

**ALASKA STATE LEGISLATURE**  
**HOUSE STATE AFFAIRS STANDING COMMITTEE**

February 24, 2004

8:03 a.m.

**MEMBERS PRESENT**

Representative Bruce Weyhrauch, Chair  
Representative Jim Holm, Vice Chair  
Representative John Coghill  
Representative Bob Lynn  
Representative Ethan Berkowitz  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Paul Seaton

**COMMITTEE CALENDAR**

HOUSE JOINT RESOLUTION NO. 3

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund.

- FAILED TO MOVE OUT OF COMMITTEE

HOUSE BILL NO. 447

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

- MOVED CSHB 447(STA) OUT OF COMMITTEE

DISCUSSION WITH DEPARTMENT OF CORRECTIONS

- HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HJR 3

SHORT TITLE: CONST. AM: PERMANENT FUND

SPONSOR(S): REPRESENTATIVE(S) CRAWFORD, CROFT

01/21/03	(H)	PREFILE RELEASED (1/10/03)
01/21/03	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	(H)	STA, JUD, FIN
02/07/03	(H)	SPONSOR SUBSTITUTE INTRODUCED

02/07/03	(H)	READ THE FIRST TIME - REFERRALS
02/07/03	(H)	STA, JUD, FIN
01/13/04	(H)	STA AT 8:00 AM CAPITOL 102
01/13/04	(H)	Heard & Held
01/13/04	(H)	MINUTE(STA)
01/22/04	(H)	STA AT 8:00 AM CAPITOL 102
01/22/04	(H)	Heard & Held
01/22/04	(H)	MINUTE(STA)
02/19/04	(H)	STA AT 8:00 AM CAPITOL 102
02/19/04	(H)	Scheduled But Not Heard
02/24/04	(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 447

SHORT TITLE: 2004 REVISORS BILL

SPONSOR(S): RULES BY REQUEST OF LEGISLATIVE COUNCIL

02/09/04	(H)	READ THE FIRST TIME - REFERRALS
02/09/04	(H)	STA, JUD
02/24/04	(H)	STA AT 8:00 AM CAPITOL 102

**WITNESS REGISTER**

REPRESENTATIVE ERIC CROFT

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as co-sponsor of HJR 3.

REPRESENTATIVE HARRY CRAWFORD

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as co-sponsor of HJR 3.

BOB BARTHOLOMEW, Chief Operating Officer

Alaska Permanent Fund Corporation (APFC)

Department of Revenue

Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HJR 3.

ROBERT D. STORER, Executive Director

Alaska Permanent Fund Corporation (APFC)

Department of Revenue

Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HJR 3.

PAM FINLEY, Revisor of Statutes

Legislative Legal Counsel  
Legislative Legal and Research Services  
Juneau, Alaska

POSITION STATEMENT: Offered a brief description and answered questions during the hearing on HB 447.

**ACTION NARRATIVE**

**TAPE 04-21, SIDE A**

Number 0001

**CHAIR BRUCE WEYHRAUCH** called the House State Affairs Standing Committee meeting to order at 8:03 a.m. Representatives Holm, Coghill, Berkowitz, and Weyhrauch were present at the call to order. Representatives Lynn and Gruenberg arrived as the meeting was in progress.

HJR 3-CONST. AM: PERMANENT FUND

[Contains brief mention of HB 11]

Number 0086

**CHAIR WEYHRAUCH** announced that the first order of business was HOUSE JOINT RESOLUTION NO. 3, Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund.

Number 0121

**REPRESENTATIVE ERIC CROFT**, Alaska State Legislature, as co-sponsor of HJR 3, stated his belief that it's an important part of any fiscal plan to ensure some substantial dividend. He said he thinks the simplest and most direct approach would be to protect the current system. He indicated that that current system has protected against inflation over the prior fiscal year. He offered to answer questions from the committee.

Number 0219

**REPRESENTATIVE HARRY CRAWFORD**, Alaska State Legislature, as co-sponsor of HJR 3, stated that the crux of the matter is whether or not a person believes that the Alaska Permanent Fund was set up as a rainy day account for government or as a permanent fund for the people. He stated his belief that it is the latter, and he said the fund will help to sustain Alaska's economy for generations. He noted that [the fund] has become approximately

one-eighth of the state's economy and, outside the urban areas, it's as much as half of the economy. He stated that the best way to protect the fund is by continuing the dividend program as is.

Number 0346

CHAIR WEYHRAUCH observed that although [HJR 3] would amend the constitution, there has been little testimony brought forth. He noted that HJR 3 would amend Article 9, Section 15, of the [Alaska State Constitution]. That part of the constitution was adopted by the people and amended in 1976 to establish the permanent fund. Article 9, Section 15 read as follows:

SECTION 15. Alaska Permanent Fund. At least twenty-five per cent 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, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

CHAIR WEYHRAUCH noted that HJR 3 would change [the last sentence] of that language. [Page 1, lines 9-13, of HJR 3] read as follows:

All income from the permanent fund shall be deposited in the earnings reserve account and distributed as provided for under AS 37.13.140, 37.13.145, and AS 43.23.025, as those statutes read on July 1, 2002 [GENERAL FUND UNLESS OTHERWISE PROVIDED BY LAW].

