

**ALASKA STATE LEGISLATURE**  
**HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS**

May 2, 2003  
7:00 a.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative Dan Ogg  
Representative Paul Seaton  
Representative Jim Holm

**COMMITTEE CALENDAR**

BAR GRAPH PRESENTATION ASSUMING VARIOUS BUDGET SCENARIOS

HOUSE JOINT RESOLUTION NO. 9

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

- MOVED CSHJR 9(W&M) OUT OF COMMITTEE

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.

- MOVED CSHJR 26(W&M) OUT OF COMMITTEE

**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
01/31/03	0102	(H)	REFERRED TO STATE AFFAIRS
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
04/04/03	0797	(H)	REMOVED FROM STA REFERRED TO W&M
04/09/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/09/03		(H)	Heard & Held MINUTE(W&M)
04/17/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/17/03		(H)	Heard & Held MINUTE(W&M)
04/24/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/24/03		(H)	Heard & Held MINUTE(W&M)
04/29/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/29/03		(H)	Heard & Held -- Location Change -- MINUTE(W&M)
04/30/03		(H)	W&M AT 8:00 AM HOUSE FINANCE 519
04/30/03		(H)	Heard & Held MINUTE(W&M)
05/02/03		(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

Jrn-Date	Jrn-Page		Action
04/17/03	1025	(H)	READ THE FIRST TIME - REFERRALS

04/17/03	1025	(H)	W&M, JUD, FIN
04/17/03	1025	(H)	REFERRED TO WAYS & MEANS
04/22/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/22/03		(H)	Heard & Held MINUTE(W&M)
04/24/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/24/03		(H)	Heard & Held MINUTE(W&M)
04/25/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/25/03		(H)	Heard & Held MINUTE(W&M)
04/29/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519
04/29/03		(H)	Heard & Held -- Location Change -- MINUTE(W&M)
04/30/03		(H)	W&M AT 8:00 AM HOUSE FINANCE 519
04/30/03		(H)	Heard & Held MINUTE(W&M)
05/02/03		(H)	W&M AT 7:00 AM HOUSE FINANCE 519

**WITNESS REGISTER**

LARRY PERSILY, Deputy Commissioner  
Office of the Commissioner  
Department of Revenue  
Juneau, Alaska

POSITION STATEMENT: Presented bar graphs as requested by the committee co-chairs and answered questions from the members.

REPRESENTATIVE BILL STOLZE  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: As sponsor of HJR 9 commented on the committee substitute and answered questions from the members.

TAMARA COOK, Director  
Legislative Legal and Research Services  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Provided a legal opinion on proposed amendments to HJR 9 and answered questions from the members.

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

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

**ACTION NARRATIVE**

**TAPE 03-21, SIDE A**

Number 0001

**CO-CHAIR JIM WHITAKER** called the House Special Committee on Ways and Means meeting to order at 7:13 a.m. Representatives Hawker, Whitaker, Heinze, Kohring, Weyhrauch, Wilson, and Moses were present at the call to order. Representatives Rokeberg and Gruenberg arrived as the meeting was in progress. Representatives Ogg, Seaton, and Holm were also present.

**BAR GRAPH PRESENTATION ASSUMING VARIOUS BUDGET SCENARIOS**

Number 0143

LARRY PERSILY, Deputy Commissioner, Office of the Commissioner, Department of Revenue, presented bar graphs at the request of the committee co-chairs, and answered questions from the members. The first graph, titled "CBRF End-of-Year Balance", was developed with the assumption that there would be a 5 percent of market value [POMV] distribution of the permanent fund starting in FY 06, which would come after a general election vote of the public in November of 2004, he explained. This graph also assumes that the sales tax [HB 293] would pass [the legislature and be signed into law by the governor], and that there has been a full fiscal year in which \$300 million in sales tax revenue has been brought in. Furthermore, this graph also assumes the passage of Representative Rokeberg's bill, HB 11, which reduces the royalty deposits into the permanent fund to the constitutional level of 25 percent.

Number 0324

CO-CHAIR WHITAKER interjected that it is extremely important that the members understand that this first bar graph shows that without an annual sales tax or other revenue measures, the beginning bar graph will be significantly less.

MR. PERSILY added that the budget base would be zero if no other revenue measures pass [the legislature]. He went on to say that in the spring of 2003, revenue forecasts predicted that the state would be out of money in FY 06. However, with the assumptions that were given for this chart, it shows [the state] starting with \$1 billion in the CBR [Constitutional Budget Reserve] rather than zero. Those assumptions are the reason the FY 06 CBR balance could be \$1 billion.

