

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

June 23, 2004

9:10 a.m.

**MEMBERS PRESENT**

Representative Lesil McGuire, Chair  
Representative Tom Anderson, Vice Chair  
Representative Jim Holm  
Representative Dan Ogg  
Representative Ralph Samuels  
Representative Les Gara  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative Mike Hawker  
Representative Ethan Berkowitz  
Representative Bill Stoltze  
Representative Mike Chenault  
Representative John Coghill  
Representative Paul Seaton  
Representative David Guttenberg

**COMMITTEE CALENDAR**

HOUSE JOINT RESOLUTION NO. 103

Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit.

- MOVED HJR 103 OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 101

Proposing amendments to the Constitution of the State of Alaska relating to and limiting appropriations from the Alaska permanent fund based on an averaged percent of the fund market value.

- MOVED HJR 101 OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 102

Proposing amendments to the Constitution of the State of Alaska relating to and limiting appropriations from the Alaska permanent fund based on an averaged percent of the fund market value and relating to permanent fund dividend payments.

- MOVED HJR 102 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HJR103

SHORT TITLE: CONST AM: APPROPRIATION LIMIT  
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

06/22/04 (H) READ THE FIRST TIME - REFERRALS  
06/22/04 (H) JUD, FIN  
06/23/04 (H) JUD AT 9:00 AM CAPITOL 120

BILL: HJR101

SHORT TITLE: CONST. AM: PERM FUND P.O.M.V.  
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

06/22/04 (H) READ THE FIRST TIME  
06/22/04 (H) JUD, FIN  
06/23/04 (H) JUD AT 9:00 AM CAPITOL 120

BILL: HJR102

SHORT TITLE: CONST. AM: PERM FUND P.O.M.V.; DIVIDENDS  
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

06/22/04 (H) READ THE FIRST TIME - REFERRALS  
06/22/04 (H) JUD, FIN  
06/23/04 (H) JUD AT 9:00 AM CAPITOL 120

**WITNESS REGISTER**

CHERYL FRASCA, Director  
Office of Management & Budget (OMB)  
Office of the Governor  
Juneau, Alaska

POSITION STATEMENT: Briefly introduced HJR 103, HJR 101, and HJR 102; presented HJR 103 on behalf of the administration, and responded to questions; responded to comments and questions during discussion of HJR 102.

BOB BARTHOLOMEW, Chief Operating Officer  
Alaska Permanent Fund Corporation (APFC)  
Department of Revenue (DOR)

Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HJR 101; responded to questions during discussion of HJR 102.

WILLIAM A. CORBUS, Commissioner

Department of Revenue (DOR)

Juneau, Alaska

POSITION STATEMENT: Responded to comments and questions during discussion of HJR 101; presented HJR 102 on behalf of the administration, and responded to questions.

JAMES BALDWIN, Senior Assistant Attorney General

Opinions, Appeals, & Ethics

Office of the Attorney General

Department of Law (DOL)

Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of HJR 102.

#### **ACTION NARRATIVE**

#### **TAPE 04-87, SIDE A**

Number 0001

**CHAIR LESIL McGUIRE** called the House Judiciary Standing Committee meeting to order at 9:10 a.m. Representatives McGuire, Anderson, Holm, Ogg, Samuels, and Gara were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

HJR103 - CONST AM: APPROPRIATION LIMIT

HJR101 - CONST. AM: PERM FUND P.O.M.V.

HJR102 - CONST. AM: PERM FUND P.O.M.V.; DIVIDENDS

Number 0125

CHAIR McGUIRE announced that the committee would take up HOUSE JOINT RESOLUTION NO. 103, Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit; HOUSE JOINT RESOLUTION NO. 101, Proposing amendments to the Constitution of the State of Alaska relating to and limiting appropriations from the Alaska permanent fund based on an averaged percent of the fund market value; and HOUSE JOINT RESOLUTION NO. 102, Proposing amendments to the Constitution of the State of Alaska relating to and limiting appropriations from the Alaska permanent fund based on an averaged percent of the

fund market value and relating to permanent fund dividend payments.

CHAIR McGUIRE asked the committee to focus on the constitutional aspects of the resolutions, and noted that HJR 103, HJR 101, and HJR 102 mirror other pieces of legislation that passed the House earlier in the year.

Number 0231

CHERYL FRASCA, Director, Office of Management & Budget (OMB), Office of the Governor, mentioned that HJR 103 is the same as HJR 9, though is slightly different than the resolution being introduced in the Senate; that HJR 101 is similar to HJR 26; and that HJR 102 contains the same formula found in HB 298, though it is a constitutional amendment, contains a requirement that permanent fund dividends (PFDs) be at least \$1,000 or 50 percent of "the payout" - whichever is greater - and contains a 10-year sunset provision. She suggested that the sunset provision will allow future legislatures to assess the formula's efficacy.

[The committee then began discussion specific to HJR 103; HJR 101 and HJR 102 were discussed later in the meeting.]

HJR103 - CONST AM: APPROPRIATION LIMIT

[Contains reference to HJR 9, the resolution that HJR 103 mirrors.]

Number 0365

CHAIR McGUIRE asked the committee to focus attention on HJR 103 first.

REPRESENTATIVE SAMUELS asked what the differences are between HJR 103 and the version of HJR 9 that passed the House Judiciary Standing Committee.

Number 0397

CHERYL FRASCA, Director, Office of Management & Budget (OMB), Office of the Governor, relayed that the House Finance Committee changed HJR 9, adding debt service as an exclusion, and that a four-year sunset was added on the House floor; HJR 103 now mirrors the version of HJR 9 that passed the House.

REPRESENTATIVE GARA turned attention to page 3, line 28, of HJR 103 and asked how the amount listed - \$3,400,000,000 - relates to the amount actually appropriated minus the exclusions listed in proposed Article IX, Section 16(d).

MS. FRASCA said it is approximately \$362 million above the amount being appropriated for fiscal year (FY) 05.

CHAIR McGUIRE noted that members' packets include a copy of SJR 103.

MS. FRASCA added that members' packets also include a comparison between the version of HJR 9 that passed the House - what became HJR 103 - and the version that was before the Senate - what became SJR 103 - and sectional analyses of both versions.

Number 0677

REPRESENTATIVE GARA made a motion to adopt Amendment 1, labeled 23-GH2167\A.2, Cook, 6/22/04, which read:

Page 1, lines 9 - 10:  
Delete "the lesser of  
(1) seventy-five percent of"

Page 1, line 11:  
Delete "(A)"  
Insert "(1)"

Page 1, line 14:  
Delete "(B)"  
Insert "(2)"

Page 2, line 1:  
Delete "; or"  
Insert "."

Page 2, lines 2 - 4:  
Delete all material.

Page 3, line 16:  
Delete "."  
Insert ";"

Page 3, following line 16:  
Insert a new paragraph to read:

"(15) that portion of an appropriation for elementary or secondary public school operations that exceeds the amount appropriated for the immediately preceding fiscal year for elementary or secondary public school operations."

