

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

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STATE OF ALASKA THIRD DISTRICT  
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Clerk of the Trial Courts

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4 BILL WIELECHOWSKI, RICK  
5 HALFORD, and CLEM TILLION,

Case No. 3AN-16-08940 CI

6 Plaintiffs,

7 v.

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9 STATE OF ALASKA, ALASKA  
10 PERMANENT FUND CORPORATION,

**APPENDIX TO PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT**

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TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Staff Report of Alaska Legislative Council,  
Dedicated and Special Funds, 3d Leg., 1st Sess. (January 1963)..... 1

H. JOURNAL, 9th Leg., 2d Sess. 38-40 (Alaska 1976) ..... 17

SSHJR 39, 9th Leg., 2d Sess. (Alaska Jan. 15, 1976) ..... 20

CS SSHJR 39 (JUD), 9th Leg., 2d Sess. (Alaska Mar. 24, 1976) ..... 22

H. JOURNAL, 9th Leg., 2d Sess. 685 (Alaska 1976) ..... 24

1980 Op. Atty' Gen. (No. 3; Mar. 19) . . . . . 26

Ch. 18, SLA 1980 . . . . . 36

Ch. 21, SLA 1980 . . . . . 51

1981 Inf. Op. Att'y Gen. (66-260-82; Dec. 22) . . . . . 61

Ch. 81, SLA 1982 . . . . . 62

Ch. 102, SLA 1982 . . . . . 73

1982 Op. Att'y Gen. (No. 13; Nov. 13) . . . . . 94

1983 Inf. Op. Att'y Gen. (366-328-83; Jan. 5) . . . . . 125

1983 Inf. Op. Att'y Gen. (366-484-83; Mar. 10) . . . . . 127

Ch. 28, SLA 1986 . . . . . 129

Ch. 134, SLA 1992. . . . . 132

Reply Brief for Petitioner, Hickel v. Cowper,  
874 P.2d 922 (Alaska 1992) (No. S-6294) (April 19, 1994) . . . . . 145

2009 Inf. Op. Att'y Gen. (JU2009-200-509; June 16) . . . . . 159

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Letter from Senator Bill Wielechowski, Alaska State Legislature  
to Angela Rodell, Executive Director, APFC (Aug. 10, 2016) ..... 199

Letter from Angela Rodell, Executive Direct, APFC  
to Senator Bill Wielechowski, Alaska State Legislature (Aug. 12, 2016). . . . . 201

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# ALASKA LEGISLATIVE COUNCIL

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DEDICATED AND SPECIAL FUNDS

STAFF REPORT TO THE FINANCE COMMITTEES

OF THE

THIRD LEGISLATURE - FIRST SESSION

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January

1963

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At its April, 1962, meeting, the Alaska Legislative Council directed its staff to investigate the use of dedicated funds. A series of short memorandum reports were prepared and considered by the Council. At the December, 1962, meeting, the Council requested that the staff summarize all available material on dedicated funds and submit it to the finance committees of the Third Legislature for their information and consideration. This report is presented in compliance with the Council request.

Draft Bill Abolishing Special Funds

Attached to this report is a draft bill that would abolish or alter a number of dedicated funds. The bill is intended by the Legislative Council only to serve as a basis of further consideration by the finance committees. The bill completely repeals the following funds:

- 1 - The Pest and Disease Control Fund
- 2 - The Radio-Telephone Fund
- 3 - The Old Age Assistance Fund (inactive)
- 4 - The Aeronautical Revolving Fund
- 5 - The Engineers and Architects Registration Fund
- 6 - The Boiler Inspection Fund
- 7 - The Small Business Enterprises Revolving Fund
- 8 - The Military Revolving Fund
- 9 - The Oil and Gas Conservation Fund
- 10 - The Vocational Rehabilitation Fund
- 11 - The FICA Administration Fund
- 12 - The Rural Development Fund (inactive)
- 13 - A special mental health fund for recoveries from patients.

In addition, special accounts would be established in the general fund for the cigarette tax for school construction, the sick and disabled fishermen's program, and the surplus property program.

This bill does not eliminate the programs financed through the special funds. Rather, the programs would be budgeted and reviewed as a part of the regular appropriation process of the legislature.

Action of Council on the Cigarette Tax; and the Sick and Disabled Fishermen's Fund

The Legislative Council at its December meeting disapproved elimination of two special dedications. In a close vote the Council decided against action that would substitute special accounts for:

- 1 - The Sick and Disabled Fishermen's Fund;
- 2 - The Cigarette Tax for School Construction.

Because of the effect of Section 7, Article IX, of the Constitution of the State of Alaska, taxes can no longer be dedicated by action of the legislature. If the two funds were to be abolished and replaced by special accounts, the dedication could never be reinstated.

General Background on Alaska's Dedicated Funds

During the 1960-1961 fiscal year, less than 10 per cent of the net state tax and license collections were paid into dedicated funds. This figure does not include the amounts credited to the special motor fuel accounts, or paid to cities in the form of shared taxes. Also excluded are those nontax revenues (including some of the mineral leases) used for special purposes. In a study prepared in 1955, the Tax Foundation, Inc., found that a number of states made extensive use of tax dedication for special purposes and noted that "as a result of earmarking, legislatures in 24 states had a voice in the expenditure of less than 50 per cent of fiscal 1954 tax collections."<sup>1</sup>

Article IX, Section 7, of the Alaska Constitution prohibits the further dedication of tax and license revenue:

"The proceeds of any state tax or license shall not be dedicated to any special purpose, except when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing on the date of ratification of this constitution by the people of Alaska."

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<sup>1</sup> The Tax Foundation, Inc., Earmarked State Taxes, Project Note No. 38, 1955.

Since 1959 the Alaska legislature has created a number of "special accounts" which differ from dedicated funds. A dedicated fund may be used only for the purposes set forth in the statute establishing it. It has been the practice of the legislature in the past three years to appropriate the money in some dedicated tax and license funds for purposes set out in the statute establishing the funds, but money in these funds in excess of the specified programs may not be diverted by legislative action. The only way the legislature may alter the uses of a dedicated fund is simply by abolishing the fund by law. A "special account" is a portion of the general fund consisting of the receipts from a particular tax source and serves to identify the amount of revenue collected from the source. The law establishing each major Alaskan (motor fuel tax) "special account" provides that the legislature "may" appropriate from it for public works undertakings. However, there is no prohibition against appropriating the resources of the "special accounts" for other purposes should the need arise.

The "special account" has the advantage of allowing the identification and appropriation of specific state resources, while providing maximum fiscal flexibility. Since the "special account" is not actually dedicated, it does not violate Article IX, Sec. 7, of the Constitution.

Dedicated funds are said to guarantee the availability of public funds for certain important services (e.g. schools and highways). The opposite view is that outright dedication limits legislative control over the appropriation and expenditure of state money. Dedication can lead to surpluses in some funds while the general operating fund is lean. The drawbacks to dedication, noted in the experience of other states, led to the development of the constitutional prohibition which Alaska has and to the replacement of some dedicated funds with "special accounts" in the general fund.

The Fish and Game Fund is the only dedicated tax fund created by the legislature since the ratification of the constitution. As is detailed later in this report, this dedication is required for participation in federal programs and so is constitutional. The legislature has abolished a number of tax dedications since statehood. Taxes no longer dedicated to special funds include the highway fuel tax, the aviation fuel tax, the watercraft fuel tax, and the school tax.

