

From: [Baker, Miles C \(GOV\)](#)
To: [GOV All Legislators](#)
Cc: [Ruaro, Randy \(GOV\)](#); [Mahoney, Lucinda M \(DOR\)](#); [Taylor, Treg R \(LAW\)](#)
Subject: Geldhof POMV Letter
Date: Monday, May 17, 2021 7:17:13 PM
Attachments: [2018 05 14 Dep of Law SB 26 Bill Review.pdf](#)

Good Evening Legislators,

On Friday afternoon you received a letter via e-mail from Joseph Geldhof regarding the Percent of Market Value (POMV) spending cap established in SB 26 (2018). Contrary to the argument presented by Mr. Geldhof, there is no legal basis for the position that the 5% statutory POMV is legally binding on the legislature's appropriation power. Rather, as the Department of Law outlined when the 5% POMV was established in 2018 (see attached), *Wielechowski v. State* clearly established that the income from the permanent fund—all of the income—is subject to appropriation. The legislature may choose to follow the 5% statutory POMV or to ignore it, as has been done in the last several years with the statutory formula for the permanent fund dividend. One action is no different than the other. It is for this very reason, that the Governor has prioritized constitutionalizing both the POMV and the dividend. However, to get there we need a financial bridge. He believes that moving money from one savings account - the earnings reserve - to another, the constitutional budget reserve, is a prudent path forward until a constitutional amendment can be put before the voters next year.

We look forward to continuing the dialogue on these important policy issues.

Respectfully,

Miles

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Note: This message and its attachments are subject to public disclosure under the Alaska Public Records Act.



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Law

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May 14, 2018

The Honorable Bill Walker
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: SB 26: Earnings of the Alaska permanent
fund (CCS SB 26)
Our file: 2018200423

Dear Governor Walker:

At the request of your legislative director, we have reviewed CCS SB 26, relating to the Alaska permanent fund. The bill establishes a new statutory structure for expenditure of permanent fund income including a percentage of market value standard to govern the use of permanent fund earnings to pay for dividends and general government services. The adoption of a percentage of market value standard is expected to substantially assist the Alaska Permanent Fund Corporation in its responsibility to manage and invest the permanent fund by providing predictability regarding expected annual appropriations of permanent fund income. As will be discussed below, this statutory framework will need to be interpreted and applied in accordance with the constitutional requirement that spending of permanent fund income be by legislative appropriation.

Section 1 of the bill would add a new subsection, AS 37.13.140(b), to require the Alaska Permanent Fund Corporation (corporation) to calculate an amount available for appropriation based on 5.25 percent of the average market value of the permanent fund for the first five of the preceding six fiscal years. The average market value of the fund would include the balance of the earning reserve account (AS 37.13.145) but does not include that portion of the principal attributed to *State v. Amerada Hess, et. al.*, IJU-77-847 Civ. (Superior Court, First Judicial District) settlement.

Section 2 of the bill, effective July 1, 2021, would amend AS 37.13.140(b) (added by sec. 1 of this bill), to change the amount available for appropriation calculation to be

based on five percent of the average market value of the permanent fund. Section 3 of the bill would amend AS 37.13.145(c), the utilization of permanent fund income, to offset the effect of inflation on the permanent fund principal to provide that an expenditure of permanent fund income for this purpose would occur after income is made available to the dividend fund under AS 37.13.145(b) and to the general fund under AS 37.13.145(e). Section 4 of the bill amends AS 37.13.145(d) to clarify that income earned as a result of the *State v. Amerada Hess* settlement is not available for appropriation for dividends or for appropriation to the general fund under AS 37.13.145(e).

Section 5 of the bill seeks to establish certain limitations on appropriations from the permanent fund earnings reserve account. Section 5 would add a new subsection, AS 37.13.145(e), to provide that the legislature may not appropriate from the earnings reserve account to the general fund a total amount that exceeds the amount available for appropriation under AS 37.13.140(b) which, as set forth above, provides for a calculation of money available for appropriation based on the percentage market value of the permanent fund. Additionally, sec. 5 would add a new subsection, AS 37.13.145(f), to provide that the expenditure from the earnings reserve account to the dividend fund under AS 37.13.145(b) and to the general fund under AS 37.13.145(e) may not exceed the amount available for appropriation under AS 37.13.140(b). Section 6 of the bill clarifies that the unexpended balance of the corporation's annual operating budget does not lapse at the end of the fiscal year but shall be treated as income and part of the market value of the fund under AS 37.13.140. Section 7 of the bill clarifies that the net income of the mental health trust fund is not included in the calculation of net income or market value of the permanent fund.

Section 8 provides that sec. 2, which changes the calculation of the average market value draw from the permanent fund to five percent, takes effect July 1, 2021. Section 9 provides an effective date of July 1, 2018 for the remaining sections of the bill.

Finally, it is important to recognize that the Alaska Supreme Court has made clear that under the Alaska Constitution permanent fund income cannot be dedicated to a particular purpose and it is subject to annual appropriation.¹ Thus, sections of this bill such as sec. 5 that seek by statute to either limit or direct permanent fund income spending provide a guide to future legislatures but are not binding on a future legislature's ability to appropriate permanent fund income. Similarly, language such as in secs. 3 and 5 that describe a "transfer" under AS 37.13.145(b) from the earnings reserve account to the dividend fund should be interpreted to require an appropriation in order to accomplish the transfer of permanent fund income.

¹ *Wielechowski v. State*, 403 P.3d 1141 (Alaska 2017)

Sincerely,

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