Number 0683

CHAIR McGUIRE objected for the purpose of discussion.

REPRESENTATIVE GARA offered his understanding that HJR 103 says that spending may only increase by three-quarters of the rate of inflation and the rate of population growth, or by the percentage of change in personal income. He explained that Amendment 1 would change the proposed constitutional spending cap - currently outlined in proposed Article IX, Section 16(a) - such that spending shall not go above the rate of inflation and population growth, but will allow the legislature to increase spending in order to account for such. He shared his concern that if, in real dollars, on a per-person basis, the legislature provides less and less money every year for public services, it will become very difficult to make appropriate changes to Alaska's public education system, and opined that spending should keep pace with inflation and population growth. He also explained that Amendment 1 would add another item - a paragraph (15) - to the list of exemptions in proposed Article IX, Section 16(d), regarding certain appropriations for elementary or secondary public school operations, so that class size could be reduced without exceeding the proposed spending cap.

REPRESENTATIVE GRUENBERG offered his understanding that Amendment 1 would also delete the provision - in proposed Article IX, Section 16(a) - pertaining to an increase based on the percentage rate of change in personal income.

REPRESENTATIVE GARA concurred, adding that he did not see how a change in personal income can be accurately measured in Alaska, particularly given that currently there is no state income tax.

REPRESENTATIVE GRUENBERG suggested dividing Amendment 1 such that the portion adding a new paragraph (15) to proposed Article IX, Section 16(d), be considered separately.

REPRESENTATIVE GARA said he has no objection to dividing Amendment 1 in that manner.

Number 0939

REPRESENTATIVE GRUENBERG made a motion to divide Amendment 1. There being no objection, Amendment 1 was divided into Amendment 1A - which would make the aforementioned changes to proposed Article IX, Section 16(a) - and Amendment [1B] - which would add a new paragraph (15) to proposed Article IX, Section 16(d).

Number 0979

REPRESENTATIVE GARA made a motion to adopt Amendment 1A.

CHAIR McGUIRE objected for the purpose of discussion.

MS. FRASCA said that the administration's concern is that revenues don't automatically rise based on inflation and population growth, and this raises the question of how to fund a budget higher than what's been predicted thus far. With regard to the question of how changes in personal income would be calculated, she explained that federal income tax information would be used as the data source, adding that other states have used changes in personal income in their calculations. She indicated that it is the administration's preference to tie the state's ability to spend money to how well citizens are doing in terms of their income.

REPRESENTATIVE GARA pointed out, however, that there is no relationship between the state's revenue, which is currently based on oil revenue and might in the future be based on gas-pipeline revenue, and personal income. He opined that they should understand and accept the reality that people live with inflation, that schools suffer from inflation, and that senior services suffer from inflation.

Number 1156

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Amendment 1A. Representatives Ogg, Samuels, Holm, Anderson, and McGuire voted against it. Therefore, Amendment 1A failed by a vote of 2-5.

Number 1199

REPRESENTATIVE GARA made a motion to adopt Amendment 1B.

Number 1204

CHAIR McGUIRE objected.

REPRESENTATIVE OGG said, "Question."

REPRESENTATIVE GARA mentioned that he has a legislative research report that speaks to the issue of how far education funding has lagged behind inflation - approximately \$50 million over the last five years. He said he is worried that with a spending cap, education funding will suffer unless the legislature has the ability to exempt funding increases based on class size.

MS. FRASCA offered her belief that education is a priority of the governor and is one of the first things that gets funded. She added, "We don't just have more revenues just because we may have a spending limit; ... the challenge will be to prioritize, into the future, the use of those revenues, and it's the foundation formula that's going to allow ... the future increases, not the spending limit ...."

REPRESENTATIVE GRUENBERG suggested that another reason to support adoption of Amendment 1B is because the proposed constitutional amendment is illogical as currently written. He drew attention to page 3, lines 8-9, and noted that the language therein specifies that appropriations of money from tuition of the University of Alaska is exempt, and this is a large part of what supports the university; in addition, the language on page 2, line 31, exempts federal money, which can include money for [military] base children and money for Native children. He opined that it is illogical to "exempt them and not to exempt other educational funding," adding that such is neither fair nor consistent.

REPRESENTATIVE GARA concluded by saying that because the No Child Left Behind Act of 2001 (NCLB Act) is an underfunded mandate and thus the state is going to struggling under it, and because Amendment 1A was not adopted and thus funding will go up less than the rate of inflation and population growth, it is very important to exempt school funding increases from the calculation that determines the spending cap.

Number 1342

A roll call vote was taken. Representatives Gara, Gruenberg, and McGuire voted in favor of Amendment 1B. Representatives Ogg, Samuels, Holm, and Anderson voted against it. Therefore, Amendment 1B failed by a vote of 3-4.

REPRESENTATIVE GRUENBERG asked to be listed as a cosponsor of Amendment 1B.

Number 1439

REPRESENTATIVE GARA made a motion to adopt Amendment 2, to replace the language currently in HJR 103 with:

**\* Section 1.** Article IX, sec. 16, Constitution of the State of Alaska, is repealed and readopted to read:

**Section 16. Appropriation Limit.** General fund appropriations by the legislature shall not exceed anticipated revenue.

**\* Sec. 2.** The amendment proposed by this resolution shall be placed before the voters of the state 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.

REPRESENTATIVE GARA recapped the current language in HJR 103 and noted that the concept of Amendment 2 was introduced by Representative Berkowitz on the House floor. Representative Gara offered his belief that people will understand the concept that the state must not spend more money than it has; Amendment 2 could be looked upon as a "balanced budget" amendment to the Alaska State constitution, and its language does not include the host of exemptions currently listed in HJR 103. He went on to describe the concept embodied in Amendment 2 as short, clean, and a little bit regal.

CHAIR MCGUIRE mentioned that she'd had a similar amendment drafted, and relayed that according to conversations she's had with Legislative Legal and Research Services, there are some potential problems with the concept.

MS. FRASCA asked how "general funds" would be defined. She said that according to her interpretation of the language in Amendment 2, the monies in the Constitutional Budget Reserve Fund (CBRF) would not be considered general funds and therefore use of the CBRF would not be permitted under the proposed spending limit.

CHAIR MCGUIRE noted that Amendment 2 makes no exception for amounts in or transferred from the permanent fund, and this lack could create problems.

MS. FRASCA remarked that Amendment 2 does not take into account "general fund match" or "general fund mental health."

CHAIR MCGUIRE offered her belief that the language currently in HJR 103 goes a long way towards the concept embodied in Amendment 2.

Number 1567

REPRESENTATIVE GARA made a motion to amend Amendment 2, to make it conceptual and to say, "state appropriations shall not exceed state revenues". There being no objection, Amendment 2 was amended.

REPRESENTATIVE SAMUELS cautioned against making a conceptual constitutional amendment. He asked whether anticipated earnings of the permanent fund would be included in the calculation proposed by Conceptual Amendment 2, as amended.

