

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS

April 29, 2003

7:07 a.m.

MEMBERS PRESENT

Representative Mike Hawker, Co-Chair
Representative Jim Whitaker, Co-Chair
Representative Cheryll Heinze
Representative Vic Kohring
Representative Bruce Weyhrauch
Representative Peggy Wilson
Representative Max Gruenberg
Representative Carl Moses

MEMBERS ABSENT

Representative Norm Rokeberg

OTHER LEGISLATORS PRESENT

Representative Dan Ogg
Representative Ralph Samuels
Representative Paul Seaton
Representative Nancy Dahlstrom

COMMITTEE CALENDAR

COMMITTEE DISCUSSION: COMPONENTS NECESSARY FOR STATE FISCAL STABILITY

HOUSE JOINT RESOLUTION NO. 9

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

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 26

Proposing amendments to the Constitution of the State of Alaska relating to and limiting appropriations from and inflation-proofing the Alaska permanent fund by establishing a percent of market value spending limit.

- HEARD AND HELD

PREVIOUS ACTION

BILL: HJR 9

SHORT TITLE:CONST AM: APPROPRIATION/SPENDING LIMIT

SPONSOR(S): REPRESENTATIVE(S)STOLTZE

Jrn-Date	Jrn-Page		Action
01/31/03	0102	(H)	READ THE FIRST TIME - REFERRALS
01/31/03	0102	(H)	STA, JUD, FIN
02/11/03		(H)	STA AT 8:00 AM CAPITOL 102
02/11/03		(H)	Heard & Held MINUTE(STA)
03/28/03	0687	(H)	COSPONSOR(S): ROKEBERG
04/04/03	0797	(H)	W&M REFERRAL ADDED BEFORE STA
04/09/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/09/03		(H)	Heard & Held
04/09/03		(H)	MINUTE(W&M)
04/17/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/17/03		(H)	Heard & Held
04/17/03		(H)	MINUTE(W&M)
04/24/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/24/03		(H)	Heard & Held
04/24/03		(H)	MINUTE(W&M)
04/29/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519

BILL: HJR 26

SHORT TITLE:CONST. AM: PF APPROPS/INFLATION-PROOFING

SPONSOR(S): RLS BY REQUEST OF LEG BUDGET & AUDIT BY REQUEST

Jrn-Date	Jrn-Page		Action
04/17/03	1025	(H)	READ THE FIRST TIME - REFERRALS
04/17/03	1025	(H)	W&M, JUD, FIN
04/22/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/22/03		(H)	Heard & Held MINUTE
04/24/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/24/03		(H)	Heard & Held MINUTE
04/25/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519

04/25/03 (H) Heard & Held
MINUTE
04/29/03 (H) W&M AT 7:00 AM HOUSE FINANCE
519

WITNESS REGISTER

TAMARA COOK, Director
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Testified on HJR 26, and answered questions from the members.

ROBERT BARTHOLOMEW, Chief Operating Officer
Alaska Permanent Fund Corporation
Juneau, Alaska

POSITION STATEMENT: Testified in support of HJR 26 and answered questions from the members.

RON LORENSEN, Attorney at Law
Simpson, Tillinghast, Sorensen, and Longenbaugh
Juneau, Alaska

POSITION STATEMENT: As outside counsel to the Alaska Permanent Fund Corporation, he testified in support of HJR 26 and answered questions from the members.

JAY HOGAN, Deputy Director
Office of Management and Budget
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Testified on HJR 26.

ACTION NARRATIVE

TAPE 03-16, SIDE A

Number 0001

CO-CHAIR JIM WHITAKER called the House Special Committee on Ways and Means meeting to order at 7:07 a.m. Representatives Hawker, Whitaker, Heinze, Kohring, Weyhrauch, Wilson, Gruenberg, and Moses were present at the call to order. Representatives Seaton, Samuels, Ogg, and Dahlstrom were also present.

The committee took an at-ease from 7:10 to 7:20 a.m.

COMMITTEE DISCUSSION: COMPONENTS NECESSARY FOR STATE FISCAL STABILITY

Number 0235

CO-CHAIR HAWKER gave a presentation on the necessary components of a long-range fiscal plan. He listed five major conceptual components of a balanced and structured fiscal plan. He said the first component, maintaining the cost and growth of public services, included the following: a constitutional spending limit in HJR 9, reducing nonessential programs, containing the growth of formula programs, outsourcing state services, and reducing statewide administration.