CHAIR WEYHRAUCH asked the co-sponsors to address the meaning of the statutes aforementioned in the proposed language.

Number 0500

REPRESENTATIVE CROFT responded that those are the permanent fund and inflation-proofing statutes and the intent of the resolution is to protect those. In response to a question from Chair Weyhrauch, he explained that the date was chosen to "lock in" the statutes as they read on that date, so any change made to them later would not effect this language.

Number 0578

CHAIR WEYHRAUCH directed attention to [Section 2, paragraph (1)], which read as follows:

(1) AS 37.13.140, 37.13.145, AS 43.23.025, and any provisions of law referred to in those sections, remain in effect as they read on July 1, 2002, unless they are amended or repealed and the amendment or repeal is ratified by affirmative vote of at least sixty percent of the voters of the State voting on the question; and

CHAIR WEYHRAUCH asked if the 60 percent would change any other voting requirement in the constitution or law.

REPRESENTATIVE CROFT answered as follows:

If this constitutional amendment passed, then to get at and change any of the dividend structure, you would both have to: under Section 1, change the constitution and under Section 2, meet this 60-percent hurdle to change the underlying statute.

CHAIR WEYHRAUCH asked in what respect the 60 percent would be different than any other constitutional amendment.

REPRESENTATIVE CROFT answered, "Generally, there's a high burden to put it before the people, Mr. Chairman - that is, a two-thirds vote in each body - but it's a 50-percent vote of the people.

CHAIR WEYHRAUCH asked for clarification that [HJR 3] would increase the requirement [for a vote of the people] from 50.1 percent to 60 percent, in order to approve any change to the aforementioned statutes.

REPRESENTATIVE CROFT said yes. He explained that the structure for amending the constitution is a relatively high burden "to get it on" and a pure majority "to get it passed." Section 2, he said, would create a system for amending "these statutes."

Number 0757

CHAIR WEYHRAUCH turned to [Section 2, paragraph (2)] which read as follows:

(2) money may be appropriated from the earnings reserve account only as authorized under AS 37.13.145(b) and (c) as those subsections read on July 1, 2002, unless the appropriation is ratified by affirmative vote of at least sixty percent of the voters of the State voting on the question.

CHAIR WEYHRAUCH offered his understanding that the intent is that the legislature may appropriate money from the earnings reserve account, but that appropriation then has to go to the vote of the people and can only be approved if 60 percent of the people approve it.

REPRESENTATIVE CROFT said that any excess earnings left after "protecting inflation-proofing and the dividend structure as it is" could only "be done by a 60 percent vote [of the people]."

Number 0851

REPRESENTATIVE COGHILL asked if there is any other place in the constitution where statutory language has been adopted as part of the constitution.

REPRESENTATIVE CROFT answered no.

REPRESENTATIVE COGHILL said he remembers some discussion a few months ago that there is a possibility under "this formulation" that there could in fact not be a dividend paid, "based on the way the average is figured and the amount available for appropriation." He asked for clarification.

REPRESENTATIVE CROFT responded that the ability to pay dividends and inflation-proof depends on having a healthy balance in the earnings reserve fund. He said, "That, if we are prudent managers of the money, should be fine." He continued as follows:

What has happened in the last two or three years that created that potential that you're talking about is both record declines in the stock market and what I feel were imprudent actions by the legislature in depositing some of the earning reserve funds .... But if you allow the earnings reserve balance to keep the earnings reserve as it should, and you protect the excess earnings so that they are there as a cushion, the projections I've seen show that it, under the

market projection, will have enough and will grow. It's only when you take a substantial amount out - and that's why Section 2 is there - that you start to threaten that structure.

Number 1032

REPRESENTATIVE COGHILL said the word "imprudent" spurs him a little bit. He stated it's also true that there have been some significant prudent investments into the fund that under "this specific scenario" wouldn't have been allowed.

REPRESENTATIVE CROFT stated that "we" have, at various times, taken balances in excess of \$3 or \$4 billion and deposited some into the principal. He added, "I think you're right, and I even voted for some of those." He classified those as being on "the prudent side of the line." Bleeding the earnings reserve down to just \$100 million during unstable stock market times, he opined, is not prudent.

Number 1100

REPRESENTATIVE COGHILL said he might even agree with Representative Croft; however, at this point, [HJR 3] would take the earnings reserve "completely off the table," so that the legislature could never again appropriate from the earnings reserve account.