CO-CHAIR WHITAKER commented that the situation is not as "rosy" as it appears. It is only as reasonable as it appears [on the graph] because there is the assumption that some type of significant revenue measure has passed [the legislature, the governor has signed it into law] and thus it is in place. He noted that the graph also assumes that HB 11 has become law.

Number 0456

MR. PERSILY added that there is also the assumption that the POMV [constitutional amendment in HJR 26] has been put before the voters and passed. The resolution would allow for a 5 percent distribution of the [percent of] market value of the fund. The assumption is that it would pass in November of 2004 and that revenue would be received by FY 06. He explained that the first chart shows the end of year balance of the CBR under three different distribution scenarios of the 5 percent of market value. The first option [shown in] the tan column distributes 60 percent to dividends and 40 percent to public services. That option shows a much more rapid decline to a negative on the CBR end-of-year balance. The next option, shown in yellow, is the 50 percent for dividends and 50 percent for public services; and the final option, shown in blue, is the 40 percent to dividends and 60 percent to public services. Mr. Persily pointed out that the higher the percentage from the permanent fund distribution that is put into public service, the healthier the CBR balance remains.

CO-CHAIR HAWKER asked Mr. Persily to explain the third line of the chart, [which says (Assumes House FY 2004 budget as the base, with no spending increase and no other new taxes)].

MR. PERSILY responded that the other premise which was used in developing the chart is that there had to be some assumption of what spending would be. The Department of Revenue took the House FY 2004 budget, that has already been adopted, and used it as the base with the assumption that there will be no other new taxes, other the \$300 million broad based [sales] tax that the

department was told to insert. For the purposes of this chart the department assumed no spending increases. This is a flat \$2.5 billion general fund budget. He pointed out that the members could look at this chart and see that if there are additional spending needs, that [appropriation] will reduce the CBR balance or a cut [in the budget] would increase the balance.

Number 0651

REPRESENTATIVE WILSON asked Mr. Persily what percent of market value has been used for the dividends in the past five years.

Number 0713

MR. PERSILY asked if she wanted him to take the current dividend distribution and convert it to what percent of market value has been used in [the] past [five] years. To Representative Wilson's positive response, he said he believes it has been about 4 percent or 80 percent of the 5 percent distribution.

REPRESENTATIVE WILSON asked if there is any correlation as to how the permanent fund dividend is currently being distributed in the three different scenarios [presented in the chart].

MR. PERSILY responded that there is no correlation. The three scenarios that are presented are those that the department was asked to chart out. He pointed out that according to this chart the [legislature] cannot afford to give more to dividends and still have enough to pay for public services. He also offered that politically [the legislature] also could not afford to give less to dividends. He suggested that the range will probably be 40-60 percent.

CO-CHAIR WHITAKER announced for the record that Representatives Gruenberg and Rokeberg had joined the committee.

MR. PERSILY asked the members to look at the second chart [titled "CBRF End-of-Year Balance"] that has the same assumptions in terms of starting points for the budget: \$300 million in taxes, the 5 percent permanent fund endowment distribution [POMV], and the passage of HB 11. The difference this chart shows is what happens to the CBR balance if there is a 2 percent spending increase factored in each year. He pointed out that a constant spending increase does seriously affect the CBR balance.

Number 0857

CO-CHAIR HAWKER pointed out the difference between the two graphs. In looking at the first one, the situation is such that the legislature has exercised the discipline to control spending. Chart 2 is a modeling component that increases spending cumulatively 2 percent per year. In the recent past, the legislature has had the discipline not to spend. The real purpose of the two charts is to emphasize the importance of [spending] discipline. If the legislature does exercise that latitude and increase [spending] 2 percent cumulatively every year, there is a significant [impact] such a decision would have on how quickly the CBR funds would be exhausted. Co-Chair Hawker reiterated his comments by saying that the two charts demonstrate the difference between the legislature's action in adding 2 percent or holding the [spending] steady.

REPRESENTATIVE WILSON commented that [2 percent increased spending] is not even keeping up with inflation. She pointed out that the legislature is really "going backwards" in the amount of money actually being spent, and the budget is still in trouble.

Number 1052

REPRESENTATIVE GRUENBERG asked what the affect would be if the legislature used the first model and implemented no spending increases, given the current rate of inflation. He inquired as to the effective decrease in today's dollars.

MR. PERSILY responded that the permanent fund assumes about a 3 percent rate of inflation, although the state is below that now.

REPRESENTATIVE GRUENBERG interjected that it would be about a 36 percent reduction in today's dollars.