CO-CHAIR HAWKER explained that the second component involves managing the permanent fund to protect its real value over time while providing a substantial individual dividend and a contribution to the cost of public services.

CO-CHAIR HAWKER noted that the third component of a general revenue system minimizes the need for broad-based taxation of individuals and accommodates local governments' revenue structures. Details of the revenue system include oil and gas resources; excise taxes on alcohol, tobacco, motor fuels, and rental vehicles as well as user fees, licenses, and permits. Publicly funded corporations are current or potential sources of dividends. These include the Alaska Industrial Development and Export Authority, the Alaska Housing Finance Corporation, the Alaska Student Loan Corporation, the Alaska Mental Health Trust, the Alaska Railroad Corporation, the Municipal Bond Bank, and the International Airport Fund. Other sources of revenues are insurance premium fees, seafood industry taxes and fees, and gaming. Broad based taxes can take the form of either income or consumption [sales] taxes.

CO-CHAIR HAWKER explained that real economic growth, the fourth component, can occur in many sectors: oil and gas, technology, fish, finance, manufacturing, transportation, construction, executive services, tourism, the Alaska Native Claims Settlement Act corporations, mining and minerals, and roads.

CO-CHAIR HAWKER identified that the fifth component of a long-range fiscal plan is a balanced budget requirement that incorporates a mechanism to mitigate the consequences of oil price volatility on the general revenue system.

HJR 9-CONST AM: APPROPRIATION/SPENDING LIMIT

TAPE 03-16, SIDE B

Number 4625

CO-CHAIR WHITAKER announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 9, Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit and a spending limit.

[CO-CHAIR WHITAKER determined earlier in the meeting that no one wished to testify on HJR 9.]

Number 4505

CO-CHAIR WHITAKER reminded the committee that [Version D] of HJR 9 is before it and a proposed committee substitute (CS) will be distributed tomorrow. He emphasized that every piece of legislation before the committee falls in the context of an overall financial plan. He reiterated that HJR 9 will be discussed in greater length tomorrow.

Number 4422

REPRESENTATIVE OGG stated that he appreciates the triggering mechanisms included for potential inflation, deflation, or drastic economic growth. Alaska has been a boom-and-bust society for many decades. He said he is concerned about [the budget increase being dependent on] a three-quarters vote because he is not sure that a 2 percent increase would adequately cover instances of gross inflation or dramatic economic growth. Representative Ogg suggested that a higher number might be more appropriate. He didn't want to see the legislature truncate its ability to respond to these circumstances. He proposed a tentative 5 percent increase [instead of the second 2 percent increase].

CO-CHAIR HAWKER stated that Representative Ogg has bracketed one part of dialogue - the upper end, the most difficult [budget] to achieve because a three-quarters vote is truly a significant hurdle. In the current committee substitute, the very base itself is flat; it does not have any level of incremental spending that could be passed by a simple majority. As written, a 2 percent increase would take a two-thirds vote; another 2 percent increase would require a three-quarters vote. He proposed a limited increment for inflation and for the formula-driven components of the budget such as education and Medicaid.

CO-CHAIR WHITAKER noted that Representative Ogg's concern is on the high end of the budget while Co-Chair Hawker's point focuses on the lower end of the budget.

Number 4041

REPRESENTATIVE WILSON said that sometimes a three-quarter vote inadvertently causes more spending. Historically, an effort to obtain a three-quarters vote required spending a lot more than what was originally intended, she commented.

CO-CHAIR WHITAKER noted that tomorrow's proposed committee substitute will have a balancing mechanism. A simple majority can pass a budget that is flat or one that has a modest increase of 2 percent. He said for those who want to leverage a three-quarter vote, the message is, "Forget it, you have a flat budget, and the majority will allow for that." It's a balancing mechanism. He said that HJR 9 represents a major change in the way the legislature produces a budget. The committee's decision [on HJR 9] will not be final. Ultimately, the voters will decide if the constitutional amendment is good enough.

Number 3814

REPRESENTATIVE HEINZE asked several questions about when the committee will present its work product.

CO-CHAIR WHITAKER stated that the committee must have the votes necessary to move legislation, and that's done one step at a time, one committee at a time. The legislature must put a constitutional amendment before voters in 2004 or the state will face an economic crisis of the magnitude of the one experienced in 1985 and 1986. He confirmed the committee's work must be completed before adjournment this year.