REPRESENTATIVE HOLM asked who would be calculating anticipated revenue. He offered his belief that under Conceptual Amendment 2, as amended, it will be difficult to fund the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS).

REPRESENTATIVE OGG noted that Conceptual Amendment 2, as amended, does not address the issue of debt, and asked how the proposed change differs from the existing constitution.

REPRESENTATIVE GARA pointed out that staff at Legislative Legal and Research Services can help draft appropriate language to satisfy a conceptual amendment should the committee adopt such; opined that the principle of the permanent fund should not be counted as revenue; and offered his belief that the Alaska State Constitution currently has no real spending restrictions, with the exception of the principal of the permanent fund, and has a current spending cap far exceeding the amount that has been spent for many years and is thus considered unenforceable.

REPRESENTATIVE OGG offered his understanding that the Alaska State Constitution already prohibits spending more money than is taken in and, thus, adopting Conceptual Amendment 2, as amended, would be redundant and not accomplish anything.

MS. FRASCA offered her understanding that the Alaska State Constitution currently says that the state cannot incur debt without a vote of the people, adding that this has been

interpreted as a requirement for a balanced budget - spending cannot exceed revenues. For this reason, the governor's budget identifies the revenues that will support the administration's proposed spending.

CHAIR MCGUIRE reiterated that she's had conversations with Legislative Legal and Research Services during which potential problems with concepts such as that proposed via Conceptual Amendment 2, as amended, were highlighted. She suggested that perhaps the House Finance Committee could better address this issue.

REPRESENTATIVE GARA, noting that both a spending cap and a balanced budget requirement already exist in the Alaska State Constitution, opined that there is no need to clutter up the Alaska State Constitution with another spending cap.

The committee took an at-ease from 9:40 a.m. to 9:45 a.m.

Number 1867

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Conceptual Amendment 2, as amended. Representatives Ogg, Samuels, Holm, Anderson, and McGuire voted against it. Therefore, Conceptual Amendment 2, as amended failed by a vote of 2-5.

Number 1873

REPRESENTATIVE SAMUELS moved to report HJR 103 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HJR 103 was reported from the House Judiciary Standing Committee.

HJR101 - CONST. AM: PERM FUND P.O.M.V.

[Contains mention of HJR 102 and HJR 26.]

Number 1905

CHAIR MCGUIRE asked the committee to focus attention on HJR 101. She noted that the concept embodied in HJR 101 was heard in committee during the regular session.

REPRESENTATIVE OGG asked for clarification regarding the constitutional language being deleted by HJR 101.

Number 1957

BOB BARTHOLOMEW, Chief Operating Officer, Alaska Permanent Fund Corporation (APFC), Department of Revenue (DOR), said that the Alaska State Constitution says that all income received from the permanent fund shall be deposited in the general fund unless otherwise provided by law, and that in 1980, the legislature passed a statute stating that all income from the permanent fund will be retained in an earnings account - within the permanent fund - available for appropriation. In response to another question, he said that the record reflects that the intent of the constitutional language was to provide the legislature with the maximum flexibility in determining the appropriate use of the earnings.

REPRESENTATIVE OGG asked whether it would be fair to say that the change proposed via HJR 101 would limit the legislature's ability to utilize the earnings of the permanent fund.

MR. BARTHOLOMEW offered that the proposed change will limit the amount of money that can be appropriated each year, not how that money can be utilized. He said that the board of trustees of the Alaska Permanent Fund Corporation (APFC) recommends this change because the permanent fund is invested for the long term, with one goal being to protect the principal and another goal being to generate earnings for use by the legislature. These goals will be more easily met if it is known how much money is going to be used every year. In addition, one way to protect a large pool of money is to protect it against inflation and, to that end, the board recommends constitutionally limiting appropriations from the earnings of the permanent fund to a sustainable yield so as not to erode the pool's purchasing power.

MR. BARTHOLOMEW mentioned that if the formula proposed were used currently, \$1.3 billion would be available each year for appropriation. He relayed the board's belief that the current rules, which were written 25 years ago, may no longer work in today's volatile, capital-market world. The change proposed by HJR 101 will allow both the legislature and the public to know what to expect from the permanent fund.

REPRESENTATIVE OGG asked how much money the legislature could appropriate under the current constitutional language.

MR. BARTHOLOMEW estimated that if using realized income in the calculation, it would be close to \$2 billion before permanent

fund dividends (PFDs) are paid, and close to \$1.4 billion after PFDs are paid. He pointed out, however, that if income currently unrealized becomes realized, the amount would change. He added that it is the professional investment managers hired by the board who determine when income becomes realized, and this produces some volatility with regard to the amount that's available for appropriations. He opined that the changes proposed via HJR 101 would eliminate that volatility.

MR. BARTHOLOMEW suggested that by getting caught up in the debate over how appropriated funds are to be used, people are losing sight of the fact that there are some things that can be done to help protect the permanent fund for the future when markets go down or become volatile. He reiterated that the board of trustees is seeking to protect the permanent fund and, to that end, is recommending the changes proposed in HJR 101.

CHAIR MCGUIRE remarked that the proposal is a sound management approach, and surmised that people are finally beginning to realize that.

Number 2301

MR. BARTHOLOMEW, in response to a question, relayed his understanding that there is an attorney general's opinion that says the legislature may only appropriate the permanent fund's realized income.

REPRESENTATIVE SAMUELS asked how HJR 101 differs from HJR 26.

MR. BARTHOLOMEW offered his understanding that the two resolutions are very similar and contain the same concept and objectives. In response to another question, he said that all earnings are reinvested immediately and so "income" is available on paper; in other words the act of reinvesting earnings does not [preclude them from being considered realized income].

**TAPE 04-87, SIDE B**

Number 2373

REPRESENTATIVE GRUENBERG said his concern is that the investment managers might choose to sell assets in order to make more funds available for appropriation.

MR. BARTHOLOMEW said that concern is one reason to adopt a percent-of-market approach; the buying and selling of assets under a percentage of market value (POMV) proposal is separate

and has no affect on what's available for distribution. Another option would be for the legislature to set an amount it wants as a spending limit on the permanent fund and then adjust statutes accordingly. In response to a question, he relayed that in 1996, when there was a large accumulation of unrealized gains, the board of trustees went through an eight- or nine-month deliberative process in order to determine whether to realize a portion of those gains and include it in the dividend formula.

CHAIR MCGUIRE mentioned that there is a concern that the board of trustees could be making management decisions based on political agendas.

Number 2209

WILLIAM A. CORBUS, Commissioner, Department of Revenue (DOR), noted that recently passed legislation prevents the governor from removing board of trustee members except for cause.