A description of dedicated funds follows:

#### State Tax and License Funds

1 - Fish and Game Fund. The Fish and Game Fund was first established in 1957 and was continued by the Fish and Game Code of Alaska, Ch. 94,

SLA 1959. Receipts from all sport fishing and hunting licenses and big game tags are placed in the fund. The federal aid programs in wildlife and sport fish restoration require the maintenance of such a fund if the state is to be eligible for participation in the federal matching programs.<sup>/2</sup> No money in the fund may be used for purposes other than those directly connected with the Department of Fish and Game. Portions of the fund are used to match federal money, but the greater part of the fund is used for state fish and game management as appropriated by the legislature. For the 1962-1963 fiscal year \$704,741 was appropriated from the fund for the following purposes:

State Game Management . . . . .	\$200,490
State Sport Fish Management . . . . .	194,246
Developmental (capital) Projects . . . . .	84,000
To Match Federal Wildlife Aid . . . . .	144,005
To Match Federal Fish Restoration Aid . . . . .	<u>82,000</u>
Total . . . . .	\$704,741

Revenues to the fund for 1962-1963 are estimated at \$670,410, and the additional \$34,000 appropriated for the year will come from fund balances.

The amount of federal aid to be received for the state matching portion is:

Wildlife Aid . . . . .	\$432,014
Fish Restoration Aid . . . . .	246,000

Federal aid is apportioned to the state according to formulas which include consideration of the area of the state and the number of license holders. State programs eligible for federal matching assistance are planned and executed by the appropriate divisions of the Department of Fish and Game after the money has been appropriated by the legislature. Actual federal aid receipts have not been subject to appropriation by the legislature. If the state is to continue to participate in the federal aid program, the present dedication of the Fish and Game Fund must be maintained.

2 - Oil and Gas Conservation Fund. All money collected under the provisions of the oil and gas conservation act (Ch. 40, SLA 1955) is paid into the Oil and Gas Conservation Fund. The sources of this fund are (1) a tax of 5 mills on each barrel of oil produced in the state; (2) a tax of 5 mills on each 50,000 cubic feet of natural gas produced in the state; (3) fees for well drilling permits at \$50 per permit. The taxes levied by Ch. 40, SLA 1955, are in addition to the oil and gas production taxes levied by Ch. 7, ESLA 1955.

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<sup>/2</sup> 16 USC Sec. 669; 16 USC Sec. 777.

The Oil and Gas Conservation Fund was established to carry out the administration of the oil and gas conservation act and was originally "appropriated to the Alaska Oil and Gas Conservation Commission...no such moneys shall revert to the general fund at the end of any fiscal period, but shall remain in the Oil and Gas Conservation Fund to cover future operating expenses of the Commission."<sup>3</sup> The State Organization Act of 1959 abolished the Alaska Oil and Gas Conservation Commission and transferred its duties to the Department of Natural Resources. However, the fund was not abolished and is now administered by the Department of Natural Resources. For the two-year period beginning July 1, 1961, and ending June 30, 1963, it is estimated that \$85,420 will be received into the fund, \$4,250 from well drilling permits, and \$81,170 from the taxes on production. Of this total \$25,000 was appropriated in 1961-1962 for the administration of the Division of Mines and Minerals, Department of Natural Resources, and for 1962-1963, \$60,000 was appropriated for the construction of an addition to the minerals building in Anchorage. Since the taxes were dedicated to the fund prior to the ratification of the constitution, the fund will continue unless abolished by the legislature.

3 - School Fund: Construction (Cigarette Tax). The first 5¢ per pack cigarette tax goes to this fund to be used to "rehabilitate, construct and repair the state's school facilities...and for costs of insurance on buildings comprising school facilities during the rehabilitation, construction and repair and for the life of the buildings."<sup>4</sup> Licenses for manufacturers, distributors, vendors, buyers and retailers are also paid to the fund. The additional 3¢ per pack levied in 1961 goes to the general fund. Resources of the school construction fund are divided according to a formula set out in the rules and regulations of the State Board of Education and described in detail later in this report. For fiscal year 1962-1963, \$217,500 in cigarette tax receipts was appropriated for state school construction. It is expected that over \$1,200,000 will be distributed directly to districts from the same source during the year. The dedication of the 5¢ per pack tax also preceded the ratification of the constitution.

4 - Sick and Disabled Fishermen's Funds. Sixty per cent of the receipts from individual commercial fishing licenses are covered into the Sick and Disabled Fishermen's Fund. Money in the fund is used to provide benefits for sick and disabled fishermen licensed to fish commercially in Alaska and qualifying for aid under the provisions of Ch. 100, SLA 1951, as amended. The fund is administered by the Commissioner of Labor with the assistance of the fishermen's fund advisory and appeals council. The

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<sup>3</sup> Sec. 15, Ch. 40, SLA 1955.

<sup>4</sup> AS 43.50.140.

commissioner must consult with the council before rendering a negative decision on an appeal filed for care under the fund. <sup>5</sup>

The Department of Labor estimates that \$100,000 will be expended from the fund during fiscal 1963 for approximately 1,200 injuries. The costs covered include hospital expenses, transportation, professional fees and drugs. Receipts to the fund during fiscal 1961 exceeded \$155,000, and the balance in the fund on June 30, 1961, was approximately \$188,000. It is the practice of the state to invest the unused balances of the fund. For 1962-1963, \$10,732 was appropriated from the fund to cover costs of administration of the program. The dedication of license fees to the fund is constitutional since it took place prior to the ratification of the constitution.

5 - Engineers and Architects Registration Fund. All license, registration and examination fees collected by the Board of Engineers and Architects Examiners go in a special fund in the state treasury. Expenses of the Board are paid from the fund. If, at the end of any calendar year, the fund balance exceeds \$10,000, the excess over \$10,000 goes to the general fund. During the fiscal year 1960-1961 over \$11,000 went into the Engineer's and Architects Registration Fund from license and examination fees. During the same year approximately \$11,000 was paid out for expenses of the board. The special fund has been in existence since 1939 and has never been appropriated by the legislature. Expenses are paid on vouchers drawn by the board and approved by the Department of Administration. The Board of Engineers and Architects Examiners is the only regulatory board in the state which uses a special fund. All other boards <sup>6</sup> pay licensing and examination fees directly to the general fund, and receive annual appropriations for operating expenses.

6 - Special State Land Fund. Receipts from land application fees and from charges for copies of maps and records received by the director of lands, Department of Natural Resources, are deposited into a special contingency fund. According to law, the fund may be used to cover the costs of processing land applications. <sup>7</sup> The fund is allocated to the division of lands by the governor and at the end of a fiscal year any unallocated fund balance over \$10,000 reverts to the general fund. During the 1961-1962 fiscal year \$505,115 was paid into the contingency fund, and \$91,173 was expended.

The constitutional prohibition of dedication does not apply to the special land fund since its sources of revenue are not taxes or licenses.

7 - Radio-Telephone Fund. Net tolls and rental fees resulting from the operation of the state radio-telephone system are deposited in the radio-

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<sup>5</sup> AS 23.35.040.

<sup>6</sup> Except for the Board of Governors of the Alaska Bar Assn. which maintains its own accounts.

<sup>7</sup> AS 38.05.035.

telephone fund. Partial maintenance and operation of the system is carried out with money in the fund, in addition to regular general fund appropriations. For the fiscal year ending June 30, 1962, \$20,673 was appropriated from the fund. For the current fiscal year \$12,000 was appropriated. Annual receipts to the fund average about \$11,000, but prior year balances have allowed in the past for appropriations which exceeded receipts. The fund was established in 1937. Since no taxes or licenses are involved, the constitutional prohibition on dedication does not apply.