REPRESENTATIVE OGG spoke about the three-quarters vote. He said the present circumstances are different than the future that this [constitutional amendment] will affect. The legislature is trying to trim the budget, but cannot because of political pressure; it's spending more money than it's actually making. He said he believes this constitutional amendment is designed for a time when the budget is balanced and the state has more money than it's actually spending. He proposed the following increments: flat or 1 percent, 2 percent, then 2 to 5 percent. He asked if this would allow for fixed cost increases.

Number 3447

CO-CHAIR HAWKER agreed with Representative Ogg's ideas on incremental increases. He suggested a base of 1 or 2 percent that is compounded and becomes a new base. He said the specific exemptions enable the state to respond to emergencies. He said if there were an emergency that required a three-quarter vote to spend some exorbitant amount, it would fit under a governor-declared disaster, which is an allowable exemption.

REPRESENTATIVE OGG commented that there needs to be a [spending] limit because without it, the legislature has not changed anything.

Number 3251

REPRESENTATIVE MOSES observed that a two-thirds vote is hard enough to get. He said the longer the legislature delays, the more problems accelerate. He said he's concerned with a spending limit because the state's deferred maintenance exceeds the state's annual budget, which is a terrible situation. In the rural areas, public safety, education, and the correctional systems are substandard. It's time to do something, he stated.

REPRESENTATIVE WILSON told the members that when looking at limiting growth, it's important to be realistic. If the budget is ratcheted down too tightly, if there's only flat funding, the state will fall behind. The state needs a mechanism in place so inflation does not [eat into state programs]. She agreed that deferred maintenance needs to be looked at, and that economic growth will create additional expenses.

Number 2904

CO-CHAIR HAWKER concurred that the state has huge amounts of deferred maintenance on public facilities, particularly schools, public safety facilities, ports, and harbors. This will require a significant investment. He pointed out that the mechanism [in HJR 9] assures the public that the legislature won't take all the new money [from permanent fund earnings and taxes] and funnel it to rural Alaska to rebuild its infrastructure and leave the large population areas such as Anchorage with nothing. This measure says the legislature will deal with the problems in the Bush, but within the constraints of a balanced budget, not an excessive spending program.

CO-CHAIR HAWKER continued by saying that one of the exemptions from the spending cap in HJR 9 is the appropriation of the

proceeds from general obligation and revenue bonds. He said the legislature does use leveraging or debt financing wisely. The legislature is issuing general obligation bonds this year, putting the money into schools and facilities across the state. The debt service must still come in under the cap, but the initial appropriation does not. He said he believes the legislature can manage within the budget in a responsible way and not spend more than is necessary to pay the debt service. It is possible to accomplish these needed projects. There's a "synergistic" mechanism within HJR 9 that accommodates both concerns.

Number 2629

CO-CHAIR HAWKER said that as the state uses the last of its cash reserves, it must develop a new fiscal structure. He supported the idea of maintaining the sunset clause in HJR 9. After the passage of the constitutional amendment, the state has a window that extends through 2010, after which this limitation would go away. Hopefully, he said, the legislature will balance the budget for six years, and then the state could look at more significant public infrastructure development across the state. This would demonstrate that the legislature can manage the resources well and get [the state] back on the right track, he said.

[HJR 9 was held in committee.]

HJR 26-CONST. AM: PF APPROPS/INFLATION-PROOFING

CO-CHAIR WHITAKER announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 26, Proposing amendments to the Constitution of the State of Alaska relating to and limiting appropriations from and inflation-proofing the Alaska permanent fund by establishing a percent of market value spending limit. He told the members that that HJR 26, 23-LS1006\H, Cook, 4/23/03, is before the committee as a working document.

Number 2446

TAMARA COOK, Director, Legislative Legal and Research Services, Legislative Affairs Agency, testified on HJR 26, and answered questions from the members. Ms. Cook explained that she was provided language to work from and proceeded from a policy neutral view, but also from the point of view of a technician. She said the change in language on page 2, subsection (b) is framed as a structure within the constitution that is

