date: January 21, 1983

II. FISCAL DETAIL

Agency Affected: Revenue

Program Category Affected: Permanent Fund, Dividend Fund

BRU, Program, or Subprogram(s) Affected: \_\_\_\_\_

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

FUNDING (Millions of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-
	-	-	-	-	-	-
	0	0				

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME	-	-	-	-	-	-
PART TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The aforementioned amounts reflect no impact since what is proposed is, I am informed by Management and Budget, already implied in the governor's budget.

IV. DATE: January 24, 1983

PREPARED BY: Vincent Wright

AGENCY: Revenue - Research

PHONE: 465-2174

Original: Legislative Finance

cc: Office of Management and Budget

Prime Sponsor (First Legislator Named)

33-001 (Rev. 01/83)

OMB Reviewed by: Glen Price



# Alaska State Legislature

## House of Representatives

### Committee on State Affairs

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

#### AGENDA

DATE: 1/28/83

TIME: 1:00 p.m.

- I. Call meeting to Order
  - A. Note the committee members present.
  - B. Welcome those observing the meeting.
  - C. Remind those who have not signed in to do so. And remind those giving testimony to speak up and state their name before talking.
- II. Announce legislation under consideration:

EO 53 - Creating Office of Budget and Management

HB 11 - Repealing the permanent fund dividend program.

Other notes or reminders:

*from me for you*

There is a note in your file. ~~from me~~ to ask Mr. MacDowell from UBM, *if applicable*

43.23.085, and 43.23.095 as set out in section 19 of this Act. The provisions of AS 43.23 and notwithstanding that they have not been enacted into law before the effective date of this Act, they shall be deemed to have been enacted into law on the effective date of this Act.

The permanent fund for fiscal year 1982 transferred to the dividend fund for payment of permanent fund dividends in 1983 along with the fiscal year 1983 earnings transferred to the dividend fund.

AS 43.23 for the years 1979 - 1981, SLA 1980, is repealed.

AS 43.23.050(c) are repealed.

AS 43.23.014, 43.23.020, 43.23.030, 43.23.040, 43.23.080, 43.23.090, and 43.23.100 are repealed.

Sections 13, and 14 of this Act are repealed.

Section 19 of this Act applies only to the determination of the amount to be paid in 1983 and applies only to the amount distributed under section 19 of this Act on or after that date, the United States Supreme Court decision.

Contrary provisions of AS 43.23.030, by which the commissioner of revenue shall give public notice of the amount of income of the Alaska permanent fund for the year 1983 transferred to the dividend fund

AS 43.23.050(b);

(2) determining the number of permanent fund dividends that would have been paid during 1982 if section 19 of this Act had not taken effect and an estimate of the number of permanent fund dividends for a prior year under AS 43.23.014; and

(3) dividing the amount determined in (1) of this subsection by the amount determined in (2) of this subsection.

Sec. 25. If secs. 2 - 5 and 14 of this Act take effect under the provisions of sec. 27 of this Act, then all other provisions of AS 43.23, as enacted in ch. 21, SLA 1980 and as amended in secs. 8, 10 - 12, and 15 - 17 of this Act, remain in effect.

Sec. 26. Notwithstanding the provisions of AS 43.23.014(c), enacted in section 4 of this Act, which require an individual to file an application for prior year permanent fund dividends within one year after reaching 18 years of age, an individual may file a claim during 1983 for permanent fund dividends for all prior years for which the individual is eligible if that individual has turned 18 years of age on or before the last day for filing an application during 1983.

Sec. 27. Sections 2 - 5, 14, 23, and 25 of this Act take effect 60 days after the date that the United States Supreme Court decides that AS 43.23.010 is invalid but also decides that AS 43.23.010 would not violate the United States Constitution if the amount of a permanent fund dividend were determined by accumulated years of residency in the state beginning on or after January 1, 1979.

Sec. 28. Sections 1 and 22 of this Act take effect 60 days after the date that the United States Supreme Court decides that AS 43.23.010 is invalid because the amount of a permanent fund dividend is determined by accumulated years of residency in the state whether those years are counted before or after January 1, 1979.

AD 11 (3)

Responsibility for Recommendations:

The legislative enactment creating the Alaska Permanent Fund Corporation mandates that the trustees in their annual report submit their "recommendations of any needed changes, and any other information the board believes would be of interest to the Governor, the Legislature, and the public." (Sec. 37.13 170)

Under present law, this could be the most important contribution by the trustees. Furthermore, under efficient trust administration while the grantor (the Legislature) has the responsibility for determining the policy and objectives of a trust, the trustees (the board) have an obligation to draw on their collective experience and submit options and consequences with decision, in this case, by the Legislature.

Contrast with Province of Alberta:

When the Alberta legislature created the Alberta Heritage Savings Trust Fund, they opted to centralize their oil endowment in one corporation with broad powers and responsibility for all investments in both profit and non-profit projects, research, loans, etc. Our Alaskan Legislature has made the decision to use multiple channels through which the oil revenues are directed. These channels might be broadly classified as follows:

1. Operating budget
2. Capital budget  
    e.g. educational, public works, etc.
3. Grants to municipalities, boroughs and other authorities.
4. Loan programs (including equity participations) for business and housing.
5. Permanent Fund Corporation

Consequences of Multiple Channels:

The fact that we in Alaska have chosen the multiple route concept does not mean we can escape from the need for coordination and forward planning of various operations funded basically from a single source. Else we run the danger of:

1. Overlapping, with more than one agency treating the same problem.
2. Missing objectives, with worthwhile projects not funded.
3. Emphasizing the immediate, with inadequate attention to the long-term concerns.
4. Substituting public funding for existing private sources of capital.
5. Concentrating on state funding rather than public leadership in getting local participation.

In the absence of a long-term plan, the Legislature has made a commendable effort to coordinate and arrange the relative priorities during the course of the sessions. However, the policy-making body will always perform best when free from operating burdens.