Number 1201

MR. PERSILY replied that argument could be made if the state loses 3 percent per year to inflation.

CO-CHAIR WHITAKER commented that Representative Gruenberg has made his point, but that there is a counter argument to that point.

MR. PERSILY agreed that that is a counter argument. He went on to say that assuming there is inflation and assuming that spending is held flat, something has to give. It will be

necessary to cut expenses if dealing with an inflationary increase. On the other hand, if the legislature decides to increase spending it is important to know that it will be necessary to find revenue to pay for the increases.

CO-CHAIR WHITAKER told the members that is a good point to lead back to the basic assumptions that the members are discussing. Even with the following basic assumptions: the POMV method will be used, a \$300 million tax of some sort will be implemented, and HB 11 will pass, there still are significant challenges with regard to future budgets.

Number 1256

MR. PERSILY commented that if the legislature decides there are additional needs, then it will be necessary to look for additional revenue.

MR. PERSILY asked the members to look at the next two charts, titled "Amount Available for Public Services" and "Annual Per-Capita Dividend Under POMV Sharing," which show the three percentage options of how much is available each year in hundreds of millions of dollars. The first chart shows options for public services and what share of that 5 percent POMV distribution could be used to pay for those public services. The next chart shows the estimated per capita dividend based on three percentage options. These [estimates] assume that in November of 2004 the voters pass a constitutional amendment for 5 percent of POMV and that in this session the legislature passes and the governor signs HB 11. He pointed out that these models are obvious in that the more money held back for public services, the lower the dividend will be, the more money given to the dividend, less money will be available for services. Mr. Persily commented that it is a set pot, so the question is how to divide it.

MR. PERSILY said the next chart provides actual dollars from the data from previous charts. These include the amount available for public services, the dividend [amount per capita], flat budget figures, 2 percent increase [to the budget], and a 3 percent increase [to the budget].

MR. PERSILY directed attention to the last chart titled "State Expenditures with Constitutional Spending Limit HJR 9" [2% Annual Budget Increase]. He turned to the question of what would be the total state spending number for FY 04, under HJR 9, that will become the base for FY 06. The department worked with

the Office of Management & Budget and began with the governor's amended FY 04 [budget] total statewide funds. As per HJR 9 the department subtracted appropriations to the permanent fund dividend, operations, the Disaster Relief Fund, the general obligation revenue bond proceeds, the debt service payments, the federal receipts, and the interagency transfers of the same dollars. Mr. Persily announced that the total state funds that would be subject to the spending limit in HJR 9 is \$3.19 billion. If starting with the \$3 billion as a base in FY 06 and if the legislature increases spending 2 percent per year, this chart shows where spending will be in FY 12, he said.

Number 1620

CO-CHAIR HAWKER reemphasized Mr. Persily's last point that this chart shows state expenditures if there is a 2 percent per year increase in spending. He noted that this chart is for discussion purposes, and not a plan that is being recommended as the appropriate way to go.

MR. PERSILY agreed with Co-Chair Hawker that this chart was graphed to show a continuing trend. He said then there are the questions of what is inflation; what is population growth; what is the public service need; and of course, what are the two constraints - the political will to spend and the cash available to spend.

HJR 9-CONST AM: APPROPRIATION/SPENDING LIMIT

Number 1737

CO-CHAIR WHITAKER announced that the first 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. [Contains discussion of HB 11]

CO-CHAIR WHITAKER announced that CS for HJR 9 (W&M), 23-LS0435\D, Cook, 4/30/04, is before the committee. He asked the members to look at the last chart reviewed [titled "State Expenditures with Constitutional Spending Limit HJR 9, 2% Annual Budget Increase"], where a 2 percent increase requires a simple majority vote. If the legislature chooses to exercise that option, then he asked members to look at the chart titled "CBRF End-of-Year Balance" [second chart in the packet], which assumes a 2 percent spending increase and no other new taxes. He pointed out that this chart shows what happens to the CBR given

an annual 2 percent increase in spending. Co-Chair Whitaker asked the members to compare this chart to the chart that is being handed out [titled "CBRF End-of-Year Balance, Assumes 5% POMV, \$300 Million Annual Sales Tax, and Passage of HB 11", (Assumes House FY 2004 budget as the base, with a 3% spending increase and no other new taxes)] and note what happens when the legislature spends 3 percent. Although 3 percent does not sound like much, this chart shows what happens very quickly [to the CBR]. Co-Chair Whitaker urged the members to keep in mind the assumptions upon which this discussion is based - \$300 million of new taxes and HB 11 having been in place a year and a half.