susceptible to being enforced in the courts. Ms. Cook told the members that her concern was how the first sentence [would impact] the second sentence in the original version [of HJR 26]. The second sentence is reasonably specific as it provides a formula that is capable of being ascertained to the extent that one [believes] accounting is a concrete science; however, it actually is not, she commented. Assuming that accounting is a concrete science, the second sentence says how much can be appropriated from the permanent fund every year in terms that should generate a specific number. Ms. Cook pointed out that the first sentence seems to make a statement of policy. She said in looking at the [language in] the original bill [it appears] the legislature wants to achieve something that is predictable so that the real value of the permanent fund is preserved over time. However, the term "over time" is not defined, so it is unclear if it is ten years, five years, or what. Ms. Cook expressed concern about [the outcome] if there is a challenge as to the validity of a specific appropriation [under] the language in the original version. Does the first sentence give the court the authority to use its own judgment [to determine] the real value is not being [maintained] over time, she asked. It may mean that the courts get to decide what real value equals and what period of time ["over time" means]. [If using the original language], she said she believes the courts would have the power to invalidate any specific appropriation, even one that clearly complies with the second sentence. If the language in the first sentence remains somewhat vague, the legislature will have essentially left [the interpretation] up to the courts to enforce a concept which could make it very difficult for the legislature or anyone else to build a budget, she explained.

MS. COOK noted that another path the court could take is to look at the language that was originally composed in this bill and say that the first sentence's reference preserving the fund is just too vague to apply. [In this case], the courts would never overturn an appropriation that meets the criteria of the second sentence. The courts would not want to substitute their judgment that this particular appropriation is no good. There is either a sentence that can be enforced in a draconian way or a sentence that cannot be enforced at all, Ms. Cook commented. What was not present was a system where the outcome would be certain and she told the members that alarmed her.

Number 2053

MS. COOK explained that she took the language and tried to structure the wording so it would work. She said she was not sure of the policy result that the legislature [was trying to achieve] because the second sentence was understandable to her, whereas the first sentence was difficult to understand. She said she tried to reduce the first statement to a statement of policy, but not an enforceable statement of policy. Ms. Cook explained that she then tried to reword the second sentence in an effort to make it say this is the way the policy will be accomplished. It was her hope that the second sentence would prevail over the first in any litigation, she said. For that reason the word "shall" became "should", which is never seen in a constitution, and that is why the word "therefore" is added on line 5. She said what she was trying to do in this draft is point out the tension between these two sentences. Ms. Cook told the members that she will try to resolve the tension so if there is an appropriation that is enacted that complies with the second sentence formula, a court will be reluctant to overturn it based on the strength of the first sentence. She acknowledged that this may not be where the members want to go with this legislation.

MS. COOK told the members if they wish to trump the second sentence, by the first sentence, then there are two things that need to be kept in mind. One, the first sentence is not very concrete, so the members need to be [cognizant of the fact that] the courts will ultimately be making decisions based on the facts that are presented in litigation. Those decisions will be what ["over time" means] and what the "real value" is so that the courts can judge a specific budget. She pointed out that this could result in a budget failing. Ms. Cook told the members that she could easily redraft the bill to strengthen the first sentence and have the language point to the formula, but always subject to a determination of what the real value of the fund is protected over time. Ms. Cook reiterated her concern that the first sentence is not very concrete and the legislature will be leaving it up to the court to decide whether there should be litigation on a case-by-case basis.

Number 1816

CO-CHAIR WHITAKER commented that this was the subject of discussion at the last meeting and that is the reason why Ms. Cook provided the committee with an explanation of the change. He noted that Representative Rokeberg was the person who had a significant concern with the change; however, he is not present today.

Number 1750

CO-CHAIR HAWKER told the members that he is not speaking for Representative Rokeberg; however, he has discussed this subject with him. He said he concurs with the explanation of the predicate clause in this [subsection] which is vague in the statement of policy and direction. Co-Chair Hawker said that he believes the committee intends to very clearly state the conclusive clause. It should be unequivocal, no shading or gray [area] and [nothing left] for legal interpretation. [The language] should say that appropriations from the permanent fund may not exceed, et cetera. He told the members that he is leaning toward recommending that the predicate clause be eliminated from this draft for all the reasons stated. Co-Chair Hawker agreed that this legislation should not be left open for interpretation by the courts. He said he does not want this to be removed from the land of legislative intent and into the vague land of court decisions.

CO CHAIR WHITAKER asked if the concern was that if there was not language that related to a series of down years a 5 percent allocation from the value of the permanent fund could potentially lead to the erosion of the principal. He asked Ms. Cook if he is correct in his conclusion that this is the reason for the inclusion of this language.

MS. COOK replied that is the reason for the inclusion of the language; however, she pointed out that she did not participate in the policy decision.