A brief review of the Permanent Fund as presently constituted should, not only identify possible modifications in the Fund itself, but also evidence why the Fund needs to be coordinated with alternative avenues for disposition of oil revenues.

#### Investment Problems:

1. Because the investment criteria provide only for money instruments, there is no hedge against inflation.

2. Clarification of policy regarding disposition of current earnings of the Fund would be beneficial. The law now provides for a 50 percent dividend distribution to the people of Alaska. If the other 50 percent could be retained in the Fund, these benefits would accrue:

(a) Longer term investments could be made with higher returns.

(b) It would facilitate a partial offset to inflation.

(c) Assuming the resident population of Alaska will increase, it would help maintain the dividend rate as well as the per capita asset value of the Fund.

3. There appears to be no investments in Alaska from the Fund, contrary to the intent of Sec. 37.13.120 (1) (1).

#### Alternative Investment Concepts:

The Legislature has stated that the Fund "Should be used as a savings device" and its assets "only be used for income-producing investments." It also mandates the use of the "prudent-man rule." However, an important fact, which necessarily affects investment thinking, is the prospective size of the Fund. Latest Department of Revenue forecasts estimate the Permanent Fund to be \$28 billions by the year 2000.

Once the concept is accepted that the oil revenues proceed from one source; that many of the projects authorized by the Legislature are in principle a type of permanent funding for the benefit of all Alaskans; then there is no reason why the total funding cannot be split with direct grants or loans and participation reserved to the Permanent Fund.

For example, if a hydro-power project is deemed worthy from a credit and public standpoint to be funded by the Legislature (or through its designated agency) with 50 percent of the cost as a grant, the other 50 percent could be an investment by the Permanent Fund. If the Permanent Fund charged say 10%, the net cost to the project would be 5% which would probably make it viable and ensure a profitable return to the Fund.

To offset inflation, there must be a return to the Fund that covers the CPI (Consumer Price Index) escalation plus a normal return for the use of the funds. This cannot come from interest alone but requires an equity instrument.

Examples are:

(1) Ownership in real estate. This can be in land with a responsible builder putting up the improvements. A good example is the ownership by the University of Washington of choice, central core real estate in Seattle. Or the state could lease, rather than sell, some of the land received from the Federal government with rentals to the Permanent Fund. Under proper safeguards, and with most of the money put up by strong partners, the Fund could take a position in improvements such as buildings, parking garages, port facilities, etc.

(2) Marketable stocks. Because of the prospective size of the Fund, some investment must be outside of Alaska. Any commitment in stocks should be split among several investment advisories with a satisfactory track record to ensure competition of performance and reduction in risk and regular grading of the results.

(3) Ownership in natural resources related enterprises. If the gas line is built, it will probably involve financing by the owner of the gas, namely, the major oil companies. If they put their money in, there should be little risk to the Fund by taking a combination position of limited debt and equity. The same principle and safeguards can be applied with respect to financing the extraction of gas liquids or an additional refinery. In addition to the equity features, there are collateral benefits of getting the project underway and ensuring consistency in state policies of taxation, regulation, etc.

(4) Public service projects.

(a) It is well known that intra-state communication rates are substantially higher than inter-state. Many areas have inadequate service. While the state could subsidize operating costs, as it has with respect to television, the Fund could make a limited equity investment in a satellite with the lead company in this field in Alaska.

(b) Power--both hydro and fossil fueled--is needed for public benefit. If public owned, consider matching funds with local authorities. If privately owned, the same financial strength from the principal owners should be required as in the discussion of natural resources. Already in this memorandum has been pointed out how a combination of grant and loan from the Fund can help both the project and the Fund.

(c) Water authorities. While Alaska is blessed with a tremendous natural

is for industry, such as fish processors and future mining, and for residential. Again, the financing can be by a formula using state and federal grants, community participation-municipal and private-with Fund participation. The approved mix can make the projects successful and income to the Fund. Frequently, such water projects can be tied in with power generation and transmission.

(d) Transportation. Many communities in Alaska need new or expanded marinas, harbor improvements, and airports. While the Legislature may wish to fund these projects through direct appropriation or grants, local participation would justify need and the Fund could be used for revenue-producing projects. This was the technique used by both the cities of Anchorage and Kodiak to finance crane installations at their respective docks, with ultimate payment coming from Sea Land Corporation.

#### Investment in Alaska:

The foregoing suggestions provide for enlarged, profitable investment in Alaska with strong safety factors, an oft-mentioned concern of the public. With the prospective size of the Permanent Fund, a bold, new approach is needed to have any meaningful investment in Alaska. This can be accomplished through real estate, income-related projects, and public service projects. Again, the size of the Fund will involve outside investment and the basic principles are equally applicable to the benefit of the Fund.

Frankly, the Fund should be able to follow the lead of our national insurance companies and make private placements.

#### Summary:

It is apparent that the investment restrictions on the management of the Permanent Fund can be safely and beneficially modified. In so doing, there should be coordination with other agencies and disbursements of the Legislature. This will mobilize the funding capabilities of the state and ensure leadership for better living.

To put this in perspective: if a new arrival in Alaska can step off the plane and acquire a home with over \$30,000 in subsidy by the state in interest during the life of the loan, should we not stimulate projects that produce income, and at the same time, benefit a broad section of the Alaskan population, many of whom have lived here all their life?

It would serve as a national model and show we are responsible custodians of both our land and our wealth. Thus would we best escape being designated as the "blue-eyed Arabs" of the North.

The very success in the public mind of our handling the Permanent Fund in coordination with other agencies will in the long run determine the amount placed in the Permanent Fund, especially as the General Fund may run down.

The interrelationship of all the allocations of oil money strongly supports the principle of long-range planning and budgeting. We need in the state a five-year and ten-year budget of cash outflow, especially capital expenditures. This is not as difficult as may first appear.

There are many obvious benefits:

1. Discipline in thinking and computation.
2. A rational basis for allocation of funds.
3. Freedom from pressures on the Legislature by lobbyists and special-interest groups.
4. Furnish the extra time to the Legislature to exercise its prime public policy function.

