

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

April 18, 2001
1:39 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator Dave Donley, Vice Chair
Senator John Cowdery
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

None

COMMITTEE CALENDAR

CONFIRMATION HEARING - Alaska Judicial Council.

SENATE JOINT RESOLUTION NO. 11

Proposing an amendment to the Constitution of the State of Alaska to guarantee the permanent fund dividend, to provide for inflation proofing, and to require a vote of the people before changing the statutory formula for distribution that existed on January 1, 2001.

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SJR 11 - No previous action to report

WITNESS REGISTER

Ms. Loretta Brown
Staff to Senator Ward
Alaska State Capitol
Juneau, Alaska 99801-1182

POSITION STATEMENT: Introduced SJR 11

Mr. Jim Kelly
Research & Liaison Officer
Alaska Permanent Fund Corporation
PO Box 25500
Juneau, Alaska 99802-5500

POSITION STATEMENT: Opposed to SJR 11

Senator Jerry Ward

Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Sponsor of SJR 11

ACTION NARRATIVE

TAPE 01-19, SIDE A
Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 1:39 p.m. Senator Cowdery, Senator Therriault and Chairman Taylor were present. Senator Ellis arrived at 1:42 p.m. and Senator Donley arrived at 2:04 p.m. Chairman Taylor announced the first order of business would be the confirmation of Eleanor Andrews for the Alaska Judicial Council.

ALASKA JUDICIAL COUNCIL APPOINTMENT

CHAIRMAN TAYLOR said Ms. Eleanor Andrews was confirmed at a previous hearing for the Alaska Judicial Council, but due to the way the terms were limited and the reappointment occurred, it is necessary to hold a second confirmation hearing. He noted that committee members asked Ms. Andrews questions at the previous hearing and, being satisfied with her answers, they forwarded her name to the full Senate for consideration of her appointment to the Alaska Judicial Council.

SENATOR COWDERY again moved to forward Ms. Eleanor Andrews' name for consideration. There being no objection, Ms. Andrews' name was forwarded.

SENATOR ELLIS arrived and Chairman Taylor explained the circumstances of Ms. Andrews' second confirmation hearing. Senator Ellis commented that she is an excellent appointment.

#SJR 11

SJR 11-CONST AM: PERM FUND INCOME DISTRIBUTION

MS. LORETTA BROWN, staff to Senator Ward, sponsor of SJR 11, said that SJR 11 proposes an amendment to the Alaska Constitution that would guarantee the permanent fund dividend program (PFD) by providing for inflation proofing and requiring a vote of approval by the people for statutory changes to the PFD formula. The Alaska Constitution protects the principal of the permanent fund but the earnings of the fund have no constitutional protection. She said the next step in taking the wishes of the people seriously is to protect the earnings as well as the principal and to guarantee

inflation proofing. The adoption of SJR 11 would mean that the PFD would no longer be at the mercy of the legislature and the governor.

SENATOR COWDERY asked if SJR 11 would put what is now in statute into the Alaska Constitution.

MS. BROWN said it would.

SENATOR THERRIAULT asked if the two statutory references on page 2, line 1, are to the five-year average of earnings to calculate the dividend.

MS. BROWN responded yes.

SENATOR THERRIAULT asked, if that is the case, how SJR 11 guarantees inflation proofing.

MS. BROWN said that language is on page 1, lines 6, 7 and 8.

SENATOR THERRIAULT said that language only names a section of the statute. He then noted that SJR 11 contains a reference to AS 37.13.145, which pertains to deposits that offset inflation. He thought if there was to be a constitutional guarantee, it should be put into the statute rather than just referencing the statute. He said there had been years of rapid growth in the earnings of the PFD and the bar graph for the rolling five-year average had continued to rise. Now that the earnings have dropped off, a higher year would be traded for a lower year and the potential for a lower dividend is very real. He said the trustees want the legislature to consider some way to smooth that out from year to year so that if a bear or drastic market fluctuation occurs, people will not be left wondering what the size of the dividend will be. SJR 11 proposes to lock in a system that has the potential for a "gyration" in the amount of the dividend. Senator Therriault wondered if Senator Ward had come to the conclusion that this would be the sensible thing to do, that a possible fluctuation of the PFD would be acceptable to the general population.