Number 1518

RON LORENSEN, Attorney, Simpson, Tillinghast, Sorensen, and Longenbaugh, testifying as outside counsel to the Alaska Permanent Fund Corporation, testified in support of HJR 26 and answered questions from the members. He pointed out that what is before the committee is the original version of HJR 26 which represents the board's recommended language. That language was discussed by the board and adopted. He told the members that when discussing this language, he alerted them to the possibility that the two sentences could be interpreted as creating two separate standards that would then have to be met with respect to an expenditure from the Alaska Permanent Fund Corporation. It was clear that the board accepted the fact that there would be two separate standards, and he said he believes it is the board's desire that the two standards [be enforced].

MR. LORENSEN explained that the 5 percent standard, as Ms. Cook has stated, is the easily determinable standard. The board had a general concern that at some future time there may be a major shift in the capital markets and that the shift could be so substantial that the 5 percent [payout] could no longer be supported by a prudent investment policy on the part of the permanent fund corporation. Because of this concern, he said, it was felt that there should be an overlay that would protect against the possibility of this substantial shift in capital markets. He identified that as the reason the board felt it was appropriate and necessary to have [two] separate standards which could ultimately lead to litigation. [Litigation] would involve the presentation of experts and ultimately the legislature would be looked to for a determination, probably not every year, but from time to time. The presentation would be based on the presentation to the legislature by experts that could say the fund can support a 5 percent payout [or not]. Those initial steps would be necessary under the two-tiered approach, but he said that is what the board was looking at and what is still the [board's] preference. He said that the board has not convened to get a determination as to how it would respond to the suggested revisions. Mr. Lorensen told the members he can understand Ms. Cook's thinking and her efforts in making adjustments to the legislation. The full body has not weighed in, but some individual members have indicated their continuing preference for the two standard approach, he added.

Number 1152

CO-CHAIR HAWKER commented that he finds the first standard troublesome by its vagueness. He asked if real value is defined in legal statute or is it a term defined in generally accepted accounting principles. What does "over time" mean, he asked.

MR. LORENSEN replied that real value is an economic concept which has fundamental grounding. It is not an accounting concept or a legal question, except that the legislature might say that real value, as provided for in the constitution, means value as an economist [would interpret it]. He said he believes a definition could be fleshed out in the legislation. There is an economic concept of what real value is that would be viewed as part of the question regarding whether or not that first sentence was complied with. He turned to Ms. Cook's point that there is no indication what "over time" meant and told the members that this is very common economic language. The language "over time" means over the long term, which was what

was intended by the board. Mr. Lorensen agreed that there may be a better way to express that. Since the fund is permanent and is going to be in existence in infinitude in theory, what "over time" really means is over the time of the fund's existence.

Number 0937

CO-CHAIR HAWKER commented that "real value" and "over time" are economic concepts. He expressed concern that this language promotes concepts, not empirical benchmarks and measures. He pointed out that there are a lot of really bright lawyers out there that can run concepts in all directions.

MR. LORENSEN commented that this might [create the need] from time to time for a review with financial experts as to whether the standard had been met. Although experts can have different opinions, he hoped that with a solid record of the [legislature's intent] the courts would accept the legislature's [intent]. That should be the way it goes, he remarked.

Number 0758

MS. COOK reminded the members of the committee what subsection (b) means as a matter of constitutional law if the second sentence was not there. She explained that it means the legislature has given its control over the budget to the experts in the courts. Ms. Cook warned that the aforementioned is questionable public policy when talking about a constitutional document. The court is going to try to give some kind of meaning to every word that appears in the constitution. The court will not ignore language. If the court does not know what it means, it will invent a meaning for it. That is the way it is, she stated.

MS. COOK used the example of the [constitutional] budget reserve fund language, which has been a source of some litigation. It is a constitutional provision that the legislature considered for many years before presenting it to the voters. The legislature apparently knew what the words used meant. Subsection (d), the notorious sweep language, was passed by the legislature with the understanding that a limited amount of state funds would be susceptible to the sweep language; the legislature very swiftly passed a statute fleshing it out. Ms. Cook read the last sentence of the sweep language which says:

The legislature shall implement this subsection by law

MS. COOK said that the legislature specified that amounts left over in the general fund that are not going to be appropriated are going to be used to repay the constitutional budget reserve fund. Furthermore, the legislature was clever enough to point out to the court that it was retaining the power to define it by law. The legislature passed the law, and the court looked at it and said no, the court knows what the general fund consists of because that is language with ordinary meaning. Essentially, the court said it consists of everything in the treasury except the permanent fund and maybe the budget reserve fund. The statute which would have limited the sweep and would have protected some of the restricted general fund [dollars] was thrown out by the court despite the fact that the legislature preserved to itself the right to implement it by law. The law was invalidated. Ms. Cook said that there is not a valid law that implements subsection (d) anymore. She told the members she shared this information as a warning that the state has a court that may decide that it understands what real value is and it understands that as lawyers not as economists. The courts tend to [interpret] language as lawyers do rather than as economists do. Ms. Cook said that there were a lot of economists trying to defend subsection (d), but the court essentially said that it did not care how the state accounts for general fund money or what satisfies acceptable accounting practices. When the constitution says general fund, the [courts] gave it a very broad meaning. Ms. Cook summarized her comments by saying that is why as a technician she is concerned [with the language in HJR 26].