Recommendation:

It is my suggestion that the Legislature make use of the Board of Trustees of the Alaska Permanent Fund Corporation to serve in this connection as a review body in a staff position to the Legislature.

The advantages are as follows:

1. The trustees are completely objective with no authority but their ideas. All decisions must be made by the Legislature.
2. This procedure does not disturb existing agencies nor alter the multiple approach to distribution of the oil money.
3. It gives the trustees something meaningful to do. They could thereby discharge the responsibilities which the public assumes they have.
4. It is cost effective. There would be no need to hire expensive outside consultants. The facts and considerations are available. The task could be accomplished through existing departments and personnel with minimal aid and secretarial help.

Elmer Rasmuson

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

HB 11 70XS  
JAY S. HAMMOND, GOVERNOR

POUCH 5  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2300

February 2, 1983

The Honorable Mike M. Miller  
Alaska State Legislature  
House of Representatives  
Pouch V  
Juneau, AK 99811

Dear Representative Miller:

During my talk last Friday, I alluded to the fact that there would be over one billion dollars in bonds (both general obligation and revenue) sold this coming year. Below is a summary of anticipated sales by agency and attached is a breakdown of our statistics received from those agencies involved.

<u>Agency</u>	<u>1/1/83 through 6/30/83</u>	<u>7/1/83 through 6/30/84</u>
Alaska Housing Finance Corporation	350 million	840 million
Alaska Industrial Development Authority	90 million	250 million
Alaska Power Authority	none	35 million
Municipal Bond Bank Authority	30 million	45 million
State Bond Committee	80 million	none
Total estimated bond sales	550 million	1,170 million

You also asked whether or not the Governor's alternatives to the existing Permanent Fund Dividend program would be considered dividends for purposes of the constitutional State Spending Limit. Those alternatives, as set out in his Budget Address, are:

1. Alaska Investment Fund
2. Revenue Sharing and Municipal Assistance
3. Longevity Bonus program
4. Reinvestment in the Permanent Fund itself.

The Honorable Mike M. Miller  
February 2, 1983  
Page 2

The Department of Law is currently researching this matter. It is their unofficial advice that preliminary research suggests that items 2, 3, and 4 will be considered a dividend. Research is still pending on the Alaska Investment Fund. As research has not been completed and the Department has not released an official opinion, you must consider this view unofficial.

If there is additional information you need, please do not hesitate to contact me.

Sincerely,



Robert D. Heath  
Commissioner of Revenue

RDH:CB:m11

Attachments

cc: The Honorable Mitchel E. Abood, Chairman  
and Committee members  
House State Affairs Committee  
w/attachments

Glen Price  
Management and Budget  
w/attachments

Questions submitted to the agencies contacted:

1. How many millions of dollars of GO and revenue bonds do you estimate will be sold between 1/1/83 through 6/30/83?
2. How many millions of dollars of GO and revenue bonds do you estimate will be sold during FY 84?
3. What was the interest rate at your last bond sale?
4. What is the total bonded indebtedness of your agency?

Alaska Housing Finance Corporation

1. Estimated between 1/1/83 and 6/30/83:

- A. Taxable: 150 million dollars
- B. Veteran's GO: 100 million dollars
- C. Tax exempt: 100 million dollars

2. Estimated during FY 84:

- A. Taxable: 500 million dollars (1st mortgage)  
15 million dollars (2nd mortgage)
- B. Veteran's GO: 225 million dollars  
Note: Authorized to sell 400 million dollars by 12/30/84
- C. Tax exempt: 100 million dollars

TOTAL estimated bonds to be sold: 1,190 Million

- 3. A. Taxable: 11.6750 True interest cost  
12.6700 Cost of funds
- B. Veterans: 8.7273 True interest cost  
9.4000 Cost of funds
- C. Tax exempt: 10.550 True interest cost  
11.220 Cost of funds

4. The Corporation's lending activities are:

\$2,490,125,000 issued in total

\$2,443,615,000 outstanding as of 1/1/83

ALASKA INDUSTRIAL DEVELOPMENT AUTHORITY

1. Estimated between 1/1/83 and 6/30/83:

A. Revenue: 40 million dollars

B. GO: 50 million dollars

2. Estimated during FY 84:

A. Revenue: 100 million dollars

B. GO: 150 million dollars

TOTAL estimated bonds to be sold: 340 Million

3. A. Revenue: variable from issue to issue

B. GO: 11.23 True interest cost (average)

4. The Corporation's lending activities are:

GO: \$101,325,000 issued in total

Revenue: \$310,000,000 issued in total

GO: \$ 90,000,000 outstanding as of 1/1/83

Revenue: unavailable at this time

ALASKA POWER AUTHORITY

1. Estimated between 1/1/83 and 6/30/83:

A. Variable demand rates: none

B. GO: none

2. Estimated during FY 84:

A. Variable demand rates: none

B. GO: 35 million dollars

TOTAL estimated bonds to be sold: 35 Million

3. A. VDR: Tax Exempt Note Rate + 1/4 of 1% = approx 9% quarterly  
Earned interest in investments estimated at 11%

B. GO: Variable rate not tax exempt  
Earned interest in investments estimated at 13%

4. The Corporation's lending activities are:

Variable rate demand notes: \$165 Million issued

GO: \$35 million issued

Municipal Bond Bank Authority

Note: FY 82 actual was \$48,500,000 issued of both types

1. Estimated between 1/1/83 and 6/30/83:

A. Revenue: none

B. GO: 30 million dollars

2. Estimated during FY 84:

A. Revenue: 15 million dollars

B. GO: 30 million dollars

TOTAL estimated bonds to be sold: 75 Million

3 A. Revenue: 10.34 True interest cost

B. GO: 10.34 True interest cost

4. The Corporation's lending activities are:

\$130,000,000 issued in total

\$122,000,000 outstanding

STATE BOND COMMITTEE

Total State bonded indebtedness (debt to maturity): \$1,435,716,090\*  
Interest Rate at next bond sale: calculate at 9% for 10 year period  
Anticipated Sales this year: 80 million dollars

\*Interest rate at last bond sale (\$185 M on 10/20/82) at 7.73%

1. Estimated between 1/1/83 and 6/30/83:

Tax exempt: 80 million dollars

2. Estimated during FY 84:

Tax exempt: none authorized excluding the Veteran's GO Bonds mentioned in item 4 below.