Special Accounts

In addition to dedicated funds, the state treasury includes a number of important special accounts. These accounts constitute portions of the general fund and are subject to direct appropriation by the legislature. They include:

1 - The highway fuel tax account consisting of all receipts from the 8¢ a gallon tax on motor vehicle fuel and the 2¢ a gallon tax on motor fuel used in stationary engines and in certain nonhighway mobile equipment. According to law, the legislature may appropriate amounts from this account for various highway purposes. For fiscal 1963, \$4,187,660 is appropriated from the account. This amount constitutes the total estimated receipts from the tax for the year, and it is appropriated to cover part of the cost of highway maintenance. Highway construction appropriations and the remainder of the maintenance costs for 1962-1963 are appropriated from the state general fund.

2 - The aviation fuel tax account made up of the 3¢ per gallon tax on regular aviation fuel and the 1 1/2¢ per gallon tax on jet fuel. Under the present statute, the legislature may appropriate money from the account for aviation facilities. For fiscal 1963, \$1,164,000 is appropriated from the account as follows:

Division of Aviation, Administration . . . . .	\$ 504,588
Equipment. . . . .	30,000
Construction Projects. . . . .	<u>629,412</u>
Total . . . . .	\$1,164,000

3 - The watercraft fuel tax account which receives the 3¢ per gallon levy on marine fuel. The law establishing the account provides that the legislature may appropriate from the account for water and harbor facilities. For fiscal 1963, \$572,366 is appropriated from the account for:

Administration . . . . .	\$ 58,741
Maintenance . . . . .	12,000
Construction Projects. . . . .	<u>501,625</u>
Total . . . . .	\$ 572,366

Other Funds and Accounts

Various special purpose funds are maintained by the state. These include:

- 1 - Loan funds, including the veterans loan fund and the agricultural revolving fund.
- 2 - Bond funds established under the bonding laws.
- 3 - Retirement funds for teachers and state employees.
- 4 - Other trust funds including the unemployment compensation fund, second injury fund, and the permanent school fund.
- 5 - Funds for the receipt of some federal grants.
- 6 - Working capital and revolving reimbursement funds established to fit the special needs of the Department of Highways and the Department of Public Works. Included are the equipment revolving fund, the federal highway aid revolving fund and the building construction revolving fund.
- 7 - A few small administrative funds including the FICA administration fund, the boiler inspection fund, and the pest and disease control fund.

The Need for Fund Structure Revision

Part of the initial Council interest in revision of the state's fund structure resulted from proposals made by the Department of Administration. In a letter to the Council dated August 21, 1962, Commissioner of Administration Floyd Guertin noted:

"It is felt that a sweeping revision is needed in our fund concept in order to develop a sound financial management program for the state. This can be done by repealing in the various laws all references to the establishment of independent funds so as to arrive at the following funds by type:

General

The General Fund

Special Revenue

World War II Veterans  
Agricultural Loan Fund  
Fish and Game Fund

Working Capital Fund

Equipment Revolving Fund

Utility or Other Enterprise Fund

International Airports Revenue Fund

Bond Funds

U. of Alaska Gymnasium and Utilities Construction  
Fund  
Military Construction Fund  
Ferries, Roads & Highways Construction Fund  
Bush Airfield Construction Fund  
Hospital Construction Fund  
Vocational Education School Construction Fund  
(one fund for each bond issue)  
Bond Redemption Fund (A composite fund consisting  
of all the Bond Redemption Funds)

Trust and Agency Funds

Teachers' Retirement Fund  
Public Employees' Retirement Fund  
Public School Permanent Fund  
U. of Alaska Permanent Fund  
Trust and Agency Fund (deposits from the various  
departments held in trust)

Since each fund carries with it restrictions and limitations, the use of many funds brings about inflexibility in budgeting and in other phases of financial administration. In the State's operation, this practice has been used as a device to avoid legislative review in order that a given program may continue without being evaluated as a part of total State needs when balanced against the total financial resources of the State. As a result, programs are being carried out with insufficient legislative review and direction.

Article IV, Section 13 of the State Constitution provides in part that, 'No money shall be withdrawn from the treasury except in accordance with appropriations made by law.' We believe the spirit and intent of this provision is not being adhered to under

present practice, where expenditures are made in several program areas without legislative appropriation."

While proposing the change in fund structure, the Department of Administration representatives pointed out that they are not suggesting any change in present state programs or in current tax levies. Rather they maintain that simplification of the fund structure and dedication pattern would lead to increased legislative fiscal control over the programs involved. They note that implementation of this proposal could lead to total review of all programs by the legislature and authorization for expenditure only through appropriation. The various motor fuel tax "special accounts" are cited as successful examples.

#### Distribution of the Cigarette Tax for School Construction

In the course of its review of dedicated funds, the Council directed the staff to make a special investigation of the use of the 5¢ per pack cigarette tax for school construction. The material developed is included here for the information of the finance committees.

#### History of the Cigarette Tax

The original Alaska tobacco tax was enacted in 1949 and consisted of levies on all tobacco products. (Ch. 42, SLA 1949) Receipts from the tax were paid to a "school fund" for use for school construction and rehabilitation. In 1955 the tobacco tax was repealed and replaced with a 5¢ per pack tax on cigarettes only. (Ch. 187, SLA 1955) The dedication for school construction was retained in substantially the same form as in the tobacco tax. Since the dedication was made prior to the ratification of the constitution, it has remained in force to the present time. Certain license fees are also exacted from cigarette dealers and these, too, are used for school construction. In 1961 the legislature levied an additional 3¢ per pack on cigarettes, but this amount goes directly to the general fund. (Ch. 53, SLA 1961) Receipts from the dedicated portion of the cigarette tax have totaled approximately \$1,200,000 per year in the past three years.

#### The Distribution Formula

Although the initial (1949) tobacco tax act limited the use of proceeds to school construction and rehabilitation, it made no mention of how or where the money was to be distributed. Consequently the Commissioner of Education asked the advice of the Attorney General. The Attorney General replied that it was the responsibility of the Territorial Board of Education to devise "the formula and machinery under which the accumulated funds are to be

distributed." <sup>/8</sup> Twenty-one Alaska school superintendents met with the Commissioner of Education in January of 1950 and developed a formula which was then submitted to the Territorial Board of Education. The formula was adopted by the board at a meeting held in April, 1950. Only minor changes in the formula have been made since that date. It is now a part of the rules and regulations of the Department of Education.

The formula operates as follows:

- 1 - The cigarette tax money is initially divided between state operated and district schools. The portion for state schools is based on the percentage that their average daily membership is to the total average daily membership of public school pupils in the state. Attendance figures for the schools on military bases are not included in the computation, since the facilities on the bases are constructed with federal money.
- 2 - The school district portion is then distributed to districts as follows:
  - a - Each district receives a basic allotment of \$3,000.
  - b - One-half of the remaining amount is distributed to districts on the basis of the number of pupils in average daily membership.
  - c - The other half is distributed to districts on the basis of the number of professional employees employed by each district.

Table I shows how the formula operated for the 1961-1962 fiscal year. For that period allotments to district schools ranged from a high of \$421,405 paid to the Anchorage Independent School District to the \$4,288 allowed the Pelican City School District.

#### Use for School Construction Purposes

The rural school portion of the cigarette tax distribution is mingled with general fund appropriations for school construction and with available federal funds to carry out projects as directed by the State Department of Education. Approximately \$200,000 has been made available annually from this source and it has been used for a variety of projects, ranging from new schools, to wells, to major rehabilitation and repairs. In each of the last two fiscal years, the amount appropriated from the general fund for rural school construction has been more than double the amount available from the cigarette tax.

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<sup>/8</sup> Minutes of the Territorial Board of Education, April 18, 1950.