MS. BROWN said she believes that Senator Ward considered that and found it acceptable. As the principal goes up and down, the money available for dispersal in dividends would also go up and down. If a particular amount were locked in and the money was not available, she did not know what would cover that.

SENATOR THERRIAULT commented that the principal going up does not necessarily guarantee that the dividend would go up.

Number 781

MR. JIM KELLY, Director of Communications, Alaska Permanent Fund Corporation, said he was concerned that adopting the proposed amendments might weaken the state's long standing position that the income of the fund is exempt from federal taxation. Mr. Kelly said this issue first came up in the mid 1980s with the proposal of a "40-30-30" distribution of income being put in the Constitution, but the Alaska Permanent Fund Corporation's (APFC) legal counsel thought that putting the dividend into the Constitution would jeopardize the tax exemption.

He said a study was commissioned that determined arguments could be made for either side but the weight of the argument was on the tax-exempt side. Putting the dividend in the Constitution would potentially tilt that in the other direction. This issue resurfaced again in 1997 and another study was commissioned with the same results. The APFC has never had any contact with the IRS, but its legal counsel felt the tax exempt agreement would be weakened if the legislature's ability to determine how the money was to be spent was removed and then vested in the people, as SJR 11 suggests.

Number 933

SENATOR COWDERY asked if SJR 11 would eliminate capping.

MR. KELLY said SJR 11 could have that effect. He said the statute does not cap the dividend and, if the Constitution referenced the statute, there would not be a cap either.

CHAIRMAN TAYLOR asked if SJR 11 were to pass and the Constitution was amended, whether that would prevent a future legislature from passing legislation that would cap or limit the dividend.

MR. KELLY said, "This is the reading you get from looking at the amendment."

CHAIRMAN TAYLOR said as long as the legislature retains the power of appropriation over the fund, it is not a dedicated trust in the eyes of the IRS. He said the closer the state comes to securing in the people their ownership of this trust amount, individually and collectively, the more likely the IRS would be to tax those trust monies. He asked if there was some way the people could be given an assurance regarding the permanent fund and still retain sufficient levels of governmental purpose so any possibility of taxation could be avoided.

MR. KELLY said he did not know of a better assurance than what is currently in place.

Number 1195

CHAIRMAN TAYLOR told Senator Ward there had been a question about whether a future legislature could retroactively change what was in effect. He suggested that instead of referencing the statute, the actual words should be put in the Constitution.

SENATOR JERRY WARD said he would have no problem with that. Originally the language was included but the drafters thought a reference to the statute would work.

CHAIRMAN TAYLOR moved a conceptual amendment to page 1, line 15, and page 2, line 1. After the language, "distributed as provided for by statutory formula that existed on January 1, 2001," delete AS 37.13.140 and 37.13.145 and insert the actual language of those statutes.

SENATOR THERRIAULT asked if there would be enough latitude for the drafters to go through those sections of the statutes.

CHAIRMAN TAYLOR replied yes; the intent of those statutes could be given without the specific wording, accomplishing the limited purpose set forth in SJR 11.

SENATOR ELLIS asked if the committee would have an opportunity to look at the new bill before it moved to another committee.

CHAIRMAN TAYLOR responded yes; this is a serious matter that the committee and public need to look at.

SENATOR WARD said during the Easter break he went back to his district and his constituents brought SJR 11 up many times. They were very supportive of the legislation.

SENATOR THERRIAULT asked Senator Ward to speak to the level of his constituents' understanding about how the current statute works.

CHAIRMAN TAYLOR asked if there was any objection to the conceptual amendment. There being no objection, amendment 1 passed.

Number 1433

SENATOR THERRIAULT said that most Alaskans expect the statute to guarantee them a bigger dividend every year but this may not always be the case, depending on the rate of return that is realized from

the stock market. A bear market or a flat market would have the potential for the yearly earnings to be less than any one of the preceding five years so that a higher year would be replaced with a lower year resulting in a smaller dividend. He wondered what Alaska's citizens would think about that.