REPRESENTATIVE CROFT corrected, "Only with the approval of the people - 60 percent."

REPRESENTATIVE COGHILL stated that although he understands why it's being [proposed], he does not agree with it. He said he thinks that was not the original intent of "putting it in." He revealed that he is struggling with "putting this complex of a system in the constitution."

Number 1264

BOB BARTHOLOMEW, Chief Operating Officer, Alaska Permanent Fund Corporation (APFC), Department of Revenue, informed the committee that since the policy decisions regarding how the use of earnings are "done" are outside the purview of the board of trustees, that board has taken "the position of no position," regarding the proposed legislation. He continued as follows:

The only statement they've made is that they would recommend, if we're going to do something like that, to try to use a method that's compatible with how the permanent fund is invested. And they have felt that there are some weaknesses with the existing system  
....

The statutes that are being referred to in the resolution are basically the existing statutes that have been in place since about 1982 that determine how to calculate how much is available, from a statutory approach, annually from the permanent fund. And it looks at the realized earnings on a five-year average  
.... Add that up and roughly take 21 percent of that.

... A second step ... is: You take the lesser of a five-year average calculation or the balance of the earnings reserve and, whichever is less, you split that in half. One half goes to a transfer to the dividend fund, so we would annually transfer that money out of the permanent fund over to the Department of Revenue to pay dividends.

The next step would be inflation-proofing whatever amount is necessary to inflation-proof the principal, which is just a portion of the fund. Historically, it's ranged from 80-95 percent of the fund  
.... And then, as Representative Croft said, there's a residual or an excess from that formula, as well as any amount that's left in the permanent fund, [which] currently is available for appropriation by the legislature. And historically, all they've done with that money is either left it in the earnings reserve or reinvested it back into the principal. And that's how the existing statutes have been working.

Number 1474

CHAIR WEYHRAUCH referred to AS 37.13.140, 37.13.145, and 43.23.025. He asked if the legislature makes an appropriation to inflation-proof the fund under the authority of those statutes.

MR. BARTHOLOMEW answered that's correct.

CHAIR WEYHRAUCH concluded that part of the inflation-proofing is subject to appropriation under the authority of that statute.

He asked if, as a result of passing [HJR 3], 60 percent of people would have to approve of inflation-proofing the permanent fund.

MR. BARTHOLOMEW offered his understanding that Section 2, [paragraph (2)] says money can be appropriated under the normal process for dividends and inflation proofing, but any earnings outside of those two calculations would trigger the 60-percent vote of the public.

Number 1550

REPRESENTATIVE GRUENBERG suggested that these would be the same questions average voters would have when they vote on the measure, because unless they have these complex statutes in front of them and were intimately familiar with them, it would be tough for them to know what [the effects of] this proposed constitutional amendment would be when they stepped into the ballot box. He said he thinks that's a problem with the [proposed resolution to amend the constitution].

Number 1611

CHAIR WEYHRAUCH expressed that there is an ongoing concern that there must be a mechanism to ensure inflation proofing of the fund and payment of the dividend. He said he thinks "that's what's really lurking underneath the introduction of this resolution." He stated that he would like to know, for the record, what sort of appropriation into the fund, beyond the constitutionally mandated appropriation, the legislature has made over time, and the value of those appropriations.

Number 1665

MR. BARTHOLOMEW noted that beginning in 1981, during the peak of the oil revenues coming into the state, the legislature appropriated approximately \$2.5 billion of general fund revenues from the general fund directly into the principal of the permanent fund and, from the mid-1980s until the year 2000, another \$4 billion from the earnings reserve account. The transfers from the general fund and the earnings reserve account totaled \$6.8 billion.

Number 1665

REPRESENTATIVE BERKOWITZ observed that that amount was direct deposit. He asked what the approximate total would be when

factoring in the amount of interest that has been gained from those [transfers].

MR. BARTHOLOMEW explained that some of the earnings from the money that was deposited early on is "part of what got swept later." He said it would take some time to figure out how much was principal and how much was earnings; however, the concept [is] that the money that was "put in there" has generated additional earnings that have either been paid out as dividends, used as inflation-proofing, or reinvested.

Number 1799

CHAIR WEYHRAUCH responded, "Well, it's a gross matter and you want to follow your POMV [percent of market value] approach. If you assumed an 8-percent growth with a 3-percent inflation rate, you're [indisc.] getting a 5-percent return on that. Is that correct?"

Number 1812

ROBERT D. STORER, Executive Director, Alaska Permanent Fund Corporation (APFC), Department of Revenue, offered the following explanation:

Over the last 15-20 years, we've actually been in an extraordinary bull market, so our real rate of return was not a "5 percent" as we suggest, but it was 6.3 percent. One way of looking to the answer to Representative Berkowitz's question is simply one third of the permanent fund's principal is special contributions. So, that, in essence, answers your question; that's all extra income that was retained in the fund.