TABLE I

OPERATION OF CIGARETTE TAX DISTRIBUTION FORMULA

1961-1962

<u>Cigarette Tax to be distributed for this period</u> . . . . .	\$1,289,992.10
<u>Total ADM for all rural and district schools</u> 37,904.53	
ADM of rural schools 5,756.30	
ADM of district schools 32,148.23	
<u>Rural school share, based on ADM, is 15.19%</u>	
<u>of total amount collected</u> . . . . .	\$ 195,898.20
<u>Balance to be distributed to district schools</u> . . . . .	<u>\$1,094,093.90</u>
Total amount of basic allotment (29 x \$3,000) . . .	\$ 87,000.00
<u>Amount to be distributed on ADM basis</u> . . . . .	\$ 503,546.95
Amount per ADM . . . . .	\$15.66
<u>Amount to be distributed on teacher basis</u> . . . . .	\$ 503,546.95
No. of teachers in district schools, 1961-62 1483.5	
Amount per teacher . . . . .	\$339.43

Source: Department of Education

District schools use allocated cigarette tax school construction money in a variety of ways. Some use it to retire general obligation bond issues for construction, others use it to pay off debts to the Alaska Public Works Agency, while other districts accumulate funds for anticipated needed construction. In Table II the Acting Commissioner of Education gives his opinion as to how cigarette tax receipts are currently used in each district. In addition, the Commissioner has commented:

"Although we receive information on bonded indebtedness, it would be very difficult to determine to what extent the districts are relying on their Cigarette Tax to pay debt service and for what period of years their bond issues are for. From my personal knowledge of school district bonds, I would like to say that almost all districts have obligated their income for a period of 20 years. Most of the larger districts have several overlapping bond issues and the Cigarette Tax is not sufficient to pay the debt service, and they need to supplement these funds from other sources. For example, the Juneau-Douglas Independent School District uses sales tax receipts for this purpose. Anchorage has an increased millage rate."<sup>9</sup>

#### Advantages of the Present Allocation System

Advantages of retaining the present formula for distribution of the cigarette tax may be listed as:

- 1 - The formula is simple and allows for speedy and objective distribution of funds by the Department of Education.
- 2 - By including both average daily attendance which reflects enrollment growth and professional workers which reflect the number of classroom units needed, the formula covers two major indicators of construction need. These are growth criteria that are included in many state plans for construction aid to local schools.
- 3 - The formula obviously has worked quite well for over 12 years, since there has been no agitation from the districts for its revision. The Acting Commissioner noted that he did not feel that he could suggest any improvements in the present formula.
- 4 - Cigarette tax receipts are the only form of state support for district school construction, and the districts have come to count on this steady and reliable source of income.

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<sup>9</sup> Letter of November 13, 1962, from the Acting Commissioner of Education.

TABLE II

## USE OF CIGARETTE TAX RECEIPTS BY SCHOOL DISTRICTS

1962

School District	USE OR ANTICIPATED USE OF FUNDS
Anchorage	Debt service exceeds CT income. Bond issues extend to 1981.
* Angoon	CT used to repay local bank loan - completed in 1964.
Bristol Bay Bor.	Will use CT for future additions
Cordova	CT funds used for APW bonds and major rehabilitation.
Craig	CT used for APW bonds and major rehabilitation.
Fairbanks	Debt service exceeds CT income.
Girdwood	CT being accumulated for new school addition.
Haines	CT used for retirement of APW bonds and major rehabilitation.
Hoonah	CT being accrued for new addition.
Hydaburg	CT being accrued for replacement of condemned facilities.
Juneau-Douglas	Debt service exceeds CT income.
Kake	CT being used for APW bond retirement.
Kenai	CT being accumulated to pay debt service on building bond issue.
Ketchikan	CT being used to retire APW bonds.
King Cove	CT being accrued for replacement of existing building.
Klawock	CT being used for repayment of APW bonds.
Kodiak	CT being used to retire APW bonds.
Nenana	CT being used to retire APW bonds.
Nome	CT being used to retire APW bonds.
North Pole	CT being used to repay State loan.
Palmer	CT being used to retire APW bonds.
Pelican	CT being accrued for future building addition.
Petersburg	CT being used to retire APW bonds.
Seldovia	CT being used to retire APW bonds.
Seward	CT being used to retire APW bonds.
Sitka	Debt service exceeds CT income.
Skagway	CT being used to retire APW bonds.
Unalaska	CT being accrued to replace obsolete facility.
Valdez	CT being used to retire APW bonds.
Wrangell	CT being used to retire APW bonds.
Yakutat	CT being accrued for addition to existing building.

\* In addition, Angoon is accruing funds for replacement of obsolete school facilities.

Source: Department of Education

Disadvantages of the Present Allocation System

The following points about the formula are raised:

- 1 - The operation of the formula results in the expenditure of over \$1 million in state tax money yearly without appropriation or periodic review by the legislature or its finance committees.
- 2 - The formula does not take into consideration the comparative ability of individual districts to pay for school facilities.
- 3 - The formula was originally adopted as a regulation of the Board of Education and has been used since 1950 to distribute the tax money. There is some question as to the propriety of using a regulation to allocate tax money. Distribution of the tax proceeds could be considered a proper matter of legislation rather than regulation.

Possible Alternatives

It is obvious that the school districts have come to rely on distributions of the cigarette tax under the present formula, and it can be assumed from available information that many of the larger districts have planned at least some of their general obligation bond issues around this source of income. There is also little question that the formula has proved effective as a vehicle for distributing the dedicated portion of the cigarette tax. However, the present system allows the legislature little control over the expenditure of a major state tax.

Should alteration of the present system be contemplated, a number of alternatives could be considered:

- 1 - The dedication could be left intact and the formula made a matter of law rather than board regulation.
- 2 - A special account could be created as in the attached draft bill, but the formula could also be included in law.
- 3 - A special account could be created as in the draft bill without mention of the distribution formula, and the Department of Education could be directed to propose alternative formulas for consideration by the 1964 legislature. In this case 1963-1964 appropriations could be made under the currently existing formula.

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am

Request...  
1897 to permit  
forests in Alaska and  
cultural techniques

was read the first time and referred to the Resources  
Committee.

COMMUNICATIONS

A letter dated January 13, 1976 to Speaker Bradner from  
Commissioner Brooks, Department of Fish and Game, was  
read, enclosing the 1975 Annual Report of activities of  
the Alaska King Crab Marketing and Quality Control Board.  
Copies of this report were distributed to each member  
of the House.

REPORTS OF STANDING COMMITTEES

HJR 47 The State Affairs Committee has had HOUSE JOINT RESOLUTION  
NO. 47 (commending the United States Forest Service for  
its Alaska Marine Highway Visitor Information Service pro-  
gram) under consideration and a majority of the members  
of the Committee recommends it do pass. The report was  
signed by Mr. McKinnon, Chairman, and concurred in by  
McKinnon, Wallis, Fischer, H. Beirne, M. Beirne, Miller  
and Parker.

HOUSE JOINT RESOLUTION NO. 47 appears on today's calendar.

INTRODUCTION, FIRST READING AND REFERENCE  
OF HOUSE RESOLUTIONS

The Governor's transmittal letters appear following the  
resolution or bill to which each pertains.

SSHJR SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 39 by  
39 the Rules Committee by Request of the Governor

Proposing an amendment to the Alaska  
Constitution, establishing a permanent  
fund for certain proceeds derived from  
non-renewable resources

was introduced, read the first time and referred to the  
Committees on Finance and Judiciary.

January 15, 1976

HOUSE JOURNAL

39

"January 15, 1976

The Honorable Mike Bradner  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

SSHJR  
39

Dear Mr. Speaker:

In accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a sponsor substitute for House Joint Resolution 39, proposing an amendment to the Constitution of the State of Alaska establishing a permanent fund for mineral leasing revenues.