REPRESENTATIVE GARA mentioned that Legislative Legal and Research Services is drafting an amendment for him which he hopes to offer as a compromise solution that all members and the community can accept. He went on to say:

There is debate ... among all of us on how much should go into a dividend: some of us want a bigger dividend, some of us want a smaller dividend, some of us want it in the [Alaska State] Constitution, some of us don't, some of us want a public vote. I don't know where that's going to go. We might come out of this special session, if we just focus on the proposals that have been made so far, with nothing. The ... two places where there seems to be consensus is, some version of POMV for managing the permanent fund seems appropriate, with maybe some tweaks here or there, ... [so] maybe we stick a clean POMV on the ballot ...; the other part that there is growing consensus on across party lines ... is that we need to reinstate some sort of municipal revenue sharing through maybe a community dividend, and so the governor has proposed - and many of the rest of us have proposed - a portion of the POMV proceeds to be used for a community dividend, whether it's 5 percent, 10 percent, [or] 7.5 percent. ...

I would like everybody to think about this: a clean POMV proposal on the ballot, plus the 5 or 7.5 or 10

percent for a community dividend. [Those are] ... the parts that I think we can all agree on. Maybe [there could be] a separate advisory vote or separate bill on the dividend amount - my preference is [to use] the current dividend formula, but leave that ... whole dividend thing to the side. I want people to consider a proposal that would address the parts I think we can come out of here with some consensus on. ... [Commissioner] Corbus, do you have any thoughts about whether or not the administration might support something like that if we can't forge consensus on something bigger?

COMMISSIONER CORBUS replied: "I think so; I think that ... there are two proposals on the table: pure POMV, and then the enshrinement of the dividend - and 45 percent of the payout to education, 5 percent to the municipal revenue sharing." We're just looking for a solution," he added.

Number 2094

REPRESENTATIVE GARA asked whether the administration would be amenable to just a clean POMV and include in it a provision for a community dividend.

COMMISSIONER CORBUS replied: "The administration has made two proposals; if [the] legislature has a counter proposal to make, we certainly would consider it."

REPRESENTATIVE GARA said he might support the POMV proposal as written, but he does have a couple of reservations, one of them being that the market could take a downturn for a long period of time, for example, 20 years. He asked whether the APFC has considered adding to the POMV proposal a provision that says the legislature may not dip into the principal at all or may not dip into the principal by more than 1 or 2 percent. He asked what amount the POMV formula would yield during a 20-year market downturn.

MR. BARTHOLOMEW said that the board has considered the issue of what happens in prolonged down markets under a 5 percent spending limit, and that is why the board has agreed to adopt statutory "guardrails" which would provide, in a prolonged down market, a mechanism by which to trend down payouts to keep pace with the market. The concept of leaving the protection of principal in the Alaska State Constitution has been complicated by well-meaning actions over the last 15 years of the

legislature. If the permanent fund had been left alone, where all the earnings that hadn't been spent had been accumulated in an earnings account, there would be \$7 billion in there; that's how much the permanent fund has earned in excess of the protection of inflation.

MR. BARTHOLOMEW explained that if that amount had been in an earnings account, he suspected that there wouldn't be any worry about near-term down markets because there would be a cushion. However, the legislature swept those reserves into principal and they are now locked up; this has created a near-term problem, but only for the next 2-4 years, wherein there is a risk of going to a reduced or a zero payout. For this reason, the board is suggesting a guardrail/safeguard to protect the fund such that the payout won't be taken to zero or be at risk. And although the risk is small, if Alaska's economy depends on a dividend or a dividend is used for public services, then if things go wrong at the wrong time, it could result in an economic crises.

MR. BARTHOLOMEW relayed that one of the debates that took place in the House Finance Committee was whether the aforementioned guardrails should be in statute or in the Alaska State Constitution, and that committee decided that the best place would be in statute.

Number 1883

REPRESENTATIVE GARA asked what the majority of institutional funds use as their POMV percentage.

MR. BARTHOLOMEW said that approximately 80 percent of institutional funds use between 4 and 5.5 percent. He indicated that those funds that used higher percentages during the bull market are now in trouble. He explained that the 5 percent figure chosen by the board and director is more conservative than it might first appear because the permanent fund uses a five-year average; this neutralizes the volatility of both up and down markets, and results in about a 4.6- or 4.7-percent rate of payout. He also noted that most funds pay out the expenses of managing the fund before calculating the payout; the legislature, on the other hand, calculates those costs as part of the permanent fund's payout percentage. Thus, he opined, the proposal of a POMV set at 5 percent is very practical, reasonable, and appropriate.

REPRESENTATIVE OGG offered his understanding that under HJR 101, there is no mandate to spend 5 percent; the legislature, in fact, could choose to spend a much smaller percentage.

MR. BARTHOLOMEW concurred.

REPRESENTATIVE GRUENBERG opined that the proposal before the committee would allow investment mistakes or investment actions based on political agendas to be covered up, thus reducing the public accountability of the fund's managers.

COMMISSIONER CORBUS said he does not see the proposal in that light.

MR. BARTHOLOMEW offered his belief that both currently and in the past, the permanent fund has been managed with as much disclosure and transparency as possible. How the permanent fund is invested is dictated by statute and the transparency of monthly reports ensures that any inappropriate investments are readily visible. Under the proposal, as an additional safeguard, it would still up to the legislature to decide whether to dip into principal. He offered his belief that there are several safeguards in place addressing Representative Gruenberg's concerns.

REPRESENTATIVE SAMUELS offered his opinion that the state should follow the example set by the majority of other funds and adopt a POMV proposal.

Number 1550

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 1, "to add into HJR 101 also the community dividend at 7.5 percent, and then leave the rest of the POMV proceeds up to the legislature to allocate among dividends and other services."

Number 1533

REPRESENTATIVE SAMUELS objected. He opined that it would be more appropriate to have a clean POMV resolution - such as is proposed via HJR 101 - and then perhaps alter HJR 102 by stripping out the PFD and education funding provisions. He noted that the concept embodied in HJR 102 has not yet been debated in the House Judiciary Standing Committee.

REPRESENTATIVE GARA said he would like to see a municipal revenue sharing provision in HJR 101 because if HJR 102 is not

adopted by the legislature, the community dividend provision in it will not go before the voters. By placing all the things that members can agree on in HJR 101, it won't matter if HJR 102, which contains provisions that members aren't yet agreeing on, fails. He suggested that it will ultimately be cleaner to put the municipal revenue sharing provision in HJR 101 and then pass both it and the POMV proposal. He then calculated that a 7.5 percent municipal revenue sharing dividend would put about \$90 million into the municipal revenue sharing program, approximately equaling what it was 10 years ago, and offered his belief that Governor Walter J. Hickel once said that there are approximately 40 communities relying either exclusively or almost exclusively on municipal revenue sharing until that provision was vetoed by the [current] governor last year.

REPRESENTATIVE GARA mentioned that even Anchorage has felt the absence of municipal revenue sharing via an increase in property taxes. By instituting a municipal dividend, Anchorage could get some relief from property taxes as well as enjoy an increase in education funding. He went on to say:

With the understanding that [Legislative Legal and Research Services] ... is drafting the 7.5 percent community dividend provision for [HJR] 101, I would still move the conceptual amendment of POMV plus a 7.5 percent community dividend. In effect, unless we change the permanent fund dividend formula, that would leave the ... the excess earnings available for expenditure on ... whatever the legislature determined it should be spent on. But just address the community dividend here.