MR. STORER, in response to a question from Chair Weyhrauch, confirmed that one third of the permanent fund's principal is [from] special contributions made by the legislature since 1981.

CHAIR WEYHRAUCH asked what the payout has been of permanent fund dividends since the inception of that program.

Number 1979

MR. BARTHOLOMEW answered that from Fiscal Year '78 to Fiscal Year '03, approximately \$12.5 billion have been paid out in dividends. In response to a follow-up question from Chair

Weyhrauch, he explained that the permanent fund was established in 1978 and the first dividend was paid out in 1982; [that first payout] included some of the earnings from the earlier years. He added that some general fund money was used to pay out the original dividend. Since then all the dividends have been paid from earnings of the permanent fund.

CHAIR WEYHRAUCH asked how much has been deposited into the permanent fund, since it's inception, separate from appropriations.

MR. BARTHOLOMEW replied that the primary original source of money into the fund was from oil deposits. He noted that the constitution requires that 25 percent of the royalty lease revenues that come into the state for nonrenewable resources goes into the permanent fund. He added, "For a period of time, for about 15 percent of the leases, that percentage was increased to 50 percent, and now that's back to 25 percent."

CHAIR WEYHRAUCH offered his understanding that HB 11 was the mechanism by which the change was made back to 25 percent last year. He asked how long the 50-percent increase was in effect.

MR. BARTHOLOMEW said he thinks it was from 1983 through 2003.

CHAIR WEYHRAUCH asked Mr. Bartholomew if he knows what the value of that additional 25 percent was, in terms of income to the permanent fund.

MR. BARTHOLOMEW answered he doesn't know, but he estimated that it would have been \$400 to \$500 million. In response to a question from Chair Weyhrauch, he confirmed that the \$400 to \$500 million is separate from the previously mentioned legislative appropriations; it's a portion of the total dedicated mineral wealth that has come into the fund, which as of June 30 was \$7.7 billion.

Number 2115

REPRESENTATIVE BERKOWITZ asked, "What if it had been 100 percent [of all mineral revenues]?"

MR. BARTHOLOMEW answered, "Well, you would probably take three times what we've put in there, because we got 25 percent. So, ... if you took it up to 100 percent, and we've received (indisc. - coughing) billion, you would have said another \$21 billion would be in the permanent fund." He clarified, "If \$7.7

billion is 25 percent, roughly, of the mineral revenues we've received, if you'd have put it all in there, there must have been another 75 percent of just royalty-type revenues and leases, so I'm saying ... \$21 billion - \$22 billion."

Number 2156

MR. STORER added, "Plus the income that would have been earned on that contribution."

REPRESENTATIVE BERKOWITZ stated, "That's somewhat akin to what Roger Cremo would have proposed [in a plan regarding the Alaska Permanent Fund]."

MR. BARTHOLOMEW responded that he is vaguely familiar with [Mr. Cremo's] plan, which he said he thinks had to do with depositing all revenues into a single source and trying to fund government from that.

MR. STORER suggested that a crude rule would be to "multiply the entire fund by that multiple of three, and you'd get currently the fund is \$29 billion." In response to a question from Representative Berkowitz, he concurred that three times that amount would be \$90 [billion].

Number 2214

CHAIR WEYHRAUCH noted that there are "other monies that are spent." He asked how much other money has been appropriated - over the course of the permanent fund - that has not been identified in previous testimony.

MR. BARTHOLOMEW responded that when people talk about money that has been spent for other than dividends, [they are referring to] the following: "the hold-harmless," dividends for certain prisoners that go to the Department of Corrections, and the operations of the Permanent Fund Dividend Division. He stated that all of those monies basically come out of the calculation of what goes to the dividend. He concluded, "So, we calculate what's available for the dividend, we transfer that amount to the Department of Revenue, and those other items actually come out of the dividend pool." He said there's roughly a couple million dollars per year that are split up between the Department of Revenue, the Department of Natural Resources, and the Department of Law, to cover some of their operating costs related to the collection of the oil royalties. He said there

is also the cost of "the investment management of the permanent fund that funds the corporation."

CHAIR WEYHRAUCH said, "So, the permanent fund dividend payment is off the top, essentially."

MR. BARTHOLOMEW replied:

You do a calculation by statute of that five-year average of earnings. Half goes to the dividend fund, it's called. Out of the dividend fund is where those other expenditures have been funded.

Number 2300

REPRESENTATIVE COGHILL asked, "Would we assume that formulation in the constitution, and do we have to get a specific appropriation authority to continue that? Are we barred from that if we put this in the constitution?"

Number 2322

REPRESENTATIVE CROFT responded as follows:

Are [we] barred from doing the hold-harmless? I don't believe so. That question was asked before, and we refer to the statutes for that reason, so that they incorporate those ideas.