The resolution proposes a constitutional amendment establishing a constitutional permanent fund into which 10 percent of all mineral lease rentals, royalties, royalty sale proceeds, revenue sharing payments, bonuses, and mineral production taxes would automatically be dedicated. The resolution also provides that the legislature may appropriate additional amounts to the permanent fund.

With respect to mineral leasing, the dedication of revenues would be 10 percent of the amount of money initially received by the State. For example, 10 percent of the amount equivalent to the rentals, royalties, and bonuses which must be paid into the Alaska Native Fund would be dedicated to the permanent fund even though it must be paid into the Alaska Native Fund. Also an amount equivalent to the value of royalties taken in kind would not be dedicated, but 10 percent of the proceeds from the sale of royalty taken in kind would be dedicated to the fund. Also, revenue sharing payments which the State receives from federal mineral leasing would be dedicated.

With respect to taxes, 10 percent of all mineral production taxes would be dedicated to the permanent fund. This would include the State's oil and gas properties production tax under AS 43.55 (severance tax), the State's mining license tax under AS 43.65, and the State's oil and gas regulation and conservation tax under AS 43.57 (conservation tax). These taxes would be dedicated to the fund regardless of how they are amended or changed in the future. The fund would not include the oil and gas exploration, production and pipeline transportation property tax under AS 43.56 (20 mil property tax) or the oil and gas reserves ad valorem tax under AS 43.58 (reserve tax).

The amount to be dedicated would be based upon the gross amount of tax to be received by the State. For example, 10 percent of an amount equivalent to the tax revenue required to be paid into the Alaska Native Fund would be dedicated even though it must be paid into the fund. Also 10 percent of the amount of production taxes not received in cash by the State because of the application of reserve tax credit would be dedicated to the fund.

The principal of the fund would be used only for investment in income-producing investments which the legislature would establish and change to meet current investment needs of the State. The fund could not be used to fund the general operating expenditures or capital improvements of the

January 15, 1976

SS

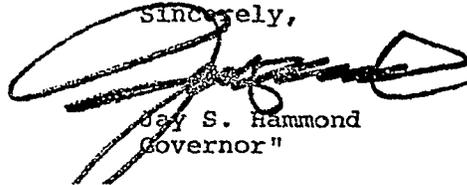
HJR

39

State. The principal of the fund could not finance capital expenditures either directly or be purchasing State obligations, but the fund could purchase obligations of separate State authorities. The income of the fund would be deposited into the general fund without any permanent fund restrictions.

I have introduced this resolution proposing a constitutional amendment because I believe strongly that the revenues from our non-renewable resources belong to future generations of Alaskans as well as ourselves. A permanent fund as I have proposed will set aside a modest portion of the proceeds from the exploitation of our non-renewable resources for investment in our future while leaving sufficient revenues for our present needs. I urge your immediate and favorable consideration of this proposed constitutional amendment so that it may be placed before the voters at the next general election.

Sincerely,



Jay S. Hammond  
Governor"

HJR HOUSE JOINT RESOLUTION NO. 48 by the Rules Committee by  
48 request of the Governor

Proposing an amendment to the Alaska  
Constitution relating to the right to  
trial by jury

was introduced, read the first time and referred to the  
Judiciary Committee.

HJR The following Governor's letter pertains to the above  
48 resolution as well as HOUSE BILL NOS. 574 and 575.

HB  
574  
HB  
575

"January 15, 1976

The Honorable Mike Bradner  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. Speaker:

In accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a package of legislation recommended by the Medical ...

Introduced: 1/15/76  
Referred: Finance and  
Judiciary

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 39

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the  
6 Alaska Constitution, establishing  
7 a permanent fund for certain pro-  
8 ceeds derived from non-renewable  
9 resources.

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

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

13 SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or  
14 license shall not be dedicated to any special purpose, except as pro-  
15 vided in section 15 and except when required by the federal government  
16 for state participation in federal programs. This provision shall not  
17 prohibit the continuance of any dedication for special purposes exist-  
18 ing upon the date of ratification of this constitution by the people  
19 of Alaska.

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

22 SECTION 15. PERMANENT FUND. Ten per cent of all mineral lease  
23 rentals, royalties, royalty sale proceeds, revenue sharing payments,  
24 bonuses, and mineral production taxes received by the state shall be  
25 placed in a permanent fund, the principal of which shall be used only  
26 for income investments. The legislature may appropriate additional  
27 amounts to the permanent fund which shall become a part of the principal  
28 of the fund. All income from the permanent fund shall be deposited in  
29 the general fund.

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

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Original sponsor: Rules Committee by  
request of the Governor

Offered: 3/24/76  
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 39

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Alaska Con-  
6 stitution, establishing an Alaska Permanent  
7 Fund for certain proceeds derived from non-  
8 renewable resources.

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

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

12 SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or  
13 license shall not be dedicated to any special purpose, except as pro-  
14 vided in section 15 of this article or [WHEN REQUIRED] by the federal  
15 government for state participation in federal programs. This provision  
16 shall not prohibit the continuance of any dedication for special pur-  
17 poses existing upon the date of ratification of this constitution by the  
18 people of Alaska.

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

21 SECTION 15. ALASKA PERMANENT FUND. Twenty-five per cent of all  
22 mineral lease rentals, royalties, royalty sale proceeds, federal mineral,  
23 revenue sharing payments, bonuses, and all mineral production taxes  
24 received by the state shall be placed in a permanent fund, the principal  
25 of which shall be used only for those income producing investments  
26 specifically designated by law as eligible for permanent fund invest-  
27 ments. The legislature may appropriate additional amounts to the perma-  
28 nent fund which shall become a part of the principal of the fund. All  
29 income from the permanent fund shall be deposited in the general fund

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unless otherwise provided by law.

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

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

March 24, 1976

SSHJR  
39"JOINT CHAIRMANS' REPORT ON  
CS SSHJR 39

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

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

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

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

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

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

March 24, 1976

HOUSE JOURNAL

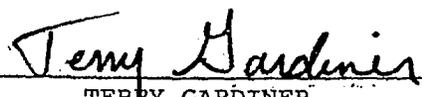
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The principal of the Fund would be used only for investment in income-producing investments which the legislative would establish and change from time to time to meet the needs of the state. The Fund would come into existence and accumulate 25 percent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

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

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

  
HUGH MALONE  
Chairman House Finance Committee

  
TERRY GARDINER  
Chairman House Judiciary Committee"

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

HJR  
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OPINION NO. 3

JAY S. HAMMOND, GOVERNOR

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

March 19, 1980

The Honorable Clem Tillion  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: CSSB 122 (rules), tax  
refunds and permanent  
fund dividends

Dear Mr. President:

You have asked for our advice on certain features relating to tax refunds and permanent fund dividends.

First, you have asked whether the tax refund or reduction can be limited to resident taxpayers. While the constitution may still permit discrimination on the basis of residence with respect to the distribution of the state's resources, Hicklin v. Orbeck, 437 U.S. 518, 529 (1978) (dicta), it does not permit the states to arrange their tax laws so as to levy a tax solely on non-residents. Austin v. New Hampshire, 420 U.S. 656 (1975). The Austin decision makes it pretty clear that where, as a practical matter, the residents escape the tax and the non-residents pay it, the law violates the privileges and immunities clause of the federal constitution, art. IV, §2, ch. 1, and is invalid. Accordingly, resident and non-resident taxpayers should be treated equally with respect to refunds or reductions.

Senator Clem Tillion  
Re: Tax refunds & permanent fund

March 19, 1980  
Page 2

The general tax refund and the permanent fund dividend share one stated purpose; that is, to distribute portions of the permanent fund income to the citizens of Alaska. Income from the permanent fund can be traced directly to the state's ownership of lands and the natural resources extracted from them. \*/ While there are limitations on the manner in which a state may deal with its natural resources, \*\*/ there appears to be no constitutional requirement that a state share the income from those resources with every citizen in the nation.