Number 1919

REPRESENTATIVE GRUENBERG told the members that there is one other factor that has not been discussed. That factor is the affect of required federal programs and unfunded federal mandates or federal programs that continue with the federal dollars going away after a period of time. He also said that it would be important to consider the "Stevens'" factor, which is what happens when Senator Stevens is no longer in Congress. He asked if Mr. Persily would comment on any or all of those issues.

MR. PERSILY said if he understood Representative Gruenberg's point correctly in referring to the constitutional spending limit [HJR 9], federal funds are exempted from the cap. However, it would be a difficulat situation for the legislature if a program that previously received federal funds did not, in a subsequent, year. He noted that there are escape clauses in that a two-thirds vote [of the legislature] can increase [spending] an additional 2 percent, and a three-quarters vote [of the legislature] can increase [spending] another 2 percent.

Number 2030

REPRESENTATIVE GRUENBERG clarified his question by asking if the Department of Revenue can estimate the impact that would have on this chart.

MR. PERSILY asked Representative Gruenberg which chart would he prefer he use.

CO-CHAIR WHITAKER noted that the committee recognizes that there is a factor there; this is only an estimate and it would be difficult to quantify.

MR. PERSILY responded that he really could not guess. Of the federal money that comes to Alaska, much of it goes out in grants and federal payroll and a significant amount of federal money is earmarked for transportation projects. Mr. Persily said he could not estimate how much money that goes into the operating budget might have to be replaced by [general fund] money if the federal money stopped [coming in], or how much the legislature might want to replace as opposed to just letting the programs go away. Common sense says that if the federal money is cut back, the state would definitely end up with some holes in its budget, he said.

Number 2226

REPRESENTATIVE OGG asked if these calculations included consideration for economic growth, a flat economy, or an economic decline.

MR. PERSILY replied that those factors were omitted. He explained that he was thinking with a fiscal note mentally when making up the charts. He explained that fiscal notes do not factor in growth or inflation, they are flat lined. This assumes that a \$300 million broad based tax in FY 06 is going to generate \$300 million in tax revenue in FY 12. He advised that the Department of Revenue will make up another set of graphs assuming some reasonable growth factor. Looking at this cumulatively, for example, if there were \$300 million in annual broad based tax revenues starting in FY 06 and if with inflation, population growth, and economic development it could be increased 3 percent per year, the cumulative result by 2012 would be an additional \$200 million. Mr. Persily commented that factoring that in can be a significant gain.

Number 2336

CO-CHAIR WHITAKER asked if a growth factor was included in the POMV. He also asked if there was growth factor included in the \$300 million in taxes. In response to Mr. Persily's negative response, he asked if the same assumptions were used with regard to growth on [tax revenues], what would the cumulative numbers be.

MR. PERSILY replied that by FY 12 it would be cumulatively \$200 million in additional revenue for the CBR.

CO-CHAIR HAWKER commented that in not including the [growth factor] in some ways it mitigates not including the inflation factor in the base general fund.

Number 2415

MR. PERSILY pointed out that the State of Alaska does not have any revenue source that grows with economic activity. If there were a broad base [tax], whether it is a sales tax or an income tax, hopefully there would be increased revenue to meet the increased needs as the population grows, inflation grows, and the demand for services increases. Although there would be some growth in revenue, it certainly would not be enough to cover it all, he said.

REPRESENTATIVE OGG asked if there is economic growth factor in the HB 11 option.

MR. PERSILY explained that HB 11 is a function of the price of oil and how much oil is pumped out of the ground. These numbers are based on the spring of FY 03 revenue oil forecast which [assumes] a long-term oil price of \$22 [per barrel] and production holding steady at about 1 million barrels per day.

REPRESENTATIVE OGG asked if there is a growth factor [included in the forecast].

MR. PERSILY replied no growth factor would be included. However, if there were additional discoveries that number would increase.

CO-CHAIR WHITAKER pointed out that that number will increase sometime in the future, perhaps even before 2012.

Number 2540

REPRESENTATIVE HEINZE asked Mr. Persily to give the members an idea how this picture would look without the \$300 million sales tax. What would the impact be on either chart, she asked.

MR. PERSILY highlighted that the first chart uses the following assumptions: no spending increase, no sales tax revenue in FY 04 of about \$125 million because it is a fraction of a year. Under the aforementioned scenario, the state would not get \$300 million per year in FY 05 through FY 12, so there would be \$2.5 billion less revenue. If the \$300 million broad base tax did not exist and in FY 12 the legislature put 60 percent of the

permanent fund distribution into public services and 40 percent into dividends, the CBRF would be more than a billion dollars in the hole instead of ending FY 12 with a \$1 billion and a half [in the CBRF]. It would make a significant difference, Mr. Persily commented.