TOTAL estimated bonds to be sold: 80 Million

3. Tax exempt: 8.73 True interest cost

4. The Corporation's lending activities are:

Authorized GO Bonds:	\$1,400,550,500
Issued GO Bonds:	\$1,319,057,000
Unissued GO Bonds:	\$81,493,500
Outstanding:	\$1,007,898,000

Note: The #4 figures do not include the November, 1982 authorization of 400 million to purchase mortgages for qualifying vets as these are mortgage revenue bonds (see AHFC report) which are, however, unconditionally guaranteed as a general obligation of the State. \$50 million of these were sold 1/26/83

INTERNATIONAL AIRPORT REVENUE BONDS

The principal amount remaining payable from revenues derived from  
International Airports: \$18,284,000.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 11

Title "An Act repealing the permanent fund dividend program; and

Requested by House State Affairs Date 1-18-83 providing

for an

effective date

II. FISCAL DETAIL

Agency Affected Office of the Governor

Program Category Affected Division of Elections

BRU, Program, Or Subprogram(s) Affected Division of Elections

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No additional fiscal impact is anticipated. The Division of Elections already prepares a microfiche listing of all persons who have registered to vote in this state. This list is generated from a magnetic tape compatible with Department of Administration data processing equipment.

IV. DATE 1-18-83

PREPARED BY Danith D. Arnoldt, Deputy Director  
AGENCY Office of the Governor, Div. of Electric

Original: Legislative Finance  
cc: Budget and Management

PHONE 586-6181

Prime Sponsor (First Legislator Named)

FISCAL NOTE

Expenditure Type  
 Revenue Type

I. REQUEST

Bill/Resolution No. HB 11  
 Title An Act repealing the permanent fund dividend program.  
 Requested by House State Affairs Date 1-19-83

II. FISCAL DETAIL

Agency Affected Department of Public Safety  
 Program Category Affected Life and Property Protection  
 BRU, Program, Or Subprogram(s) Affected Driver/Vehicle Services  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This would have no fiscal impact on Division of Motor Vehicles.

Office of Management and Budget  
 Reviewed by: Mike Maher, Program Budget Analyst  
 Division of Budget Review

IV. DATE January 19, 1983 PREPARED BY Bill Brown Phone 465-4335

DIVISION Motor Vehicles Initials [Signature]

Original: Legislative Finance DEPARTMENT OF PUBLIC SAFETY Initials [Signature]

cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:  
COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES,  
TITLE PAGE ONLY HAS BEEN FILMED.

**THE TRUSTEE PAPERS**

**A collection of professional papers prepared for  
the Alaska Permanent Fund Corporation Board of Trustees**

**Published in March, 1982**

**Alaska Permanent Fund Corporation  
Pouch SB  
Juneau, Alaska 99811**

# ALASKA PERMANENT FUND Corporation

### Members of the Board of Trustees

Elmer E. Rasmuson, Chairman  
Thomas K. Williams, Vice-Chairman  
Peter B. McDowell, Secretary  
Wilson L. Condon  
George W. Rogers, Ph.D.  
Robert W. Ward

### Acting Executive Director

Peter A. Bushre, Treasurer

### Contact Address:

Alaska Permanent Fund Corporation  
Pouch SB  
Juneau, Alaska 99811

### Telephones:

Juneau, (907) 465-2350  
Anchorage, (907) 277-1496



*NOTE:*  
*1982 ANNUAL REPORT*  
*& FINANCIAL*  
*STATEMENTS*

H B

20

STATE OF ALASKA  
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 20 Date on Bill: \_\_\_\_\_  
 Title: "An Act relating to the responsibilities of the APOC: estab. standards of conduct"  
 Sponsor: M.M. Miller and Duncan  
 Requestor: \_\_\_\_\_

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating				399.5	392.5	416.1		
Total				399.5	392.5	416.1		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

All figures are in addition to the Governor's Request for \$590.6 which provides 6 F/T and 3 P/T positions for the APOC (under the three existing laws) in FY 84. FY 85 and 86 are based on an inflation factor of 6%. Since the task of working with municipalities and REAA School Districts is too large to be accomplished within the one year allowed for those entities to enact their own codes, substantial travel is anticipated for successive years.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor.

Prepared By: Shelby S. Pittman, Exec. Dir. Phone: 276-4176  
 Division: Alaska Public Offices Commission Date: 3/14/83  
 Approved by Commissioner: Thomas J. Conroy Date: 3/15/83  
 Department: Administration

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/8/83

HB 20 2/24/83 APOC Fiscal Note

The FY 84 total of \$399.5 includes an RSA of \$100.0 with the Department of Law for the services of a senior attorney, three new positions for the Alaska Public Offices Commission as well as funding to reclassify three existing positions, and increased travel and services to address the bill's applicability to municipalities and REAA school districts.