REPRESENTATIVE CROFT said the rule of thumb is that about one third of the principal of the fund is either direct constitutional or statutory appropriation, one third is discretionary, and one third is inflation-proofing that has been done. He said, "So, to the extent you were making that point, I'd conceded that at least a third of the value of the fund itself is by our actions of the legislature adding discretionary, nonrequired deposits." He said he would also concede that "we" have almost totally only used the fund, to date, for dividends, inflation-proofing, and special appropriations. That amount that has been used for other things, he said, is almost negligible, and is always related to things related to the dividend itself, to the operation of the fund, or to generating the revenue for the fund. He opined, "We have, to date, been pretty good managers of the fund, either out of fear or out of good government."

REPRESENTATIVE CROFT addressed Representative Coghill's previous question regarding whether discretionary deposits to the principal could be made "under this amendment." He said, "I don't think so, and I don't think you'd have to anymore." He explained that the only permanent fund-related reason for putting money from the earnings reserve into the principal is to take it away from the legislature so that it can never be spent. He said, "Well, you've already got that protection now." He stated that the purpose of discretionary deposit is to make sure that that money is not spent at some later time. He said, "If you didn't have that fear, you wouldn't put it in the principal to begin with. By protecting it [with] another mechanism - this 'don't spend at 60 percent' - you wouldn't need to salt it away, it is salted."

Number 2449

REPRESENTATIVE COGHILL questioned if the legislature would surrender authority if it was barred from changing the statute because "it's assumed in the constitution." He said that the way [HJR 3] is written, it seems to him that the legislature would even be barred from making the appropriation. He clarified that he needs to know how the mechanics work.

REPRESENTATIVE CROFT responded that it sounds like an issue for the House Judiciary Standing Committee to consider.

Number 2517

REPRESENTATIVE BERKOWITZ moved to report HJR 3 out of committee with individual recommendations and the accompanying fiscal notes.

Number 2529

REPRESENTATIVE COGHILL objected.

Number 2533

REPRESENTATIVE GRUENBERG said that, while he is undecided on the issue, he thinks it's appropriate to move the proposed resolution to the House Judiciary Standing Committee.

Number 2575

REPRESENTATIVE HOLM said he has been quiet, but would not be so quiet in the House Judiciary Standing Committee. He mentioned

that he has another idea [regarding the permanent fund]. He noted that one of the aspects of [HJR 3] is that it makes no "definitive for population growth." He revealed that, since 1982, the population has grown by 200,000 people. He questioned how the proposed resolution would impact the size of the [permanent fund] dividend in the future when there is more population growth. He said he isn't going to "not support" moving [HJR 3 out of committee], but he said he wonders what would happen if oil were to be \$9 a barrel again. He said he thinks it was overwhelmingly proven today that the legislature has, in the past, been somewhat responsible about how the money is spent. Representative Holm questioned whether or not "we want to tie our hands." He opined that Representative Coghill made a good point; putting statutes in the constitution that [the legislature] can't touch impinges its right to be good legislators and be responsive to the needs of the people. He continued:

Today, when we're spending \$400 or \$500 million more than we've taken in revenue, how in the dickens do you propose that we're going to make up those shortfalls? And, more so than that, how in the dickens do you propose that we're going to have more money in for education? Where's it come from? You can't tax enough for that.

Number 2673

REPRESENTATIVE LYNN stated his belief that HJR 3 should be moved to the next committee of referral. He said he thinks it deserves study and is an important concept. He noted that the question is what to do with the permanent fund. Everybody is asking that question, he said. He stated that the fund needs to be preserved, but the fiscal deficit also needs to be addressed.

Number 2701

REPRESENTATIVE COGHILL responded that he couldn't disagree more. He said he thinks [HJR 3] is bad public policy and that assuming statutes in the constitution is so complex that for the legislature to revise statutes now that have been assumed in the constitution is problematic. He indicated that he could consider enshrining a constitutional amendment that would protect the dividend, but HJR 3 is cumbersome and complex. He said, "We're going to put in the constitution language, such as unrealized gains, and then we're going to have to decide what that is at a constitutional level." Net income, he observed,

can be debated in court now at a whole different level, so the balance of the earnings reserve becomes an interesting discussion, since "we" have assumed that it is a protected and growing entity. He stated that if HJR 3 goes to the House Judiciary Standing Committee, he will make certain that his questions get asked in that committee. Representative Coghill reiterated that he thinks HJR 3 is bad public policy and he stated that he would not vote for it.

Number 2776

REPRESENTATIVE BERKOWITZ noted that the title for HJR 3 would allow for some change, because it's a wide-open title. He said he hopes there is opportunity to discuss central changes. He said Representative Holm had pointed out that this is a spending limit, which Representative Berkowitz opined is the fiscally responsible course for the legislature to take. He continued as follows:

If you constrain the amount of money government can have, it won't waste money. And if you want to use money, you have to work hard to go get it. So, to the extent that this is a spending limit, I think there's a lot more consideration than we've seen here.