Number 2703

REPRESENTATIVE ROKEBERG said he wanted to correct one statement made by Mr. Persily. He said Mr. Persily forgot to indicate that oil and gas production growth does have a positive tax impact.

REPRESENTATIVE ROKEBERG asked if there is any way to display these same types of graphics showing the current situation in FY 03 or FY 04. What he would like to see, he said, is a base line start because it would show the impacts of no action on the CBRF and the spending lines would be used as starting points. Also, as Representative Heinze asked, it would be interesting to see the impacts of HB 11 or the lack of that component. He commented that he is not shilling for HB 11, but he said he believes that a chart would show the failure or cumulative impact in 10 years. There would either be no dividends or decreased dividends. This would show the long-term cumulative affect of a small component as well as help to make judgments as to the importance of taxation and spending variables. Representative Rokeberg said another chart he would like to see is a 1 percent decrease in spending.

Number 2936

CO-CHAIR HAWKER responded that those charts will be before the committee tomorrow.

REPRESENTATIVE HOLM questioned whether the legislature has considered reducing spending and whether the administration plans some kind of reduction in spending.

CO-CHAIR WHITAKER commented that is certainly something that the legislature can do. The legislature has reduced the budget in the past and can certainly do it again.

REPRESENTATIVE GRUENBERG surmised that the charts take into consideration that as the CBR goes down it will earn less, and therefore there will be some kind of geometric affect.

MR. PERSILY responded that is correct. These charts assume that whatever balance is in the CBR generates investment earnings and [those earnings] are put back in for appropriation. The less money in the CBR, the less it earns, and the less is available for appropriation.

Number 3147

REPRESENTATIVE BILL STOLZE, Alaska State Legislature, as sponsor of HJR 9, commented on the committee substitute and answered questions from the members. He observed that the CS liberalizes the constitutional spending limit significantly. It allows for three times the increases that the original resolution proposed. He asked why a section was taken out that would have directed the governor to make necessary reductions in expenditures to meet the spending limit. He said he was not involved in the process [of writing the CS].

CO-CHAIR WHITAKER responded that the section that would have required the governor to make necessary reductions in expenditures to meet the spending limit was removed because of concerns that the governor would be constrained and left without the option of spending in a manner deemed appropriate. He said there was the recognition that there would be consequences to that change in terms of budgets ramifications.

REPRESENTATIVE STOLTZE said he wanted it noted on record that this is the Co-Chair's choice, and not his.

Number 3344

REPRESENTATIVE GRUENBERG, commenting as a lawyer, remarked that the language on page 2, Section 16(c), lines 17-21, would have resulted in allowing the governor to reduce expenditures and divest the legislature of the authority to override those vetoes. He asked if that was Representative Stoltze's intent.

REPRESENTATIVE STOLTZE replied that he believed the language was clear and that [his intent] was that he wanted the governor to comply with the spending limit.

REPRESENTATIVE GRUENBERG reiterated his belief that a lawyer or judge would interpret the language to mean that it clearly divests the legislature of any participation in the process.

REPRESENTATIVE STOLTZE clarified that his intent was that the legislature pass the budget. The governor could call the

legislature back into session, or the legislature could demand to come back into session with the requisite number of votes, he said. Representative Stolze said he does not believe there is an abrogation [of powers].

Number 3557

REPRESENTATIVE ROKEBERG moved to adopt a conceptual amendment to CSHJR 9, Version H. He said the amendment would remove language on page 2, lines 11-16.

REPRESENTATIVE ROKEBERG objected for purposes of discussion.

REPRESENTATIVE ROKEBERG explained the current [work] draft allows for three incremental increases of 2 percent. The proposed amendment would eliminate the second level of 2 percent increase and a two-thirds vote of each house. Therefore, it would limit the cap to 4 percent with a standard 2 percent increase and would require a three-quarter vote for any increase in the budget. Representative Rokeberg said that the 6 percent increase annually really does not look like much of a spending cap to him, and that is the rationale for this amendment.

CO-CHAIR WHITAKER stated that Conceptual Amendment 1 to HJR 9 would delete subsection (b), page 2, lines 10-16.

Number 3721

REPRESENTATIVE GRUENBERG objected.