It is likely that a court would find that a non-resident had no right at all to a share of the income from Alaska's natural resources, and therefore even likelier that it would find that the denial of a share did not infringe upon a non-resident's fundamental or important rights. The state's interests, on the other hand, in restricting shares in its natural resources income to its residents are several and substantial.

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\*/ Article IX, Sec. 15, of the Alaska Constitution provides in part, "At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the state shall be placed in a permanent fund . . . ."

\*\*/ For example, it would be an impermissible burden on interstate commerce if a state law were enacted prohibiting the export of oil and gas from the state. Hughes v. Oklahoma, 47 U.S.L.W. 4447 (April 24, 1979).

Senator Clem Tillion  
Re: Tax refunds & permanent fund

March 19, 1980  
Page 3

First the legislature is required by Article VIII, section 2, of the Alaska Constitution to:

[P]rovide for the utilization, development, and conservation of all natural resources belonging to the state . . . for the maximum benefit of its people.

(Emphasis added.)

Further, the state has a legitimate interest in encouraging its citizens to become aware of, and involved in, the important decisions that are made by their elected representatives concerning the management and disposal of the state's natural resources and the expenditure of income derived from those resources. Providing residents with a direct stake in those decisions certainly furthers that purpose. Providing non-residents with a similar stake would not only fail to serve that purpose, but would tend to dilute the interest that residents would have in the management of the permanent fund.

We believe that on balance the state's interests outweigh whatever interest a non-resident might claim to a share of permanent fund income, and that a court would therefore apply a less stringent standard of equal protection review. That is, a court would simply ask whether the residency requirement has a "fair and substantial relation" to the purposes of the act. Commercial Fisheries Entry Commission v. Apokedak, Op. No. 2011 (Alaska, February 5, 1980).

Senator Clem Tillion  
Re: Tax refunds & Permanent fund

March 19, 1980  
Page 4

The permanent fund dividend is structured in such a way that the total amount to be distributed each year can be closely tied and directly traced to permanent fund income, since the value of each dividend is to be calculated on the basis of a percentage of permanent fund income. Although some general fund money would be required initially because of the \$10 minimum value set for each dividend, it appears that within a very few years (the precise number depending upon whether contributions to the principal of the permanent fund are increased), the dividends will be funded entirely by the 10 percent of permanent fund income allocated for them. The relationship, then, between the purposes of the legislation and the residency requirement seems clearly to be both fair and substantial, at least with respect to the payment of permanent fund dividends.

Your third question was whether the increased amounts of benefits based on length of residency for the income tax reduction and for the dividend is constitutional.

We believe that different treatment based on duration of residency always raises constitutional issues. The Alaska Supreme Court has upheld durational-residency criteria only with respect to running for public office. Gilbert v. State, 526 P.2d 1131 (Alaska 1974); Castner v. City of Haines, 598 P.2d 953 (Alaska 1979). It has stricken such criteria with

Senator Clem Tillion  
Re: Tax refunds & Permanent fund

March 19, 1980  
Page 5

respect to preferences for employment, Hicklin v. Orbeck, 565 P.2d 159 (Alaska 1977), rev'd on other grounds, 437 U.S. 518 (1978), voting, State v. Van Dort, 502 P.2d 453 (Alaska 1972), and filing for a divorce, State v. Adams, 522 P.2d 1125 (Alaska 1974). None of these cases, however, involved the gradual increase in benefits based on length of residency.

With respect to the one-to-5-year differentials for tax reductions (the five years is dictated by the existence of tax records), the increase in the percentage the tax is reduced is relatively small from year to year and short in duration over the entire period. The differential hinders no one's right to travel to Alaska, and indeed, encourages persons to come to establish a permanent residence. It also encourages non-resident taxpayers who earn income in Alaska, to continue contribution to the Alaska economy. The tax burden is one that has been shared by each longer-term taxpayer in turn, and it is not placed solely on the new taxpayer. By ensuring that each employed or self-employed person earning income in Alaska pays taxes at first, the differential gives each a closer economic tie to the government, a share in the common weal, a degree of paid-for citizenship, and with respect to non-residents, an assurance that they have paid at least in part for their share of governmental services. It might well pass constitutional muster. Cf., Starns v. Malkerson, 326 F.Supp. 234 (D. Minn. 1970), aff'd, 401 U.S. 985 (1971) (university tuition).

Senator Clem Tillion  
Re: Tax refunds & Permanent fund

March 19, 1980  
Page 6

The durational-residence classification for accrual of dividends running back to statehood has a different basis. The dividends represent a distribution of mineral revenues to the state's citizens. Their beneficial interest in the resources runs back to the state's acquisition of rights to the resources, i.e., to 1959. Hicklin v. Orbeck, 437 U.S. 518, 528 n.11 (1978). At statehood, that interest was shared by the then residents, and as each new citizen was born or arrived to take up residence, each acquired a beneficial interest in equal share with those who were here before. The durational-residence classification results in each resident's receiving one share for each year of residence beginning at statehood or whenever after that time his residence began.

The benefits for oldtimers are unquestionably greater than for newcomers. However, newcomers are not denied a benefit outright. Rather, each newcomer begins participation in the dividend program and earns an increasing dividend with each continued year of residence. And eventually, today's newcomers will "catch up," and become tomorrow's oldtimers. Accruing dividends on the basis of length of residence does not penalize travel between states in the sense that it imposes a barrier to any right, privilege, benefit, power, or activity which the traveler would have enjoyed in his state of origin. Thus, the dividend program should not be viewed as penalizing or frustrating the right to travel into a different state and

Senator Clem Tillion  
Re: Tax refunds & Permanent fund

March 19, 1980  
Page 7

make a home there. Indeed, it tends to encourage the exercise of that right. Accordingly, the strict-scrutiny test should not be applied. Cf., Hicklin v Orbeck, 565 P.2d 159, 163 n. 5 (Alaska 1977), rev'd on other grounds, 437 U.S. 518 (1978).

The question then becomes whether the classification of persons on the basis of the duration of their residency in Alaska for purposes of disbursing a portion of the income from Alaska's mineral revenues is reasonable rather than arbitrary, resting upon some difference which has a fair and substantial relation to the object of the legislation, with all persons similarly situated being treated alike. Isakson v. Rickey, 550 P.2d 359 (Alaska 1976); State v. Wylie, 516 P.2d 142 (Alaska 1973). Clearly the accrual of dividends based on residence length is directly and inextricably related to the date at which each resident's interest in Alaska's resources arose. If that rationale is accepted, then the accrual of dividends based on residence will be sustained.

Finally, you have asked whether the payments of dividends can be prescribed by law to be made directly from the income of the Alaska Permanent Fund. The last sentence of the constitutional amendment which established the fund provides as follows:

All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

Senator Clem Tillion  
Re: Tax refunds & Permanent fund

March 19, 1980  
Page 8

Alaska Const., art. IX, § 15 (emphasis added). The question is just what is the effect of the concluding, emphasized phrase.

Because of decisional law applying constitutional provisions which require disclosure of the principal objects and effects of amendments, the effect of the words, "unless otherwise provided by law" may be quite limited. Our reading of the decisional law on constitutional amendments leads us to the conclusion here that the legislature probably can provide by law for income from the fund to be automatically deposited back into the fund or distributed as dividends. Both are part of the amendment's history and both are closely related to the fund itself. Use of the income without annual appropriations for other purposes, say for loan programs or guarantees, has no close relationship to the fund itself and probably would not pass constitutional muster. Indeed, it is possible that the Alaska Supreme Court could find that an appropriation is required under article IX, section 13, even for deposits to the fund and distributions of income. We doubt this would occur, but it is possible.