[It's a] question of intergenerational equity. I mean, we have been in a generation that has benefited from the dividend. And I don't think we ought to preclude our children and grandchildren and great grandchildren from also enjoying the benefits of a permanent fund dividend [emphasis on the word "permanent"].

REPRESENTATIVE BERKOWITZ remarked that there's been a great deal of focus in the legislature on the money that comes out of the permanent fund, but to some extent the legislature has ignored the money that goes into the permanent fund. He referred to the testimony of [Mr. Bartholomew and Mr. Storer] regarding what would have happened if "we" had adopted 100 percent of the resource royalty money and "gone into the permanent fund." He said the situation would have been far different today. He stated that that seems to be a way of preserving the state's options in the future. He said he will personally promote giving that aspect of the permanent fund a much closer look.

Number 2888

CHAIR WEYHRAUCH stated that he plans to vote no on moving HJR 3 from committee and to vote no at "every other opportunity." Notwithstanding that, he stated that he doesn't want "the people" to think that he didn't want this debate to occur. He said he thinks the permanent fund belongs to the people and they deserve to debate on it. He revealed that he did no lobbying on the resolution whatsoever, nor did he impose his opinions on any member of the committee, but he thinks HJR 3 is "one of the worst kinds of public policy decisions this legislature could ever make ...."

CHAIR WEYHRAUCH said there has been a tremendous amount of interest in the resolution, not just at the recent conference in Fairbanks where enshrinement of the dividend was discussed, but also through thousands of e-mails that he said he has tried to respond to. He indicated that some of the e-mails he's received are offensive and "have no deference or concern at all [regarding] what happens to anyone else in this state, or any other program in this state." He continued as follows:

Some of the e-mails and comments I've received are more principled and selfless, and reflect a basic distrust of the legislature's desire or ability to continue to pay permanent fund dividends or to inflation-proof the fund, or to protect the fund for future generations. And people who have sent those e-mails believe that, unless the [... payout of the permanent fund is enshrined in the constitution that the people will never get a permanent fund dividend and the legislature is suspect and would not do that in the future, given the competing tensions of the political process.]

[Not on tape, but taken from the Gavel to Gavel recording on the Internet, was a major portion of the above bracketed testimony.]

**TAPE 04-21, SIDE B**

Number 2988

CHAIR WEYHRAUCH continued as follows:

I disagree with that. If people have campaigned on the basis of protecting the permanent fund and they don't do that, their constituents have a constitutional right to vote them out of office and that's what they should do.

We've heard testimony that far outweighs the defeat of this ... measure than would urge passage of it. For on thing, the vagueness of these statutes and what they mean and the implications of what they mean to enshrine them in the constitution is completely unknown and unanswered. That is such an important role for this committee to play in terms of state policy decision that there's no way in good conscience I can vote this out of committee.

The second thing that we've heard is compelling testimony that instead of raiding the permanent fund, ... the legislature, in fact, has bolstered the permanent fund to the extent of billions of dollars. And instead of threatening a permanent fund dividend, this legislature has done everything possible to pay a permanent fund dividend. Instead of threatening future generations with failure to inflation-proof the permanent fund, this committee has heard testimony that the legislature has done everything possible to ensure the fund is protected against the ravages of inflation.

CHAIR WEYHRAUCH stated that to allow 40 percent of the people to decide what the legislature should do is tyranny by the minority. He opined that, "We, as public policy makers, as stewards of the government's trust, as stewards of this money, have an absolute obligation to protect this fund for future generations and to use it for basic state services."

CHAIR WEYHRAUCH continued as follows:

And I'm really glad that Lieutenant Governor Leman has passed out a constitution to every member of this legislature this session, and this copy that I have is signed by John B. "Jack" Coghill. And it's also got copies of every signer of the constitution of the State of Alaska. And just for the public's benefit: we look at the declaration of rights - civil rights, freedom of religion, freedom of speech, petition, due process - all those protect our rights as citizens in this country and in this state. It establishes a legislature; it establishes an executive branch, a judiciary, elections, a legislative apportionment, health, education, and welfare, natural resources, finance and taxation, local government, the initiative referendum and recall process. All of those

provisions focus down to one article, and that is under Section 15 of Article 9, where we have this Alaska Permanent Fund. And 25 percent of all mineral lease rental royalties, royalty sale proceeds are to be placed in the permanent fund. Instead of violating that, what the legislature has shown in historic actions is to increase from 25 percent of the constitutional mandate to 50 percent, over a substantial period of time. That is not squandering the people's money; that is not dispersing it to state government; that is not squandering it on pork; that is protecting this fund for future generations.