100 - Personal Services	\$154.9
New: Assistant Director, Range 23	
Research Analyst II, Range 16	
Secretary, Range 12	
Re-class: Executive Director from range 24 to 26	
Assistant Director from range 21 to 23	
Administrative Assistant II from range 14 to 16	
200 - Travel	\$ 32.4
4 additional Commission meetings @ \$3,220	
Municipal information & compliance \$15.0	
Council on Governmental Ethics \$4.5	
300 - Contractual	\$186.8
Printing (RSA) \$10.0	
Telephone \$7.2	
Word Processor Modum \$1.4	
Office Space (RSA) \$25.2	
Public Information \$25.0	
Data Processing (RSA or Contract) \$18.0	
Dept. of Law (RSA) \$100.0 - includes \$19.5 one-time	
Attorney, range 24 & 1/2 time Sec., range 10/10 mo. \$63.5	
Municipal travel, \$7.5; services, \$8.0; commodities, \$3.5;	
equipment, \$17.5	
400 - Commodities	\$ 3.0
500 - Equipment (one-time items)	\$ 22.4
Word Processor/terminal, \$17.9	
FY 84 total	\$399.5
FY 85 total	\$392.5
Delete \$41.9 in one-time items from FY 84; add \$12.7 to cover	
2 months of Dept. of Law salaries, multiply by 1.06 to add	
inflation factor of 6%.	
FY 86 total	\$416.1
Multiply FY 85 by 1.06 for an inflation factor of 6 %.	

INTRODUCTION OF BILLS (House)(cont'd)

HB 19 (cont'd)

after Governor's signature).

Introduced January 17 and referred to Health, Education and Social Services, then to Finance.

Public  
Officials  
(standards  
of conduct)

HOUSE BILL NO. 20, By M.M. Miller, Duncan, Zharoff, Davis, McBride, Szymanski, Wendte, Koponen, Malone, Larson, Clocksin, Goll, McBride, and Vaska. Amends AS 39 (Public Officers and Employees) by adding a new chapter - (AS 39.49) outlining standards of conduct for public officials. Rewrites sections of law pertaining to the Alaska Public Offices Commission (APOC), expanding its powers in regards to conduct of public officials.

New standards of conduct would prohibit solicitation of gifts and abuse of office by a public official. Also outlined are various situations wherein conflicts of interest could arise and procedures to be taken by the state or municipal official in order to comply with state law.

New powers given to the Alaska Public Offices Commission (under AS 15.13, State Election Campaigns) provide the Commission administer laws relating to standards of conduct (AS 39.49), conflict of interest (AS 39.50) and regulation of lobbying (AS 24.45). The Commission has the power to issue advisory opinions on violations of standards of conduct, hold hearings and determine if there is sufficient cause to believe an official should be removed from office. The Commission may also assess civil penalties for violations of AS 24.45, AS 39.49 or AS 39.50. Provides the Commission may pursue appropriate legal remedies for violations, including criminal prosecution.

Provides the standards of conduct apply to state officials on the effective date of the bill (July 1, 1983), and to municipal public officials July 1, 1984, unless the municipality adopts standards of conduct for its officials, submits the standards to APOC, and APOC determines the municipal standards are substantially similar to those adopted under AS 39.49. APOC shall consider municipal standards based on the size of the municipality, recent budgets, procedures adopted for the regulation of fiscal procedures, and other matters submitted to the Commission by the municipality.

Repeals AS 15.13.045 (State Election Campaigns. Investigations, hearings.); AS 15.13.130(6) (current definition of "municipality"--replaced in new sections); and AS 39.50.090 (a) - (e) (Conflict of Interest. Prohibited Acts--does not repeal AS 39.50.090(f), prohibiting a municipal official from representing a client for a fee before the municipal body he represents).

Provides Act takes effect July 1, 1983.

Introduced January 17 and referred to State Affairs, Judiciary, then to Finance.

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 20  
Title "An Act relating to the responsibilities of the Alaska Public  
Requested by Representative Abood Date 1/19/83

Offices Commission; establishing standards of conduct for public

II. FISCAL DETAIL

officials; and providing for an effective date."  
Agency Affected Department of Law  
Program Category Affected Legal Services  
BRU, Program, Or Subprogram(s) Affected Legal Services

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		0	0	0		

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Although additional work may be caused by enactment of this bill, the department does not believe additional attorney level resources will be needed. The department does note that the FY 84 budget requests, for both the APOC and Law, provide for additional investigative resources at the Associate Attorney level which will be definitely needed if this bill is approved. It is anticipated that, for the time being, any new litigation related to this bill will occur at various locations and be handled by the existing attorney staff.

IV. DATE January 26, 1983 PREPARED BY Richard I. Pegues Dir. Adm. Svcs.

AGENCY Department of Law

Original: Legislative Finance PHONE 465-3672  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

OMB Reviewed by: Guy Bell



# Alaska State Legislature

## House of Representatives

January 10, 1983 Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

TO: Representative Mike Miller

FROM: Michael Ford, Counsel  
House Minority

RE: Conflicts of Interest (HB 20)

RECEIVED  
JAN 17 1983

This bill as you know is identical to the one passed out of the House Judiciary Committee in the first session of the twelfth Alaska Legislature. The bill in essence creates standards of conduct for public officials, as well as setting up a system for disclosing conflicts that do occur. A commission is also created to accept and initiate complaints concerning violations of the conflicts law.

The major point to bear in mind is that the bill covers all "public officials", which includes members and employees of the legislature, appointed officers and employees of state agencies and municipalities, and the Governor and Lieutenant Governor. Only Judicial branch employees are not included. The bill is in two major parts, the first being the ethical standards and their operation, the second being the administration of the law through the Commission. Each part will be addressed in turn.

The standards to be applied to public officials is contained in section two of the bill. Specifically, gifts are prohibited where given to influence or reward an official action. Under the heading abuse of office, a list of specific conflicts is set forth, which are proscribed. These include using public office to benefit a member of the household, soliciting or accepting compensation for performing official duties, and using public equipment or facilities for private or campaign purposes.

The conflicts section of the bill sets forth those circumstances under which a public official cannot act, without violating the law. This section however does contain an escape clause for both public officials and officials of municipalities. By disclosing the conflict, and in some cases doing so in writing, the official can take action without breaking the law.

The remainder of the bill sets out the structure of the Commission that will administer the law. The existing A.P.O.C. is given the responsibility for enforcement and administration. Of note is the power to issue an advisory opinion at the request of a public official, as well as the power to issue a determination that a wilful violation of the conflicts law has occurred.