In sum, while we cannot be certain of the outcome, tax refunds or reductions cannot be limited to residents, but the dividends from the permanent fund can be limited to residents. While any durational-residence requirement raises serious legal issues, a one-to-five year, phased-in durational

Senator Clem Tillion  
Re: Tax refunds & Permanent fund

March 19, 1980  
Page 8

Alaska Const., art. IX, § 15 (emphasis added). The question is just what is the effect of the concluding, emphasized phrase.

Because of decisional law applying constitutional provisions which require disclosure of the principal objects and effects of amendments, the effect of the words, "unless otherwise provided by law" may be quite limited. Our reading of the decisional law on constitutional amendments leads us to the conclusion here that the legislature probably can provide by law for income from the fund to be automatically deposited back into the fund or distributed as dividends. Both are part of the amendment's history and both are closely related to the fund itself. Use of the income without annual appropriations for other purposes, say for loan programs or guarantees, has no close relationship to the fund itself and probably would not pass constitutional muster. Indeed, it is possible that the Alaska Supreme Court could find that an appropriation is required under article IX, section 13, even for deposits to the fund and distributions of income. We doubt this would occur, but it is possible.

In sum, while we cannot be certain of the outcome, tax refunds or reductions cannot be limited to residents, but the dividends from the permanent fund can be limited to residents. While any durational-residence requirement raises serious legal issues, a one-to-five year, phased-in durational

Senator Clem Tillion  
Re: Tax refunds & Permanent fund

March 19, 1980  
Page 9

classification for tax refunds or reductions might withstand constitutional scrutiny; and an accrual of dividends based on residence running back to statehood also might withstand constitutional scrutiny. The legislature's discretionary power over permanent fund income may be limited, but it is probably broad enough for it to prescribe for the distribution of a portion of the income to the people without annual appropriation.

Sincerely yours,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:  
Wilson L. Condon  
Deputy Attorney General

WLC:md(bwb)



# LAWS OF ALASKA

1980

Source

FCCSSB 161

Chapter No.

18

## AN ACT

Relating to the Alaska permanent fund; to nonrenewable resource revenues; to legislative oversight; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 10

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: April 8, 1980  
Actual Effective Date: April 9, 1980 except for Section 10 which takes effect upon transfer of the Alaska permanent fund to the Alaska Permanent Fund Corporation.

AN ACT

Relating to the Alaska permanent fund; to nonrenewable resource revenues; to legislative oversight; and providing for an effective date.

\* Section 1. FINDINGS. The legislature finds that there is a substantial need for oversight of the performance of those agencies of the state which perform lending or investment functions since those functions do not receive the detailed review to which other expenditures of public money are subject, and therefore the knowledge necessary for sound legislation in this area is not readily available. There is a need for legislative oversight which will provide information on the policy and performance of these agencies, the extent to which the agencies conform to statutory intent, and the impact of their performance on the economy and the state treasury.

\* Sec. 2. AS 24.20 is amended by adding new sections to read:

Sec. 24.20.156. PURPOSES. The purposes of the Legislative Budget and Audit Committee include

(1) monitoring and reporting

(A) the performance of the agencies of the state which perform lending or investment functions,

(B) the extent to which the performance of these agencies has contributed to the fiscal, financial, economic and social improvement of the state and its citizens,

(C) the extent to which these agencies and the executive have prepared and coordinated short-term and long-term economic,

Chapter 18

fiscal, investment and financial planning;

(2) holding these agencies accountable to statutory intent in their performance by recommending, where appropriate, changes in policy to the agencies or changes in legislation to the legislature;

(3) annually reviewing the extent of capitalization of the investment funds of the state and alternative investment policy for the general fund surplus and recommending needed legislation.

Sec. 24.20.206. DUTIES. The Legislative Budget and Audit Committee shall

(1) report to the legislature its recommendations relating to the confirmation of appointees to the Board of Trustees of the Alaska Permanent Fund Corporation and the Board of Trustees of the Alaska Renewable Resources Corporation;

(2) annually review the long-range operating plans of all agencies of the state which perform lending or investment functions;

(3) review periodic reports from all agencies of the state which perform lending or investment functions;

(4) present a complete report of investment programs, plans, performance, and policies of all agencies of the state which perform lending or investment functions to the legislature within 30 days after the convening of each regular session;

(5) present to the legislature within 30 days after the convening of each regular session a review of the report of the governor under AS 37.07.020(d) with recommendations for needed legislation;

(6) in conjunction with the finance committee of each house recommend annually to the legislature the investment policy for the general fund surplus and for the income from the permanent fund;

(7) provide for an annual post audit and annual operational and performance evaluation of the Alaska Permanent Fund Corporation in-

Chapter 18

1 vestments and investment programs.

2 Sec. 24.20.209. RECORDS. The Legislative Budget and Audit Commit-  
3 tee shall keep a complete file of all reports presented to it and all  
4 reports presented by it to the legislature or to a legislative commit-  
5 tee.

6 \* Sec. 3. AS 24.20.201(a) is amended by adding new paragraphs to read:

7 (9) hold public hearings on the confirmation of the members  
8 of the Board of Trustees of the Alaska Permanent Fund Corporation, and  
9 the members of the Board of Trustees of the Alaska Renewable Resources  
10 Corporation;

11 (10) make recommendations to the legislature and to agencies  
12 of the state which perform lending or investment functions concerning  
13 the structure and operating practices of the agencies;

14 (11) enter into and enforce all contracts necessary or desira-  
15 ble for the functions of the committee.

16 \* Sec. 4. AS 37.07.020 is amended by adding a new subsection to read:

17 (d) The governor shall annually, before the convening of the  
18 legislature, report to the legislature through the Legislative Budget  
19 and Audit Committee the long-range fiscal and economic consequences of

20 (1) alternate levels of capitalization of the investment  
21 funds of the state; and

22 (2) alternative investment policy for the general fund sur-  
23 plus.

24 \* Sec. 5. AS 37 is amended by adding a new chapter to read:

25 CHAPTER 13. ALASKA PERMANENT FUND.

26 Sec. 37.13.010. ALASKA PERMANENT FUND. (a) Under art IX, sec. 15  
27 of the state constitution, there is established as a separate fund the  
28 Alaska permanent fund. The Alaska permanent fund consists of

29 (1) 25 percent of all mineral lease rentals, royalties,

Chapter 18

royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued on or before December 1, 1979, and 25 percent of all bonuses received by the state from mineral leases issued on or before February 15, 1980;

(2) 50 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued after December 1, 1979, and 50 percent of all bonuses received by the state from mineral leases issued after February 15, 1980;

(3) any other money appropriated to or otherwise allocated by law to the Alaska permanent fund.

(b) Payments due the Alaska permanent fund under (a) of this section shall be made to the fund once each month.

(c) The Alaska permanent fund shall be managed by the Alaska Permanent Fund Corporation established in this chapter.

Sec. 37.13.020. FINDINGS. The people of the state, by constitutional amendment, have required the placement of at least 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments and bonuses received by the state into a permanent fund. The legislature finds with respect to the Alaska Permanent Fund Corporation that

(1) the corporation should provide a means of conserving a portion of the state's revenues from mineral resources to benefit all generations of Alaskans;

(2) the corporation's goal should be to maintain safety of principal while maximizing total return;

(3) the corporation should be used as a savings device

Chapter 18

1 managed to allow the maximum use of disposable income from the corpora-  
2 tion for purposes designated by law.

3 Sec. 37.13.030. PURPOSE. It is the purpose of this chapter to  
4 provide a mechanism for the management and investment of those permanent  
5 fund assets allocated to the Alaska Permanent Fund Corporation in a  
6 manner consistent with the findings in AS 37.13.020.