... I'm seriously worried about Article 7 of this state's constitution: health, education, and welfare. We are required to establish a public education system in this state, a state university system, a board of regents, and, specifically Section 4 of Article 7, "the legislature shall provide for the promotion and protection of public health," and Section 5, "the legislature shall provide for public welfare." Now maybe it's those portions that said we shall establish a permanent fund for people to use for their own benefit. And I benefit from that as others have. We've benefited from the payment of permanent fund dividends to the tune of billions of dollars. My children have benefited from that and I use it to pay for their education. But to constitutionalize the payment of a check for individuals and subject the appropriation of any other money to 40-percent right to veto that by the legislature is an abrogation of our constitutional responsibility. It's an abrogation of our right to address public education. Nowhere in this constitution do we constitutionalize appropriation. Nowhere in this constitution do we say that people have a right to a check. Nowhere in any constitution in any state or any nation have I ever seen that people have a right to payment of a check. And to say that people have a right to a permanent fund dividend check and that ... 40 percent of the people have a right to veto legislative appropriation over the public's right to an education, to teachers, to reasonable-sized classrooms or the promotion and protection of public health or public welfare, to me is terrible public policy.

Number 2697

REPRESENTATIVE BERKOWITZ said he appreciates Chair Weyhrauch's heartfelt concern regarding the schools, and health and public safety. He said that concern is well taken, which is why, during the times when he has served on the legislature, attempts were made to put funds into those areas. In spite of the need, he said, the request for those funds has been rejected. He stated that he looks forward to Chair Weyhrauch's support this year for "our amendments" to bolster schools, health, and public safety. He said it's one thing for the legislature to gather and say, "Cut the budget," but people who are cutting the budget need to remember that they're hurting people. He added, "And, at some point, you've got to do what you think is right for the public, not just follow a bumper sticker."

CHAIR WEYHRAUCH responded, "If you think that constitutionalizing the payment of a permanent fund is going to help the legislature address the serious needs of its education, then I think that we better spend a lot more time in a lot more committees, on a lot more issues like this one, because we're not getting it. The legislature doesn't understand it."

Number 2643

REPRESENTATIVE LYNN stated that he thinks this is such an important issue and the stakes are so high that people need to "ventilate on this situation" in more than one committee. He noted that other people feel the same way that Chair Weyhrauch does. He stated that he shares his concerns, but he thinks that the people in the next committee of referral need to have the opportunity to say the same thing if they choose to do so.

CHAIR WEYHRAUCH clarified that he had no intention to "kill this bill or bottle it up," which is why he brought it up for a vote of the committee.

REPRESENTATIVE LYNN clarified that he will not be voting in favor of the resolution, but in favor of moving it to the next committee for that committee's consideration.

Number 2670

A roll call vote was taken. Representatives Berkowitz, Gruenberg, and Lynn voted in favor of HJR 3. Representatives Holm, Coghill, and Weyhrauch voted against it. Therefore, HJR 3 failed to move out of the House State Affairs Standing Committee by a vote of 3-3.

Number 2540

CHAIR WEYHRAUCH asked Representative Gruenberg to move for reconsideration.

Number 2550

REPRESENTATIVE GRUENBERG said, "Yes."

CHAIR WEYHRAUCH announced that [HJR 3] would be brought before the committee again at the next committee meeting when there was a full committee. [HJR 3 was not heard again.]

HB 447-2004 REVISORS BILL

Number 2512

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 447, "An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

The committee took an at-ease from 9:00 a.m. to 9:03 a.m.

Number 2494

PAM FINLEY, Revisor of Statutes, Legislative Legal Counsel, Legislative Legal and Research Services, told the committee that the purpose of [HB 447] is to "clean up the statutes on matters where the policy has already been decided." She indicated that there should be no policy changes in the proposed legislation. She explained that most of the changes in the bill have to do with two executive orders from last year, which "didn't make certain technical changes that needed to be made." Those changes, she explained, have been discussed with the executive branch. Ms. Finley noted that there is a sectional included with the bill. She offered to answer questions.

Number 2443

MS. FINLEY began discussion of what became Amendment 1. She said the Department of Law has asked for a change as follows:

On page 7, line 6  
Delete "and restoration"

MS. FINLEY explained that the Department of Natural Resources (DNR) says it is not doing restoration.

Number 2387

REPRESENTATIVE GRUENBERG suggested, "When we're talking about whether DNR ... chooses to do restoration, that may be a policy issue."

MS. FINLEY responded that it would be [a policy issue] if that section of the bill "told people to do things." She clarified, "What this section of the law is, is a list of state activities that can be considered in determining the differential in fees between residents and nonresidents for fishing." She continued as follows:

So, what it basically says is that you may consider the cost incurred by the state for direct operating expenditures in regulation of the commercial ... fishing industry, including -- and then there's this long laundry list.