Number 1398

REPRESENTATIVE HOLM offered his belief that in his borough, the community dividend has been eaten up 100 percent by the Teachers' Retirement System (TRS) and Public Employees' Retirement System (PERS) problem, and remarked that this problem has yet to be addressed. He characterized adopting the POMV approach such that the state won't be able to pay for the PERS and TRS problem as "hedging our bet." He remarked that although he doesn't have a problem with the POMV approach, he does have a problem with not being able to fund that which the state has already contracted to fund, and suggested that for some areas of the state any funds they receive from a municipal dividend will go to pay for the PERS and TRS shortage rather than for other needed services.

REPRESENTATIVE OGG recalled that the House did pass out a clean POMV resolution, and suggested that they should do so again. He characterized Conceptual Amendment 1 as cluttering up the current proposal, said he is not willing to pass on such to the other body, and suggested altering HJR 102 instead.

CHAIR McGUIRE said she admires Representative Gara for coming forward with proposed amendments as an attempt at finding consensus, adding that she agrees with his summation of what members have consensus on.

REPRESENTATIVE GARA offered his belief that a POMV proposal with a community dividend provision will address Representative Holm's concern regarding funding the PERS and TRS shortages, and still leave money for other needed municipal services. The proposed changes to the constitution will not preclude other items from being funded via statutory provisions.

Number 1103

REPRESENTATIVE GARA withdrew Conceptual Amendment 1, and made a motion to adopt in its stead as Amendment 1 an amendment labeled 23-GH2168\A.1, Cook, 6/23/04, which read:

Page 1, line 1:  
Delete "**and limiting**"

Page 1, line 2, following "**fund**":  
Insert "**and limiting those appropriations**"

Page 1, line 15:  
Delete "a new subsection"  
Insert "new subsections"

Page 2, following line 3:  
Insert a new subsection to read:  
"(c) Each fiscal year at least seven and one-half percent of the total amount available for appropriation under (b) of this section shall be appropriated as State aid to municipalities and other communities. The balance remaining available may be appropriated for other public purposes, including a program of dividend payments for residents of the State established by law."

Number 1101

REPRESENTATIVE ANDERSON objected.

REPRESENTATIVE OGG expressed a concern that such a change could result in the legislature being forced to fund a municipal dividend at the expense of education funding.

CHAIR MCGUIRE remarked that such is a concern with enshrining the permanent fund in any fashion, that it could result in something being funded at the expense of some other needed service.

Number 0992

A roll call vote was taken. Representatives Gara and McGuire voted in favor of Amendment 1. Representatives Ogg, Gruenberg, Samuels, Holm, and Anderson voted against it. Therefore, Amendment 1 failed by a vote of 2-5.

Number 0988

REPRESENTATIVE SAMUELS moved to report HJR 101 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HJR 101 was reported from the House Judiciary Standing Committee.

HJR102 - CONST. AM: PERM FUND P.O.M.V.; DIVIDENDS

[Contains mention of HJR 101.]

Number 0961

CHAIR MCGUIRE asked the committee to focus attention on HJR 102, and noted that the concept embodied in it has not yet been heard by this committee.

Number 0947

WILLIAM A. CORBUS, Commissioner, Department of Revenue (DOR), relayed that the concept embodied in HJR 102 was put forth in response to the opinions and resolutions that came out of the "Conference of Alaskans" in Fairbanks and from numerous Alaskans who have expressed a desire that the [permanent fund dividend (PFD)] be constitutionally guaranteed. If one assumes that HJR 102 was in effect for fiscal year (FY) 05 and that there was approximately \$1.4 billion available, this would result in a PFD of approximately \$1,000, in about \$564 million - 45 percent -

being available for education funding, and in about \$63 million - 5 percent - being available for municipalities.

COMMISSIONER CORBUS relayed that page 2, lines 4-11, outlines that 50 percent of amounts available for appropriations shall go into a dividend program; that 45 percent shall go to public education; and that 5 percent shall go to municipalities. The resolution also guarantees a minimum PFD of \$1,000; that language can be found on page 2, lines 12-17, in subsection (d) of proposed Article IX, Section 15. Should 50 percent of the amount available for appropriation not yield a \$1,000 PFD, then monies for public education and municipalities shall be reduced in order to fund the shortfall. A final change is the addition, in Article XV of the Alaska State Constitution, of a proposed Section 30, which contains transition and repeal provisions with the repeal language specifying July 1, 2014.

CHAIR McGUIRE posed a hypothetical situation in which a shortfall in the PFD program was so great that even monies destined for education and municipalities would not be sufficient to fund the shortfall, and asked whether the legislature might have to institute some form of tax in order to ensure that people got a \$1,000 PFD.

COMMISSIONER CORBUS said he didn't know the answer to that but would do some research on the issue.

CHAIR McGUIRE said this is an important point, noting that if the legislature is required constitutionally to make a certain payout, whether it be for PFDs, municipalities, or education, there is a danger that future legislatures may have to institute some form of tax in order to meet that constitutional requirement.

Number 0562

CHERYL FRASCA, Director, Office of Management & Budget (OMB), Office of the Governor, said that it is certainly not the governor's intention to institute a tax in order to guarantee a \$1,000 PFD. She offered her belief that under the percentage of market value (POMV) framework, the probability of not being able to pay a \$1,000 PFD from 50 percent of available funds is unlikely; the advantage of the POMV framework is its stability going forward, particularly when compared to the volatility of the current practice wherein there is only 24 percent certainty that a 2005 PFD will be \$1,000.

CHAIR McGUIRE, notwithstanding that point, said that someone should still think through what would have to happen, what steps the legislature would have to take, in the aforementioned hypothetical situation if a \$1,000 PFD is constitutionally guaranteed.

REPRESENTATIVE GARA said that regardless of what's being guaranteed - PFD, municipal dividend, education funding - they should probably include "some sort of out" in case the permanent fund experiences a fiscal crises; for example, a provision saying something along the lines of "guarantee these things, but if there is a crises, ... with a two-thirds vote of the legislature, you could do something else." He offered his understanding that similar provisions are already in many parts of the Alaska State Constitution.

REPRESENTATIVE HOLM asked whether there are any legal rulings regarding the constitutionality of having a repeal provision in the Alaska State Constitution.

MS. FRASCA replied:

We had a ratification of the original 1982 constitutional spending limit - it was brought back before voters in ... four years, in 1986. So that's not quite a sunset. There are term requirements, or requirements for actions in a certain period of time; for example, every ten years we vote on a constitutional conventions, every ten years - I believe - judges are up for ... retention, and so there are some time requirements in the [Alaska State] Constitution for certain acts. ... The [Department of] Law did not raise any red flags over that.

Number 0319

REPRESENTATIVE GRUENBERG asked why a repeal provision was not included in HJR 101.