REPRESENTATIVE WILSON commented that [vague language] really concerns her too. For that reason the committee must be very careful that the unintended does not happen again.

Number 0318

CO-CHAIR WHITAKER said he interprets Ms. Cook's comments as saying that no matter how definitive the legislature attempts to be, it may be interpreted otherwise. He asked if he is correct in that assertion.

MS. COOK responded that the court will strive to give a reasonable interpretation of the language placed before it. However, the court's reasonable interpretation may not be the same reasonable interpretation as that envisioned by the people who are working with the language.

Number 0235

CO-CHAIR WHITAKER asked if it is possible to be more definitive with this language than is currently written.

MS. COOK responded that it is possible [to have more definitive language] and to the extent that there is not definitive language, she said, it is because the people who are thinking about it, do not really know what the members mean to say yet. That is why the language is inaccurate. There are two possible solutions to the concerns of the permanent fund, the first is to decrease the 5 percent and take the risk that the fund will grow, rather than risk that the fund will drop. The other observation is that this is a constitutional provision that limits the amount that the legislature may appropriate from the fund. It does not say that the legislature has to appropriate all that money every year. If there is a fiscal crisis with the fund, the permanent fund corporation should be able to demonstrate that fact to the legislature in a convincing fashion so that it does not appropriate the full amount over those periods of severe decline.

CO-CHAIR WHITAKER asked if language could be crafted to bring the legislation to that end.

MS. COOK replied no. The second point Ms. Cook made is that perhaps it is not necessary to address [the issues in the first sentence]. Perhaps the legislature needs to have faith in future generations to do the right thing. She said perhaps there is only so much control that can be made with the limited knowledge [the legislature] has about what people in the future will have to deal with, which cannot be conceived of now. Maybe, she suggested, just the second sentence is all the control that should be expected to be imposed on those future generations.

Number 0029

MR. LORENSEN told the members that his responsibility is to ensure that the board's point of view with regard to this matter is presented. He said he does not believe he can make any further recommendations beyond what Ms. Cook has stated.

TAPE 03-17, SIDE A

CO-CHAIR WHITAKER asked for Mr. Hogan's thoughts on Co-Chair Hawker's point.

Number 0038

JAY HOGAN, Deputy Director, Office of Management & Budget, Office of the Governor, testified on HJR 26. He told the members that his major concern regarding the first sentence [in subsection (b)] is that there will be objections raised to any use of the permanent fund other than the way it has been used for the last 20 years. Other states, he said, who have permanent funds and used them [to fund] various state purposes, had this kind of language explaining what was trying to be done. He said they were trying to guarantee stability of the fund, and availability year in and year out. This [sentence falls] short in trying to get that point across. The real purpose is to protect the permanent fund over the long haul to make the resource predictable as far as value used. That was the thrust behind the first sentence. It may very well lend itself to further discussion and explicit discussion in accompanying statute relating to this bill, he noted.

Number 0310

REPRESENTATIVE WILSON pointed out that the legislature is using financial language and there is concern that a court might interpret the language differently than what is meant by the legislature. She asked why the resolution could not just use plain English.

CO-CHAIR WHITAKER agreed that is what the committee is trying to do. He said the effort has been to make the language as understandable and clear as possible with the intent. He commented that the discussion has led the committee to the belief that no matter how much effort is expended to make the intent clear, it might not be possible.

CO-CHAIR WHITAKER asked committee members to work on putting together clarifying language before tomorrow. He said it is his intent to move this resolution from committee in the next day or two.

Number 0454

REPRESENTATIVE HEINZE asked why the language could not just start out by saying that it is the legislature's intent [to preserve the fund] for future generations.

MR. LORENSEN commented that is something that could be discussed, although statements of intent are unusual in a constitution.

CO-CHAIR WHITAKER replied that the members need to contemplate that issue before the meeting.

[HJR 26 was held in committee.]

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Ways and Means meeting was adjourned 9:00 a.m.