And actually, even if it weren't in this list, I think if it's met the basic definition of a commercial fishing activity, you could still consider it. I think this list was passed, probably in response to a court decision where they were trying to spend the fee differential, and they wanted as much as they could put in it. So, if this were a statute that says, "DNR shall do 'x,' 'y,' or 'z,'" I would agree with you - it would be a policy matter and I wouldn't touch it. ... This is a list of things we're doing that you could consider in the fee differential and, actually even if it's not in this list, you could still consider it. So, I don't really have any objection to making DNR happy on this point.

Number 2260

REPRESENTATIVE BERKOWITZ asked the following:

If DNR were to engage in restoration - which, since they've assumed most of the functions of [the Alaska Department of Fish & Game], they ought to - would removal of this language preclude a differential?

MS. FINLEY said she doesn't think so, because the language specifies the Department of Natural Resources, "including" the Alaska coastal management program and habitat program. She explained that the use of the word "including" does not mean "these are the only things." She opined that it's nice to have [and restoration] in the list, which she explained is why she included it; however, if DNR decided to do restoration, she said she thinks the department could still argue that as long as it had something to do with commercial fishing, it could be included.

REPRESENTATIVE BERKOWITZ asked if that language was removed at the request of someone.

MS. FINLEY noted that she had received a call from Janet Burleson-Baxter, [Department of Natural Resources], who asked her to [remove the language], whereby she deferred Ms. Burleson-Baxter to [Deborah Behr, Assistant Attorney General]. Then Ms. Behr called her and asked her to take the language out. She said, "We agreed that since this was just an including provision, both in [the Alaska Department of Fish & Game] and in DNR, ... in some ways it didn't matter at all."

Number 2181

CHAIR WEYHRAUCH asked if there was any objection to adopting the foregoing Amendment 1. There being none, it was so ordered.

Number 2135

MS. FINLEY, in response to a query from Chair Weyhrauch, offered the following history: She said there was a time when the advisor's bill just went to the House Judiciary Standing Committee and the Senate Judiciary Standing Committee. At some point, she noted, it got a referral to "State Affairs in one house and then in the next." Ever since then it has been heard by both the House State Affairs Standing Committee and the Senate State Affairs Standing Committee.

Number 2112

CHAIR WEYHRAUCH noted that there has been some grumbling by some that [the revisor's bill] should not get a referral to [the House State Affairs Standing Committee or the Senate State Affairs Standing Committee]. He opined, "I think it's fine if another pair of eyes looks at it." He noted that sometimes "people pick things up that aren't picked up in one committee."

Number 2092

REPRESENTATIVE BERKOWITZ remarked that he thinks that's why it's generally preferable that bills - particularly substantive bills - get at least two committees of referral. He stated that he knows that the speaker [of the House of Representatives] is "not always of the same opinion."

Number 2064

REPRESENTATIVE COGHILL turned to [page 6, line 4], and asked for an explanation of the change in language from "[PRIMARY]" to "general".

MS. FINLEY explained that at one point nominating petitions were done for the primary election. That was changed in 2001, so that the nominating petitions only applied to general elections. She added, "And we did it in all the other statutes and we missed this one." She clarified that the language that Representative Coghill asked about is just conforming language.

Number 2015

REPRESENTATIVE COGHILL moved to report HB 447, as amended, out of committee with individual recommendations [and the accompanying fiscal note].

Number 2007

REPRESENTATIVE BERKOWITZ objected to say that he has noticed that a substantial portion of the bill came about because executive orders were not "carefully vetted"; they didn't do what they should have done. He said this highlights the problem of when the administration acts without doing a thorough job regarding executive orders. He said that it highlights the danger of using executive orders as opposed to going through legislation to conduct the state's business. He noted that it is not the legislature's mistake that is being fixed, but the governor's. That said, Representative Berkowitz withdrew his objection.

Number 1959

There being no further objection, CSHB 447(STA) was reported out of the House State Affairs Standing Committee.

DISCUSSION WITH DEPARTMENT OF CORRECTIONS

Number 1931

CHAIR WEYHRAUCH announced that the committee would now pose questions to Commissioner Marc Antrim of the Department of Corrections, which Commissioner Antrim would digest and answer during an upcoming overview.

[Committee members posed questions and Commissioner Antrim offered preliminary answers to some of them. The question period began on TAPE 04-21, SIDE B, but due to technical difficulties continued on TAPE 04-22, SIDE A.]

NOTE: A copy of the tape(s) may be obtained by contacting the House Records Office at State Capitol, Room 3, Juneau, Alaska 99801 (mailing address), (907) 465-2214, and after adjournment of the second session of the Twenty-Third Alaska State Legislature this information may be obtained by contacting the Legislative Reference Library at (907) 465-3808.

**ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:25 a.m.