COMMISSIONER CORBUS indicated that HJR 101 was brought forth by the board of trustees of the Alaska Permanent Fund Corporation (APFC), who chose not to include such, and that the administration considered that resolution - that simply establishes a POMV methodology - as strictly a management tool for the permanent fund. He noted that not everyone is convinced that enshrining the PFD in the Alaska State Constitution, as is proposed via HJR 102, is such a good idea, and so HJR 102

includes a repeal provision for subsections that address how appropriated funds are to be distributed.

REPRESENTATIVE OGG noted that the Alaska State Constitution prohibits the dedication of funds, and asked why the administration is proposing a constitutional amendment counter to that restriction.

MS. FRASCA replied:

While the [Alaska State] Constitution does speak very clearly against dedicated funds, I would suggest to you that the practice of designating fund sources throughout the budget has, in essence, dedicated revenues to certain purposes. So in the practical sense ... it's appropriate, if you're going to dedicate, that it be in the [Alaska State] Constitution. So this is the way to dedicate funds. Having said that, one of the reasons, from a policy point of view, is that ... if we're going to start using the permanent fund ... earnings for purposes other than what we've been using them for - to pay dividends - there is a strong expectation on the part of voters that they're going to get to have a say in that. And so we linked up those reasons and put them into the proposed constitutional amendment, which has to go to the voters for their approval, so it's a way for them to have that say.

**TAPE 04-88, SIDE A**

Number 0001

REPRESENTATIVE OGG offered his understanding that passage of HJR 102 will preclude the legislature from utilizing [permanent fund revenues] for government services and expenses that do not qualify as one of the three items listed in the resolution, and asked whether that is the governor's intent even though, in times of declining state revenue, such a change might result in some form of taxation being instituted to pay for needed government services.

Number 0128

BOB BARTHOLOMEW, Chief Operating Officer, Alaska Permanent Fund Corporation (APFC), Department of Revenue (DOR), offered his belief that the POMV proposal will allow the legislature to have, over time, the maximum amount available in order to

balance out the needs of current and future generations. He declined to comment, however, on the policy issues surrounding how the legislature might choose to have the proposed constitutional amendment apportion out the funds available for appropriation.

COMMISSIONER CORBUS replied:

It's a tough call, the \$1,000 minimum. The issue is: are we going to break the logjam and get some action as far as accessing the permanent fund. This is one proposal to break that logjam, and under the set of circumstances you've suggested, maybe that wouldn't be so good. But looking at the overall picture, we think this is a prudent thing to do to access the permanent fund, to make money available to help pay for the cost of government. And this is one way to do it.

MS. FRASCA added:

What this scenario does is it also provides about \$560 million of relief, if you will, to what currently is supported by general funds, ... and that's the K-12/university education. ... So in terms of the pressure, if we have your scenario and in the future there is a real dramatic drop in our state revenue, at least then there's some cushion ... to help with what we've been paying for with general fund dollars. ... It's a tough call.

MS. FRASCA went on to relay that there had been discussion regarding whether the sunset [repeal provision] should be five years, but it was decided that although ten years is a long time, it could provide the needed time for future economic-development revenues to come in. She said it is not [the administration's] intention to set up a circumstance in which an income tax must be instituted, adding that the administration has considered oil taxes, "transient accommodation taxes," and other user-benefit/user-pay type taxes.

Number 0372

REPRESENTATIVE OGG pointed out, however, that even if a portion of the permanent fund revenues go towards education funding, there is still the state's current fiscal gap to be dealt with, and surmised that that is where any freed up GF monies will go, and thus there won't really be the cushion as described by Ms.

Frasca, particularly if GF revenues decrease due to various circumstances. He suggested that during times of economic downturns, what's being proposed essentially says that it is more important to put \$1,000 in a child's pocket than it is to educate that child, with the only other option being to institute an income tax in order to pay for one or both of those things. Is that where the administration wants to be, he asked.

CHAIR McGUIRE said that Representative Ogg is touching on some of the basic, philosophical concerns that some members have with the concept of enshrining the PFD and other uses of permanent fund revenues in the Alaska State Constitution, regardless of the specific amounts or formula; members have those concerns because there is no way to predict what the state's economy is going to look like in the future. She added that from a traditional constitutional perspective, she is troubled with the concept of placing a sunset on a provision of the Alaska State Constitution, and disagrees with the notion that constitutional language regarding judicial retention is similar.

REPRESENTATIVE GRUENBERG asked whether enshrining the PFD in the Alaska State Constitution would make receiving a PFD a constitutional right.

Number 0600

JAMES BALDWIN, Senior Assistant Attorney General; Opinions, Appeals, & Ethics; Office of the Attorney General; Department of Law (DOL), offered his belief that it would become an entitlement, whereas currently PFDs are subject to appropriation.

REPRESENTATIVE GRUENBERG asked whether making receiving a PFD an entitlement in that fashion would cause the courts to consider them differently with regard to such things as residency and equal protection.

MR. BALDWIN said he didn't think so, but it would be hard to say, since "these cases" are based on one-at-a-time type analyses by the courts.

REPRESENTATIVE GRUENBERG said:

My recollection is, some of the cases have proceeded from the premise that lesser constitutional protections are involved because [PFDs] are not a right. My question is, if this becomes a

constitutional right, might that not subject ... legislative classifications to a higher level of scrutiny, from a constitutional perspective?

MR. BALDWIN said it's possible, but that's just speculation at this point.

CHAIR MCGUIRE asked Mr. Baldwin to come back to the legislature with a legal opinion on this issue.

REPRESENTATIVE HOLM asked whether an entitlement to a PFD would have the same weight as the right to free speech, for example, adding, "I really have a problem with the idea that we enshrine a right to a check."

Number 0774

REPRESENTATIVE GARA, addressing Commissioner Corbus, said:

We've talked about solving the fiscal gap, and ... frankly I believe the administration has wiped most of the options that we need to consider off the table and so all we're talking about is the permanent fund. You know, there's been a lot of discussion about what do we do if there's not enough permanent fund money available to help us fund schools or something like that. And I will tell you, I would say, I'm happy the administration has finally jumped on board and said we need to take another look at the economic limit factor - the elf - the exemptions that many of us think are quite overbroad in our tax structure, so thank you for finally coming aboard. But on the other hand, I think there's a fair argument to be made that as we sit here and do nothing about it this year, we're giving away about [\$500 million to \$700 million in] income that we could stick into our savings account. ... I can't tell you how frustrated that makes me. ...

If the administration thinks that it can push ... its proposal of a 50 percent dividend, then so be it and I can't stop it. If the administration thinks that we need room for compromise, [then] according to the [APFC], the current dividend formula, over the long term, projected as well as we can project it, would produce roughly a 70 percent dividend. If we did that, that would leave about \$375 million available for public services. ... Would the administration

consider something closer to a split that reflects the long term average of the current dividend formula, assuming that left available about \$375 million of permanent fund money, and then just let us figure out what to do for the rest? Would it consider that?