Finally it should be noted that municipalities may avoid coverage of this law by adopting "substantially similar" standards of conduct within one year of the effective date of this bill, which is July 1, 1983.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

December 3, 1982

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

Re: Conflict of interests  
Our files: 366-255-83, 366-286-83,  
A66-393-81, J66-457-81

Dear Governor Hammond:

I. INTRODUCTION

Seven situations have been brought to our attention which require analysis of the law of conflict of interests. We address this opinion to you because of the statewide importance of these questions and because of the profound implications of our remarks for all officers and employees of state government.

At the outset we must emphasize our key theme. The fact that there may be no conflict of interests statute that makes a particular course of conduct criminal or otherwise improper does not mean that it is legal. A transaction may not violate Alaska's criminal conflict of interests law, AS 39.50.-090; it may not even violate any one of a dozen civil statutes which prohibit conflicts of interests in specific agencies; yet it may still be illegal. By this opinion, we hope to make state officers and employees aware of an ethical code which is not in

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the Alaska Statutes but which is in force in Alaska: the common law. Unless and until the legislature puts a different body of enacted law in its place, the common law of conflict of interests, as declared by the courts, prescribes the standards of conduct which must be followed by all state officers and employees.

The common law provides, generally, that public officers and employees are trustees of the people, and as such they are forbidden to have outside interests which conflict with that trust; they not only may not, as public officers, make decisions to benefit their own private businesses (or influence other public officers to do so), but they must avoid even the appearance that they have engaged in self-dealing or attempts to influence official decision-making for their private advantage. Where there is the fact or appearance of impropriety, the courts will declare the contract, transaction, or decision void unless a statute permits the action in question, and this result cannot be avoided by the expedient of letting a "disinterested" colleague or subordinate make the decision.

The questions which prompted this opinion are related below. Our analysis follows thereafter.

First, may a legislator, or his or her company, contract with the state to provide the state with goods or services? The answer is no.

Second, may a legislator, state officer, or state en-

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ployee receive a loan from the state? The answer with respect to educational and residential loans is a qualified yes. Because educational and residential loan programs have relatively rigid requirements and loan ceilings, there is much less opportunity for improper influence; thus, state legislators, officers, and employees may receive such loans. However, it would be incumbent upon the applicant/lendee to insure that no one takes any step which might be viewed as an attempt to influence the administrators of the program in their evaluation of the applicant/lendee's application and their administration of the loan. Commercial loans are much more questionable transactions which we will discuss below.

Third, may a legislator vote on a bill which will inure to the financial benefit of the legislator? The answer is yes, unless the legislator's interest is peculiarly personal, such as when the bill benefits only a tiny class of which the legislator is a member, or when the bill concerns a project on which the legislator, or the legislator's company, is a contractor.

Fourth, may a director of a state corporation, board, or commission which is governed by no specific conflict of interests statute hold that position if he or she is also an officer, manager, or large stockholder of a private company which has entered into contracts to provide the state with goods or services? If the director's company has a contract with an agency of state

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government different from the agency in which the director serves, and if the likelihood that the two agencies will interact on other than routine, ministerial matters is small, there would be no conflict. If, however, the director's company has contracts with the agency in which the director serves, the director must divest himself of his private holdings or resign his directorship; otherwise, any contracts his company executes with that agency would be void.

Fifth, may an officer of the Division of Minerals and Energy Management of the Department of Natural Resources (DMEM) own a mineral claim, an interest in a mine, or an interest in the products of a mine on land under state jurisdiction? Ownership of such interests is not prohibited under AS 27.05.010 unless DMEM is engaged in an "investigation" described in AS 27.05.010 -- 27.05.070. However, the common law does prohibit the ownership of such interests: A conflict of interests would exist because the officer (or the officer's subordinates) would be required to review and approve the officer's filings with DMEM concerning the officer's mining interests. In addition, the officer would have a substantial voice in the department's land use classifications, which could inure very much to the officer's benefit were he an actual or potential investor in mineral claims on land subject to state regulation.

Sixth, may an inspector in a state regulatory agency

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sell the right to use a process the inspector developed and patented to companies whose plants he inspects? The answer is no. Neither may that inspector obtain a state grant to test the process in plants which he inspects.

Seventh, may a person with an interest in a business that has a contract with the state be a member of the board of the Alaska Resources Corporation (ARC)? The answer is a qualified yes. A member is forbidden to acquire any conflicting interest after joining the board. AS 37.12.065(b). Concerning interests which a member holds and held before joining the board, there are two answers: First, if the contract is with an agency other than ARC, and if that other agency has only routine, ministerial contacts with ARC, there is no conflict. Second, if the contract is with ARC, the board member must abstain from voting and take no formal or informal part in discussions of ARC's policies or actions toward the business in which the member has an interest. Id.

## II. THE ROLE OF THE ATTORNEY GENERAL

The attorney general is the chief legal officer of the state and "the legal advisor of the governor and other state officers." AS 44.23.020(a). As such, he is duty bound to assist the governor in "the faithful execution of the laws." Alaska Const., art. III, § 16. These laws include the common law of

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conflict of interest, see AS 01.10.010; the constitutional requirements that "[no] appropriation of public money [be] made ... except for a public purpose," and that "[n]o obligation for the payment of money shall be incurred except as authorized by law." Alaska Const., art. IX, §§ 6, 13; and AS 39.50 concerning conflicts of interests.

The attorney general performs this function by prosecuting legal actions, AS 44.23.020(b)(1), and furnishing written legal opinions. AS 44.23.020(b)(4). The attorney general is also empowered to bring an action to recover state funds which were illegally paid or paid to a person not authorized to receive them. AS 37.10.090. Short of court action, the attorney general may advise against an agency course of action which he believes is against the public interest. See Mobil Oil Corp. v. Kelley, 353 F. Supp. 582, 586 (S.D. Ala. 1973), aff'd 493 F.2d 784 (5th Cir. 1974). Indeed, the attorney general is duty bound, in the service of the public interest, to give such advice, even in the face of objections from client agencies, officers, or legislators. D'Amico v. Board of Medical Examiners, 520 P.2d 10, 20 (Cal. 1974)(In Bank); Commonwealth ex rel. Hancock v. Paxton, 516 S.W.2d 865 (Ky. 1974). The first allegiance of the attorney general is to the public interest. Id.