REPRESENTATIVE WILSON said that she really has a problem with this amendment because in thinking realistically of the future of the state she sees many problems, such as the teacher shortage. This is a crisis situation and she predicted that in order to attract teachers it will be necessary to increase their pay. Representative Wilson said that if the legislature puts itself in too tight of a box, the state will be in big trouble. She emphasized that the legislature needs to think realistically and face the future.

REPRESENTATIVE KOHRING asked for the sponsor's reaction to the Conceptual Amendment 1.

REPRESENTATIVE STOLTZE responded that it is an improvement [from the committee substitute].

A roll call vote was taken. Representatives Weyhrauch, Rokeberg, Kohring, Heinze, Whitaker, and Hawker voted in favor of Conceptual Amendment 1. Representatives Moses, Gruenberg, and Wilson voted against it. Therefore, Conceptual Amendment 1 passed by a vote of 6-3.

Number 3921

CO-CHAIR HAWKER moved Amendment 2 [23-LS0435\H.1, Cook, 5/1/03] which read as follows:

Page 2, line 16, following "made":

Insert ", excluding appropriations listed in (a)(1) - (10) of this section"

Page 2, line 22, following "made":

Insert ", excluding appropriations listed in (a)(1) - (10) of this section"

Number 3934

CO-CHAIR WHITAKER objected and noted that Amendment 2 was developed by Legislative Legal and Research Services. He explained that Amendment 2 clarifies that if the legislature does obtain the supermajority level for expenditures, it does not become part of the base for future appropriations.

REPRESENTATIVE WILSON asked for further explanation of the bill.

CO-CHAIR HAWKER told the members that this Amendment 2 adds a line on page 2, line 22, at the end of the paragraph, which says if the legislature makes an appropriation that exceeds the amount allowable under this [constitutional] amendment, it will require three-quarters of each house of the legislature to do it; [Amendment 2] makes it very clear that the amount of the appropriation may not exceed 2 percent. The 2 percent is based on the amount appropriated in the two fiscal years preceding the years for which the appropriations are made. That 2 percent does not apply to those exceptional items in Section 16 (a)(1)-(10), on page 1, lines 10-16 and page 2, lines 1-10. It is strictly a 2 percent increment based on the base level of government expenditures. This would not include the permanent fund distributions, disaster response, general obligation bond issues, reappropriation money, and all the other items listed in (1)-(10). This amendment would clearly restrict the overriding capacity of the legislature to the base amount in the constitutional amendment.

The committee took an at-ease from 7:55 to 7:56 a.m.

Number 4300

CO-CHAIR WHITAKER withdrew his objection to Amendment 2. There being no objection, Amendment 2 was adopted.

Number 4351

REPRESENTATIVE ROKEBERG proposed Amendment 3. He asked the members to look at Version A of HJR 9, which is the original version of the bill as offered by the sponsor. Representative Rokeberg explained that on page 2, lines 17-21, the provision that the sponsor talked about with respect to directing the governor to make a cut in funding if the legislature failed to do so, should be reinserted. He said that he would like to insert that language in as subsection (c) on page 2. Representative Rokeberg read [subsection (c) of Version A] which said: "(c) If appropriations for a fiscal year exceed the amount that may be appropriated under (a) and (b) of this section, the governor shall reduce expenditures by the executive branch for its operation and administration to the extent necessary to avoid spending more than the amount that may be appropriated under (a) and (b) of this section." He commented that this was excised from the original resolution and he would like to reinsert this language.

Number 4614

REPRESENTATIVE ROKEBERG moved Amendment 3 as follows:

On page 2, line 17,  
Insert the following:

**"(c) If appropriations for a fiscal year exceed the amount that may be appropriated under (a) and (b) of this section, the governor shall reduce expenditures by the executive branch for its operation and administration to the extent necessary to avoid spending more than the amount that may be appropriated under (a) and (b) of this section."**

REPRESENTATIVE GRUENBERG objected.

**TAPE 03-21, SIDE B**

Number 4650

REPRESENTATIVE GRUENBERG told the members he is not sure how this amendment would work, and would have no objection to Amendment 3; however, he sees two different ways this language could be interpreted. For example, the language could be interpreted to mean that even though \$1 million has been appropriated for the Alaska Department of Fish and Game, the governor does not need to spend all of that money and [the administration] should make its best efforts not to do so. This language could also be interpreted to mean that if the legislature appropriated too much money under the Constitution [under this amendment], the governor could veto the appropriations bill and the legislature would constitutionally have no power to override that veto. Representative Gruenberg highlighted the legal importance of knowing the intent of the amendment. It has got to be clear in the language, he said, and asked for the intent of this language.