COMMISSIONER CORBUS replied:

I don't know that I could say what the administration would do. Certainly it is concerned that a sizable proportion of the permanent fund payout under the POMV be made available to help pay for the cost of government. We have proposed [that] 50 percent be made available. We would be interested, if the legislature has other proposals, but I'm not prepared to say what would be acceptable.

Number 0960

REPRESENTATIVE GARA, addressing Mr. Bartholomew, said:

You did an April projection that showed what you thought a 50-50 split would compare to, [under] the current dividend formula, ... over the long term. ... Is it fair to say, ... projecting long term into the future, [that] the current dividend formula would produce roughly a dividend ... equal to something like a 70-30 split, something close to that?

MR. BARTHOLOMEW replied that given the volatility inherent in the current formula, that percentage is really hard to measure. He added, however, that it would be appropriate to say that it could fall into a range between 60 and 70 percent, though it could also vary between 30 and 80 or 90 percent. In response to another question, he acknowledged that he'd produced a chart for Representative Gara that showed a projection of between 60 and 70 percent, with the long-term projection staying at around 70 percent. He noted, however, that that projection was based on one analysis, and that there are other analyses out there that have a long term projection of between 60 and 70 percent but closer to 60 percent. He added that those were the numbers that were shared at the Conference of Alaskans. He offered his belief that the reality would fall somewhere in between those two projections and would be extremely volatile compared to a POMV formula.

Number 1127

REPRESENTATIVE GARA made a motion to adopt Amendment 1, labeled 23-GH2176\A.2, Cook, 6/22/04, which, with handwritten changes, read:

Page 2, line 3, following "year.":

Insert "An appropriation from the fund shall be made for each fiscal year to be used for a program of dividend payments to State residents established by law. The amount appropriated for the dividend program shall equal at least the amount that would have been used for the dividend program under AS 37.13.140 and 37.13.145, as those statutes read on January 1, 2004, or the entire amount that may be appropriated from the fund under this subsection, whichever is less."

Page 2, lines 8 - 9:

Delete all material.

Page 2, line 10:

Delete "(2)"  
Insert "(1)"  
Delete "and"

Page 2, line 11:

Delete "(3)"  
Insert "(2)"  
Delete "."  
Insert "; and" after "percent"

Page 2, line 12:

Insert "(3) the remainder may be made available for public services authorized by law."

Page 2, line 27:

Delete "Sections 15(c) and (d)"  
Insert "Section 15(c)"

Number 1147

REPRESENTATIVE SAMUELS objected.

REPRESENTATIVE GARA explained that Amendment 1 would say that the dividend shall be at least \$1,000 and no less than what is provided for under current law. He surmised that the public probably doesn't want a substantial reduction in their PFDs, and offered his belief that the administration's current proposal

could result - three or four years down the road - in a PFD that is about \$400 less than what current law provides for, and then - long term - in a PFD that is about \$650 less than what current law provides for. He went on to say:

I personally think that asking somebody with very little money, perhaps a senior citizen, to pay as much as somebody who has just purchased a brand new Land Rover is not a fair way to balance the budget, especially when we're, in my view, so badly under-taxing oil at current oil prices. ... It's a fairness issue. ... If you agree not to reduce the [PFD] below what the current formula provides, you still make quite a substantial amount of money available for public services. ... The bill as written right now says a certain amount goes into public education, but the amount the current provision puts in is less [than] the money we put into public education right now anyway, so there's no guarantee of additional education funding under this proposal.

But by doing what I propose, you still make about \$375 million or more available for the services you've discussed but also protect the [PFD] at the same time, at the current rate. I think the public could accept that, I think I could accept that, and I think that would require us to go to the next step and say, what else besides the [permanent fund] are we going to use to fund public services.

REPRESENTATIVE GARA, in response to a question, said his intent in offering Amendment 1 is to ensure that the PFD is at least as much as the current formula provides for but at no less than \$1,000 just as the governor proposes.

Number 1309

A roll call vote was taken. Representative Gara voted in favor of Amendment 1. Representatives Ogg, Gruenberg, Samuels, Holm, Anderson, and McGuire voted against it. Therefore, Amendment 1 failed by a vote of 1-6.

Number 1323

REPRESENTATIVE GARA made a motion to adopt Amendment 2, labeled 23-GH2176\A.3, Cook, 6/22/04, which, with handwritten changes, read:

Page 2, line 3, following "year.":

Insert "An appropriation from the fund shall be made for each fiscal year to be used for a program of dividend payments to State residents established by law. The amount appropriated for the dividend program shall equal the lesser of

(1) seventy percent of the amount that may be appropriated from the fund under this subsection or the amount that would have been used for the dividend program under AS 37.13.140 and 37.13.145, as those statutes read on January 1, 2004, whichever is greater; or

(2) the entire amount that may be appropriated from the fund under this subsection."

Page 2, lines 8 - 9:

Delete all material.

Page 2, line 10:

Delete "(2)"

Insert "(1)"

Delete "and"

Page 2, line 11:

Delete "(3)"

Insert "(2)"

Delete "."

Insert "; and" after "percent"

Page 2, line 12:

Insert "(3) the remainder may be made available for public services authorized by law."

Page 2, line 27:

Delete "Sections 15(c) and (d)"

Insert "Section 15(c)"

Number 1339

CHAIR McGUIRE objected.

REPRESENTATIVE GARA explained that Amendment 2 does essentially the same thing as Amendment 1, but provides for a more certain 70-30 split, which, he offered, would make \$375 million available for public services, would protect the PFD at roughly a bit more than it would be under the current formula, and would

direct the legislature to seek any additional needed funding from sources other than the permanent fund.

CHAIR McGUIRE surmised that in its philosophical underpinnings, Amendment 2 is similar to Amendment 1.

Number 1355

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Amendment 2. Representatives Ogg, Samuels, Holm, Anderson, and McGuire voted against it. Therefore, Amendment 2 failed by a vote of 2-5.

Number 1382

REPRESENTATIVE GARA made a motion to Adopt Amendment 3, labeled 23-GH2176\A.4, Cook, 6/22/04, which read:

Page 2, line 3, following "year.":

Insert "Except for appropriations for a program of dividend payments for residents of the State established by law, no appropriations shall be made from the fund for a fiscal year unless, during that fiscal year, the amount of State funding for operation of elementary and secondary public schools is increased by at least the amount necessary to offset inflation, based upon increases during the second preceding calendar year in consumer prices for most State residents."

Page 2, line 17, following ".":

Insert "However, no appropriations shall be made under (c) of this section unless those appropriations are permitted to be made under (b) of this section."

Number 1387

REPRESENTATIVE SAMUELS objected.

REPRESENTATIVE GARA explained that Amendment 3 would guarantee that school funding is protected from inflation. He remarked that many, including the governor, have offered POMV proposals that talk about public education but don't put a single extra penny into school funding than is being put into it right now. As currently written, HJR 102 would put in about \$300 million less into public education than last year's budget did, he remarked, and so it doesn't do anything to protect schools from

the harm caused by inflation or protect them from further increases in class sizes. In other words, he added, Amendment 3 says, "If we're going to talk about education, let's do something about education," and "before you spend any of the POMV money on public services, you have to make sure that education funding has gone up at least the amount of inflation over the prior year." Inflation is a real problem that schools face, and they should be protected in at least that regard, he concluded.