In this opinion, we advise on various courses of action. This advice is based upon our best reading of the case law

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and our conviction that, were the specific situations presented to a court in a lawsuit, particular outcomes would follow. This is not a certain prospect: as will be made clearer below, we are, with few exceptions, dealing not with specific statutes but with the common law, a general and changing body of principles developed and applied by courts over the centuries. Our conclusions are based upon what we believe a court would do given those general principles, prevailing public policy, the public interest, and the continuing silence of the legislature in this area generally. Thus, this memorandum is a prescription for agency action in the face of conflicts of interests not addressed by statute, and a guide for legislative action should the agency or court resolution be unsatisfactory to the legislature.

State agencies, officers, and employees should heed advice in this memorandum until ordered to do otherwise by a court. See Gray v. Main, 309 F. Supp. 207, 220 (M.D. Ala. 1968); State v. District Court of Mayes County, 440 P.2d 700, 707 (Okla. 1968).

### III. STATUTES AND COMMON LAW PRINCIPLES

There are more than a dozen provisions dealing with conflict of interests scattered through the Alaska Statutes. Only AS 39.50 applies to state officers generally. One of that chapter's purposes is "to discourage public officials from acting

upon a private or business interest in the performance of a public duty," AS 39.50.010(a)(1), and it declares that "public office is a public trust which should be free from the danger of conflict of interest." AS 39.50.010(b)(1). Its main feature is its disclosure requirements. E.g., AS 39.50.020. The chapter's only prohibitions are contained in AS 39.50.090, subsection (a) of which provides:

No public official may use his official position or office for the primary purpose of obtaining financial gain for himself, or his spouse, child, mother, or father, or business with which he is associated or owns stock.

Violation of this subsection is a crime. AS 39.50.090(d).

Other Alaska conflict statutes incorporate AS 39.50 by reference, 1/ or impose other limitations. 2/ The other limitations range from a simple prohibition on the employment of close relatives, AS 14.14.140, to a duty to divest oneself of the conflicting interest or suffer forfeiture of one's office. AS 42.07.061.

The statutes mentioned above speak only to a relative handful of government agencies, boards, corporations, and commissions. 3/ In some cases, the statutes prescribe rules of conduct

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1/ AS 24.55.310; AS 46.12.090.

2/ AS 08.88.391; AS 14.14.140; AS 18.55.080; 18.55.500; AS 21.06.040; AS 24.20.291; AS 27.05.020; AS 37.12.065(b); AS 38.06.035; AS 42.07.061; AS 44.07.330; and AS 44.88.180.

3/ See nn.1, 2, supra.

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for officers of state agencies, but offer no guidance for employees. 4/ There remain hundreds of conflict situations to which no Alaska conflict legislation 5/ pertains except as AS 39.50. 6/

It is well-settled in the federal courts, particularly with regard to criminal sanctions for bribery and fraud, that the existence of criminal statutes (such as AS 39.50.090) does not extinguish the common law rights and remedies which would ordinarily exist. United States v. Kearns, 595 F.2d 729, 732-733 (D.C. Cir 1978); Continental Management, Inc. v. United States, 527 F.2d 613, 620 (Ct. Cl. 1975), and cases cited therein. We believe that the same rule would apply in Alaska: AS 39.50 will not be held to repeal, amend, or preempt the common law of conflict of interests which will apply "unless and until the Alaska legislature acts to modify it." Surina v. Buckalew, 629 P.2d

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4/ Compare AS 21.06.040, AS 27.05.020, and AS 44.07.330 with AS 44.88.180, AS 46.12.090, and AS 48.55.500.

5/ Personnel Rules 13 12.0 and 13 16.0 apply to most executive branch personnel and prohibit conflicts of interests in terms which essentially incorporate the standards of the common law.

6/ AS 39.50 governs the conduct of very few persons. AS 39.50.090(a)(1) limits the chapter's scope by excluding officers or employees below the director level from the coverage of the provision. There remain outside the coverage of the Act deputy directors in the executive branch, assistant attorneys general, appointive officers of the legislative branch (including legislative assistants), non-judicial officers of the court system, and all subordinate employees of these agencies. Thus, fully 90 percent of state officers and employees are beyond the reach of the criminal sanctions in AS 39.50.090(a).

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969, 973 (Alaska 1981). Thus, a person may act illegally without violating the criminal law, and serious non-penal consequences may follow.

Neither is it possible to formulate a rule of administrative decision for a given situation by analogy, based upon legislative pronouncements with respect to other agencies, for no consistent policy is apparent from an examination of the various statutes. One statute lays down no other rule than that school boards may not hire close relatives of the board members, AS 14.-14.140, and even that rule may be waived by the commissioner of education. Id. Thus, on local school boards, were it not for the common law rule and AS 39.50.090(a), a board member could let a contract to himself. 7/ In another agency, the law provides that a board member may not vote on a contract with his own firm or one in which he holds a "direct" ownership interest, but he need not divest himself of the interest. AS 44.88.180. In still other agencies, such interests are prohibited and the officer must dispose of the interest or forfeit the office. AS 42.07.-061. See AS 21.06.040; AS 24.20.291; AS 27.05.020; AS 38.06.035. From this range of solutions, no overriding general policy prescription is apparent for the guidance of public officers and employees.

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7/ A stricter rule applies to regional school boards. AS 14.-08.131.

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Most conflict of interests situations in Alaska are covered not by statute but by the common law. Judge Wickersham described the common law in In Re Burkell, 2 Alaska 108 (D. Alaska 1903):

The common law includes those principles, usages, and rules of action applicable to the government and security of person and property which do not rest for their authority on any express and positive declaration of the will of the Legislature (1 Kent's Com. 533); a system of elementary principles and of general judicial truths which are continually expanding with the progress of society, and adapting themselves to the gradual changes of trade and commerce and the mechanic arts and the exigencies and usages of the country (Pierce v. Props. Swan Point Cemetery, 10 R.I. 227, 14 Am. Rep. 667).