REPRESENTATIVE STOLTZE commented that he would have a better appreciation for the members' concerns about passing powers to the governor if Representative Gruenberg had not voted for a \$20 million unallocated reduction for the governor to make as a budget amendment.

Number 4354

REPRESENTATIVE ROKEBERG agreed that Representative Gruenberg raised a very good and interesting point with respect to the amendment and the issue of constitutional separation of powers.

REPRESENTATIVE GRUENBERG reiterated that he would have no problem with Amendment 3 if the intent is the first interpretation of the amendment.

REPRESENTATIVE ROKEBERG commented that there may be some ambiguity in the amendment and would like to get counsel's opinion on this issue.

CO-CHAIR HAWKER responded that he does not have a legal background so his approach is the doctrine of common sense. If the purpose of [HJR 9] is as stated on page 1, line 6, "Appropriations made for a fiscal year shall not exceed", [the word] "shall" seems to be an imperative. He asked the members to look at the proposed additional language which says, "If appropriations exceed". There seems to be a contradiction within the amendment itself, he commented. Co-Chair Hawker said that with all due respect, this is a constitutional amendment

proposition and it appears that this language would build a conundrum into the Constitution.

Number 4214

REPRESENTATIVE ROKEBERG responded that everyone knows that because of supplemental appropriations [the budget can exceed the spending limit]. The other factor is if there is a legislature or governor that is predisposed to [increase] rather than decrease spending, there could be the problem of a constitutional challenge. He said he looks at this amendment as a further check on that separation of powers. He went on to say that the ability of the legislature to override by veto is an important question.

CO-CHAIR WHITAKER pointed out that the next committee of referral is the House Judiciary Standing Committee where he believes that issue will be discussed at great length.

Number 4052

REPRESENTATIVE SEATON told the members that he believes there are constraints put on the legislature that prevent the members from living up to this matter in the amount spent on capital expenditures. He noted that he is in favor of this amendment because it inserts a dual requirement that if the legislature does not appropriate the way the Constitution says, which is now the case with the capital budget, then the governor is directed to make these changes. Representative Seaton summarized his comments by saying he thinks the amendment is appropriate.

REPRESENTATIVE GRUENBERG commented that his question still remains unanswered, and asked if Ms. Cook would provide an interpretation.

Number 4003

TAMARA COOK, Director, Legislative Legal and Research Services, Alaska State Legislature, provided a legal opinion on HJR 9 and proposed amendments, and answered questions from the members. Ms. Cook asked if Representative Gruenberg's question is whether the legislature would retain veto power if the language in subsection (c) from the original bill is reinserted. In response to Representative Gruenberg's affirmative response, she commented that everyone who has touched upon the issue is correct, this is an issue that needs to be addressed. If the issue is not addressed she believes the legislature would not

have veto power because the override power applies to vetoes. This is clearly not a veto; it is direction to the governor not to spend money that has, in fact, been appropriated.

MS. COOK told the members that she does not know of any mechanism in the Constitution whereby the legislature can veto a decision of the [governor] not to spend money that has been appropriated. She pointed out that the Sheffield case dealt with that situation with the North Star Borough. In that case, then-Governor Bill Sheffield ordered a reduction in certain expenditures due to the state facing a decrease in revenues and a budget that was not balanced. The time for him to veto the appropriation had long since expired. He was not vetoing an appropriation in the sense that the legislature would then have something to override. He was directing the executive branch [of government] not to spend money that had, in fact, been appropriated, she said. That [action] resulted in litigation. She pointed out that the reductions by [the then-Governor Sheffield] were overturned in court. The legislature responded by coming back into session and ratifying those reductions. Ultimately the decisions that then-Governor Sheffield made were upheld by the action of the legislature. She said that as she reads this provision, absence any clarification, she believes [the amendment] would be building that kind of situation into the Constitution. She said that what this does is tell the governor that despite the fact that the money has been appropriated, it will be the governor's decision not to spend it. In fact, the governor must decide not to spend some money that is appropriated to the Executive Branch since he cannot reduce money to the Judicial or Legislative Branches of government. The governor must elect to not spend some money if, in fact, the money appropriated exceeds the spending limit as a constitutional matter.

Number 3710

REPRESENTATIVE ROKEBERG withdrew Conceptual Amendment 3. However, he said he hopes it will be considered during the bill's referral to the House Judiciary Standing Committee.