7 Sec. 37.13.040. ALASKA PERMANENT FUND CORPORATION. There is  
8 established the Alaska Permanent Fund Corporation. The corporation is a  
9 public corporation and government instrumentality in the Department of  
10 Revenue managed by a board of trustees. The purpose of the board is to  
11 manage and invest the assets of the corporation in accordance with this  
12 chapter.

13 Sec. 37.13.050. COMPOSITION AND QUALIFICATIONS OF BOARD OF TRUS-  
14 TEES. (a) The Board of Trustees of the Alaska Permanent Fund Corpora-  
15 tion consists of six members appointed by the governor. Three of the  
16 members shall be heads of principal departments of state government, one  
17 of whom shall be the commissioner of revenue. Three members shall be  
18 appointed by the governor from the public and may not hold any other  
19 state or federal office, position or employment, either elective or  
20 appointive, except as a member of the armed forces of either the United  
21 States or of this state. Members other than the commissioner of revenue  
22 shall be separately confirmed by a majority of the members of the legis-  
23 lature in joint session.

24 (b) The three public members of the board shall have recognized  
25 competence and wide experience in finance, investments, or other busi-  
26 ness management-related fields.

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

29 Sec. 37.13.060. TERM OF OFFICE. The members of the board shall be

Chapter 18

1 appointed for terms of three years, and they may be reappointed subject  
2 to confirmation by a majority of the members of the legislature in joint  
3 session. Terms shall be staggered. Initial terms for members other  
4 than the commissioner of revenue shall be two members serving for one  
5 year, two members serving for two years, and one member serving for  
6 three years.

7 Sec. 37.13.070. REMOVAL AND VACANCIES. (a) The governor may  
8 remove a member of the board from office. However, the removal of a  
9 member of the board is subject to disapproval by a vote of a majority of  
10 the members of the legislature at the first joint session held 10 or  
11 more days after the legislature receives notice of the removal from the  
12 governor. A removal by the governor shall be in writing and shall state  
13 the reason for the removal. A member who is removed by the governor may  
14 not participate in board business and may not be counted for purposes of  
15 establishing a quorum between the time he receives written notice of his  
16 removal from the governor and the time that the legislature's power to  
17 disapprove the removal under this subsection expires. If the legisla-  
18 ture disapproves the removal of a board member, the board member shall  
19 be reinstated.

20 (b) A vacancy on the board shall be promptly filled by appointment  
21 by the governor and confirmation by a majority of the members of the  
22 legislature in joint session. An appointee to a vacancy shall hold  
23 office for the balance of the term for which his predecessor on the  
24 board was appointed. If a vacancy arises on the board while the legis-  
25 lature is not in session, the governor may appoint an interim board  
26 member who shall exercise the powers of a board member until the legis-  
27 lature fails to confirm the appointment of the interim board member.

28 (c) A vacancy on the board does not impair the authority of a  
29 quorum of the board to exercise all the powers and perform all the

1 duties of the board.

2 Sec. 37.13.080. QUORUM. Four members of the board constitute a  
3 quorum for the transaction of business and the exercise of the powers  
4 and duties of the board.

5 Sec. 37.13.090. COMPENSATION OF BOARD MEMBERS. Public members of  
6 the board receive an honorarium of \$400 for each meeting day if they  
7 attend the meeting. All members of the board are entitled to per diem  
8 and travel allowances as provided by law for members of state boards and  
9 commissions.

10 Sec. 37.13.100. CORPORATION STAFF. The board may employ and  
11 determine the salary of an executive director. The executive director  
12 may, with the approval of the board, select and employ additional staff  
13 as necessary. No employee of the corporation, including the executive  
14 director, may be a member of the board. The executive director and the  
15 other employees of the board are in the exempt service under AS 39.25.

16 Sec. 37.13.110. CONFLICTS OF INTEREST. (a) Members of the board  
17 and the executive director are subject to the provisions of AS 39.50.

18 (b) If a member of the board or an employee of the corporation  
19 acquires, owns or controls an interest, direct or indirect, in an entity  
20 or project in which corporation assets are invested, he shall im-  
21 mediately disclose the interest to the board. The disclosure is a  
22 matter of public record and shall be included in the minutes of the  
23 board meeting next following the disclosure.

24 Sec. 37.13.120. INVESTMENT RESPONSIBILITIES OF THE BOARD. (a)  
25 The prudent-man rule shall be applied by the board in the management and  
26 investment of Alaska permanent fund assets. The prudent-man rule as  
27 applied to investments of the corporation means that in making invest-  
28 ments the board shall exercise the judgment and care under the circum-  
29 stances then prevailing which an institutional investor of ordinary

Chapter 18

1 prudence, discretion, and intelligence exercises in the management of  
2 large investments entrusted to it not in regard to speculation but in  
3 regard to the permanent disposition of funds, considering probable  
4 safety of capital as well as probable income.

5 (b) The corporation assets shall only be used for income-producing  
6 investments.

7 (c) The board shall maintain a reasonable diversification among  
8 investments unless under the circumstances it is clearly prudent not to  
9 do so.

10 (d) The board shall submit long-range and quarterly investment  
11 reports to the Legislative Budget and Audit Committee.

12 (e) The corporation may not borrow funds or guarantee from princi-  
13 pal of the Alaska permanent fund the obligations of others.

14 (f) The board may enter into and enforce all contracts necessary,  
15 convenient or desirable for purposes of the corporation.

16 (g) Subject to the limitations in (h) and (i) of this section, the  
17 board may invest corporation assets in

18 (1) obligations of, or obligations insured by or guaranteed  
19 by, the United States or agencies or instrumentalities of the United  
20 States;

21 (2) obligations secured by reserves paid in by the United  
22 States or agencies or instrumentalities of the United States or obliga-  
23 tions of corporations in which the United States is a shareholder or  
24 member;

25 (3) certificates of deposit issued by United States domestic  
26 banks which are members of the Federal Deposit Insurance Corporation for  
27 which a generally recognized secondary market exists or which are fully  
28 secured at all times as to payment of principal and interest by invest-  
29 ments described in (1) - (2), (8) or (12) - (16) of this subsection; the

Chapter 18

1 security pledged under this paragraph shall be at least equal to the  
2 face value of the deposit and the board may require substitution of  
3 collateral;

4 (4) shares of federally chartered savings and loans associa-  
5 tions in Alaska which are fully secured at all times as to payments of  
6 principal and interest by investments described in (1) - (2) of this  
7 subsection;

8 (5) savings certificates issued by state chartered savings  
9 and loan associations in Alaska which are fully secured at all times as  
10 to payments of principal and interest by investments described in (1) -  
11 (2) of this subsection;

12 (6) deposits with mutual savings banks in Alaska which are  
13 fully secured at all times as to payments of principal and interest by  
14 investments described in (1) - (2) of this subsection;

15 (7) fixed-term certificates of indebtedness of federally  
16 insured credit unions which are fully secured at all times as to payments  
17 of principal and interest by investments described in (1) - (2) of this  
18 subsection;

19 (8) corporate debt securities which are rated AA or better by  
20 a nationally recognized rating service;

21 (9) short-term corporate promissory notes of the highest  
22 ratings assigned by a nationally recognized rating service;

23 (10) bankers' acceptances drawn on and accepted by United  
24 States banks each of which have a combined capital and surplus aggregat-  
25 ing at least \$200,000,000;

26 (11) repurchase agreements, the securities underlying the  
27 agreements being any of the items in (1) - (3) and (8) - (10) of this  
28 subsection;

29 (12) the guaranteed portion of Federal Small Business Adminis-