Id. at 117. See Howard v. Pfeifer, 443 P.2d 39, 44 (Alaska 1968). In Alaska, the common law controls judicial decision-making "unless and until the Alaska legislature acts to modify it." Surina v. Buckalew. See AS 01.10.010.

The common law of conflict of interests is clearest in the case of a contract made by a public officer who will, as a private person, benefit from the contract. The most comprehensive discussion of the typical situation, the controlling rule, and the underlying public policy is found in Beebe v. Supervisors of Sullivan County, 19 N.Y.S. 629 (App. Div. 1892), aff'd 37 N.E. 566 (N.Y. 1894):

At the time of his employment [by the board of supervisors as the board's attorney in several

collection matters], the defendant Anderson was a member of the board of supervisors. They were the agents of the county of Sullivan, and as such had no right to enter into contracts for their own benefit with their principal, the county of Sullivan. They are trustees, and have no right to enter into contracts with each other at the expense of those for whom they are acting, and whose interests they are bound to guard and protect. The illegality of such contracts does not depend upon statutory enactments. They are illegal at common law. It is contrary to good morals and public policy to permit municipal officers of any kind to enter into contractual relations with the municipality of which they are officers; and this principle applies with particular force to members of a board like the board of supervisors, which not only makes the contract, but subsequently audits the bill.

But it is said that in the case before us the supervisor who was employed did not vote on the question of his own employment, or upon the audit of his bill. That does not cure the evil. The influence upon fellow members is the same. His constituents are entitled to his judgment in making contracts, to his scrutiny in passing upon accounts, and to his unbiased and disinterested efforts in both; and he cannot make the violation or neglect of the duties he owes to his constituents the means of validating an otherwise illegal act. He cannot put on and off the garb of a public official, and discharge or refuse to discharge the duties of his trust, at will, and as best subserve his private interests. He is a part of the board of supervisors. Its act is his act; and he cannot, as a supervisor, make a contract with himself as a private citizen.

Id. at 630 (citations omitted).

#### IV. THE PROCESS OF COMMON LAW ADJUDICATION

In the absence of legislation, it is the task of the courts, with the assistance of the attorney general, other mem-

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bers of the bar, litigants, and amici curiae, to apply common law principles and policies articulated by the Beebe court and hundreds of other courts and commentators before and since. The task is a difficult one because, with the exception of the self-dealing public officer situation just described, the law is not settled; the courts must reason from the situations already addressed by the courts to solutions for new questions presented.

For this undertaking the common law is well-suited, as Chief Justice Lemuel Shaw noted in his classic description of the process:

It is one of the great merits and advantages of the common law, that, instead of a series of detailed practical rules, established by positive provisions, and adopted to the precise circumstances of particular cases, which would become obsolete and fail, when the practice and course of business, to which they apply, should cease or change, the common law consists of a few broad and comprehensive principles founded on reason, natural justice, and enlightened public policy modified and adapted to the circumstances of all the particular cases which fall within it.

....

Another consequence of this expansive character of the common law is, that when new practices spring up, new combinations of facts arise, and cases are presented for which there is no precedent in judicial decision, they must be governed by the general principle, applicable to cases most nearly analogous, but modified and adapted to new circumstances by considerations of fitness and propriety, of reason and justice, which grow out of those circumstances.

Norway Plains Co. v. Boston & Main Railroad, 1 Gray (67 Mass.)

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263 (1854), reprinted in Hart and Sacks, The Legal Process: Basic Problems In The Making And Application Of Law (1958) 386-395. 8/

It is our task to begin with the legislative solutions to determine if any statute answers any of the conflict questions posed. Failing that, we must turn to the common law and, beginning with the first principles, reason to the conclusion the courts would likely reach given the facts, judicial precedent in analogous cases, and prevailing public policy.

V. LEGISLATOR CONFLICTS

Two questions are presented concerning potential legislator conflicts: First, may a legislator, or his or her firm or business, contract with the state to provide the state with goods or services? Second, may a legislator receive a state loan?

The first question does not concern classic self-dealing, the letting of contracts by an official to himself or his relatives, associates or company. It is a different problem described in the following terms:

There is a great possibility that an official who has no immediate administrative connection with

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8/ Thus, even if there is no statute and not one case addressing the situation before a court, that court may, by the process of common law adjudication, formulate a wholly new answer to settle the dispute which gave rise to the lawsuit. See Howard v. Pfeifer, 443 P.2d at 44.

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the contract may be sufficiently motivated by his personal interest to exert whatever influence his position allows to pressure the public official who in fact has a direct responsibility concerning the contract to favor that personal interest. In this way, an official without a personal interest in the contract acquires a conflicting interest in the sense that he must choose between appeasing the pressuring official and properly discharging his duties in the matter.

Experience indicates the harm that may flow from [this situation]. Contracts may be awarded that are over-priced or unnecessary, or the performance rendered under the contract may be inferior, all because of official favoritism, compromise or intentional oversight. Even if the abuse is nothing more than partiality in awarding a contract, it may import an aspect of unfairness into public administration, engendering popular disrespect for government.

Note, Conflict-of-Interests of Government Personnel: An Appraisal of the Philadelphia Situation, 107 U. Pa. L. Rev. 985, 987-988 (1959). See Eisenberg, Conflict of Interest Situations And Remedies, 13 Rutgers L. Rev. 666, 686 (1959).

There are no cases which squarely hold, as a matter of common law, that a legislator, having no formal, institutional connection with the letting or oversight of a contract, can or cannot contract with the state. The archetypical situation arises in the municipal context where principles of separation of powers do not apply and assemblymen or councilmen act administratively as well as legislatively. Thus, an assemblyman might, in a private contractor capacity, offer goods or services to the city, which goods or services are accepted, inspected, super-