SENATOR WARD said his constituents do not trust legislators. They feel that legislators have tried to steal their dividends to spend the money on bigger government. What his constituents understood from the September 14th vote was that government does not need their permission to spend money, and that is what prompted SJR 11. Senator Ward said he works for his constituents and they would like the government capped before their income is.

SENATOR THERRIAULT asked if Senator Ward's constituents want the PFD guaranteed with SJR 11 even though the language in SJR 11 would sometimes trigger a lower dividend or whether they would like to have a guaranteed dividend with some level of comfort that they could count on from one year to the next.

SENATOR WARD said he knows they do not want a cap on the dividend.

SENATOR THERRIAULT said he was not asking about a cap but about fluctuations in the market that would cause a lower dividend.

SENATOR WARD said they might not understand this formula as well as the legislators but this is the formula they were endorsing - "they are comfortable with the way it is."

Number 1663

SENATOR ELLIS asked if the language in SJR 11 would preclude the legislature from setting an upward cap on the dividend.

SENATOR WARD said it clearly does, the legislature would have to take action to do that and the voters would have to be involved. He said:

This just simply puts the people of the state of Alaska between us being able to grab the dividends and the inflation proofing and the excess money, and spending it on government. And I'll tell you right now I really do believe that if we have a spending cap and we have this mechanism in place, I believe then what we have to do, we have to be very clear to the people what we want to take their money for and spend it on and that's not necessarily going to be some of the things that you and I may advocate in our districts. It's going to have to be

very specific things, such as new schools or whatever, but it won't be because 11 or us and 21 of us decided to do this.

SENATOR ELLIS said he thought it was clear that Senator Ward had not intended for the legislature to cap dividends in the future without a vote of the people.

SENATOR WARD responded that once there was a constitutional spending limit cap, the people might be willing to look at it.

SENATOR COWDERY agreed that this should be strengthened but he was not certain that SJR 11 is clear about whether future legislators could cap the dividend.

SENATOR WARD said SJR 11 directly involves the people with their account.

Number 1756

CHAIRMAN TAYLOR said that was the concern the APFC raised. If the governmental purpose provision of the fund became a dedicated trust fund for specific beneficiaries, it could be subjected to IRS taxation.

SENATOR WARD said that was simply not correct. He said:

I've called the IRS, I've talked to them, and the existing law that we have now will be the existing law, there is nothing that changed and it doesn't alter it whatsoever. And anybody that says that I've said to them the same thing, bring forth any kind of an opinion that our existing law is not, cannot withstand a challenge from the IRS and they can't because it is existing law. Just because it may have to go through some extra steps, which means to go on to the ballot process, the money is still there, the whole process is still there, and nothing has changed. It takes more to get to it, just like getting to a constitutional budget reserve or any other thing. It's not taken off into the trust {indisc.}. It's the existing law as it is. That is the reality of it.

SENATOR THERRIault said that existing law says the decision is made on a year-to-year basis, whereas if you put it into the Constitution, that decision is made for all time, unless it is reversed.

CHAIRMAN TAYLOR said the legislature appropriates the dividend and people do not realize that. All of the income flows through the general fund and the legislature appropriates it back to the people. As long as the legislature appropriates the dividend with a governmental function involved, the state is shielded from an IRS tax.

SENATOR WARD said, "So will this, once it's passed, it will have the same degree to it and there will not be a letter from the IRS stating anything different."

CHAIRMAN TAYLOR asked if Senator Ward had any legal opinions on that.

SENATOR WARD said, "They have told me they will not issue a letter to say that this would alter it in any form or the status of it. Until one comes, all it is, is rhetoric from people that want to get their hands on the dividend."

CHAIRMAN TAYLOR said the committee would wait for the committee substitute and bring it up again at a later meeting.

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There being no further business to come before the committee, Chairman Taylor adjourned the meeting at 2:15 p.m.