REPRESENTATIVE OGG remarked:

This is very laudable; it sure is a goal you'd like to get to, to make sure your education system is funded well and that we provide for our students and our future leaders the best education we can do. And money certainly helps that. But the underpinning here creates a problem. If we go to a period like we did in 1987, where the oil price dropped [and] 30,000 people left Anchorage, ... this amendment would say that we would still have to increase education funding by the inflation proofing. So we would be providing more funding for schools for less students. This just doesn't take into account that circumstance, and I'll have to oppose it.

REPRESENTATIVE HOLM agreed with Representative Ogg, adding that at some point there might be a need to increase funding for public safety instead of public education, and so those choices should be made at the legislative level rather than at the constitutional level.

Number 1516

REPRESENTATIVE GARA suggested to Representative Ogg that they simply make a change in the resolution such that fiscal crises could be addressed via a two-thirds vote of the legislature.

CHAIR McGUIRE asked whether Amendment 3 would be taking into account the foundation formula, which addresses student population decreases.

REPRESENTATIVE GARA remarked:

We are so far behind on school funding that we can't even address the issue that we need to address, which is a base-student salary for entry-level teachers.

Our class sizes are far, far too large in most urban areas - far too large. So I don't think it would harm our public policy at all to have school funding ... go up with inflation. If we felt it was going up too much, then I would agree to allow a provision ... to be added to say, "We don't have to increase that money if two-thirds of the legislature agrees." That would be the out; that would be the out where we deal with the crises that Representative Ogg mentions. So it's a good point, but I think it is addressed by the two-thirds-vote out.

REPRESENTATIVE ANDERSON said that he although he doesn't agree that all classrooms are overcrowded, he does agree that the offsetting of inflation is important.

REPRESENTATIVE OGG said he did not disagree that perhaps classrooms are overcrowded or that school funding has been inadequate, but suggested that the "out" that Representative Gara speaks of should really be a statutory fix rather than a constitutional one, otherwise it is in essence saying that the legislature can "go in and mess with" the [Alaska State] Constitution with a two-thirds vote. He opined that such a constitutional provision would be different than what currently happens regarding the Constitutional Budget Reserve Fund (CBRF), and would be evidence of a parliamentary system of government, not a constitutional system. He reiterated that he cannot support Amendment 3.

REPRESENTATIVE GARA said that those were good points, and that he plans on introducing something similar on the House floor with perhaps some modifications that will address Representative Ogg's concerns.

Number 1719

REPRESENTATIVE GARA then withdrew Amendment 3, and offered the following comments:

I don't think that you can come up with a perfect way to protect our schools, for some of the reasons you discussed and some of the reasons I discussed, but the current system - which lets school funding fall behind inflation almost every year until there's a crises every once in a while and we come back and we do something about it - is unacceptable to me. ... And I also have a huge amount of heartache with those who

... are using what I think is a Trojan horse by saying the money's going to go to education when in fact we know that [we'll] be putting less money into education through these proposals than we already put in. So ... I think the use of the words, "education" are there to appeal to the public and hope the public doesn't notice that it provides for less money than we already put in. And so if we're going to use the term, "education", I want something real to happen with education funding, and we can deal with [that] ... on the House floor.

CHAIR MCGUIRE said she appreciates Representative Gara's withdrawing Amendment 3 at this time to work on it, since there does seem to be some support for its basic concept, the idea that education has been underfunded and has not kept up with inflation.

Number 1777

REPRESENTATIVE SAMUELS made a motion to adopt Amendment 4, labeled 23-GH2176\A.1, Cook, 6/22/04, which read:

Page 1, line 3:

Delete **"and relating to permanent fund dividend payments"**

Insert **", relating to permanent fund dividend payments, and limiting state taxes on the incomes of individuals"**

Page 2, following line 17:

Insert a new subsection to read:

"(e) The State may not levy or collect a tax for a year on the income of an individual in an amount that exceeds the amount of the dividend for that same year paid to a resident as the result of appropriations made under (c)(1) and (d) of this section."

Page 2, line 27:

Delete "and (d)"

Insert "(d), and (e)"

Number 1782

REPRESENTATIVE GRUENBERG objected, and offered his belief that Amendment 4 is unconstitutional and out of order because it will

change the title of the resolution, significantly expanding it to include a limitation on state income taxes, and thus make it fall outside the scope of the governor's proclamation. He asked Chair McGuire for a ruling.

REPRESENTATIVE SAMUELS remarked that Legislative Legal and Research Services has relayed to him that arguments could be made on various sides of the issue.

The committee took an at-ease from 11:19 a.m. to 11:27 a.m.

CHAIR MCGUIRE relayed that the director of Legislative Legal and Research Services told her that there is relatively little risk that Amendment 4 would fall outside the scope of the governor's proclamation, that traditionally legislatures have had broad powers to interpret and deal with the subjects of proclamations; the director also relayed that if the committee wished she would draft a "savings clause" which would say that should any portion of the resolution be found unconstitutional, the remainder of the resolution would still be valid.

REPRESENTATIVE GRUENBERG mentioned that perhaps Mr. Baldwin's opinion might differ from that of the director of Legislative Legal and Research Services.

REPRESENTATIVE SAMUELS said he feels strongly that the change proposed by Amendment 4 constitutes good public policy, adding that if the PFD is enshrined in the Alaska State Constitution and citizens end up being taxed in order to pay out a PFD, it will create a chasm between "those that pay and those that get." He said he disagrees with the concept of enshrining the PFD into the Alaska State Constitution to begin with because of the potential for having to institute a tax in order to meet that constitutional obligation, opining that such will cause huge problems.

Number 1999

REPRESENTATIVE SAMUELS then withdrew Amendment 4, and said he would work on it some more and that he would do more research on the issue of how a constitutionally mandated PFD will be paid for in times of economic downturns. He again expressed disfavor with enshrining the PFD in the Alaska State Constitution.

CHAIR MCGUIRE said Representative Samuels raises a good point, and indicated that perhaps a solution might be forthcoming from the administration.

REPRESENTATIVE GRUENBERG relayed that his objection to Amendment 4 was based on parliamentary procedure and not on the merits of the amendment.

REPRESENTATIVE GARA asked Representative Samuels to also give consideration to perhaps structuring his proposed tax cap based on a percentage rather than on a certain dollar amount.

REPRESENTATIVE OGG said he is happy that Representative Samuels withdrew Amendment 4, and mentioned that altering the Alaska State Constitution without enough consideration could rend its very fabric.

Number 2154

REPRESENTATIVE ANDERSON moved to report HJR 102 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HJR 102 was reported from the House Judiciary Standing Committee.

#### **ADJOURNMENT**

Number 2164

The House Judiciary Standing Committee meeting was recessed at 11:35 a.m. to a call of the chair. [The meeting was never reconvened.]