Number 3627

REPRESENTATIVE GRUENBERG said he does support a mechanism to get state spending under control; however, he is not sure how it should be done. Representative Gruenberg expressed concern that this measure may tie the hands of the legislature at a time when it is important to have options to make very difficult

decisions. He pointed to the 1970s where the state experienced runaway inflation, which is something beyond the control of legislature in the constitutional sense. Another issue might be some kind of situation that does not fall into one of these escape clauses. He expressed concern that the committee adopted Amendment 1 and thus eliminated subsection (b), which would have been helpful. On page 2, line 20, the resolution specifies that the legislature cannot under any circumstances exceed 2 percent of the previous amount. That 2 percent figure is going to be grave and in stone. Representative Gruenberg said he would feel more comfortable about this resolution if there were some method of giving the legislature, under some circumstances, the ability to get around that. Representative Gruenberg pointed out that something may occur that no one in this room could have foreseen, something that could require an immediate appropriation; the only way that the legislature would be able to make that appropriation is by amending the Constitution, which could not be done until the next general election.

Number 3237

REPRESENTATIVE HEINZE moved to report CSHJR 9, as amended, out of House Special Committee on Ways and Means with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 9(W&M) was reported from the House Special Committee on Ways and Means.

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

Number 3153

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 noted that CS for HJR 26, 23-LS1006\I, Cook, 4/29/03, is before committee.

The committee took an at-ease from 8:15 to 8:17 a.m.

[Due to technical difficulties the log numbers from this point through the end of the minutes are ascending, rather than descending.]

Number 3151

CO-CHAIR HAWKER moved Amendment 1 to CS for HJR 26, Version I, which reads as follows:

On page 1, line 3  
delete the word "ensure"  
insert the word "assure"

On page 1, line 4  
delete "is preserved"  
insert "will be preserved over the long term"

On page 2, line 3  
after the words "will be preserved"  
insert "over the long term"

CO-CHAIR WHITAKER objected for purposes of discussion.

CO-CHAIR HAWKER said that there have been lengthy discussions in earlier meetings on prefacing language. He commented that the original version of the resolution had predicate language and it now has a prefacing clause. As a result of those discussions, this amendment was drafted in coordination with the Alaska Permanent Fund Board and Legislative Legal and Research Services.

Number 3319

CO-CHAIR HAWKER explained that the changes from "ensure" to "assure" revolve around a legal subtlety that is better explained by an attorney. He told the members that the amendment restores one important clause in the prefacing language clarifying that this amendment is intended to refer to "over time" as over the "long term". He explained that the words "long term" seemed to be more definitive language than "over time". Co-Chair Hawker said that the third change is just additional conforming language [on the same issue]. He recommended the committee adopt this amendment since it is most closely akin to that which was introduced by the Permanent Fund Corporation. He noted that HJR 26 will go to the House Judiciary Standing Committee where it may be more appropriately reviewed from a legal prospective. He commented that the House Special Committee on Ways and Means focus is a bit more financial than judicial. He noted his confidence that the House Judiciary Standing Committee will give the resolution a more appropriate hearing. He summarized his statement by saying that he believes the committee is in agreement as to the financial

appropriateness, correctness, and quality of this resolution with the inclusion of Amendment [1].

Number 3507

REPRESENTATIVE GRUENBERG stated that he strongly supports Amendment [1].

Number 3535

There being no objection, Amendment 1 was adopted.

Number 3537

REPRESENTATIVE HEINZE moved to report CSHJR 26, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE KOHRING objected. He told the members that he has concerns about this legislation and will be voting against it. He said he can see the writing on the wall as far as the support for this resolution and he said he respects the members of the committee. He said that he also respects the efforts to address the fiscal situation [of the state]. However, he views this legislation as a creative way for more money to be spent on government appropriations from the permanent fund. Representative Kohring said he is concerned because he believes the proposal before the legislature is based on the value of the fund, as opposed to the performance of the fund. He said he thinks it could be a potential bonanza if the value of the fund were to go up as far as what could be made available for expenditures. He said he does not see a problem that warrants this kind of filter since the legislature has exercised good fiscal discipline with years of effort in cutting spending. He believes the legislature should go a lot further [in cutting spending] particularly in the areas of making government more efficient through mergers, consolidations, and other measures. He also expressed concern that these monies could take away the incentive to engage in serious spending reductions in the future. The one saving grace, he commented, is that if it passes the legislature it will go before the voters and maybe the voters will see the wisdom of turning this [constitutional amendment] down. Representative Kohring stated that he will campaign against the passage of this constitutional amendment.

REPRESENTATIVE KOHRING removed his objection, but restated he does not support the legislation.

Number 3745

REPRESENTATIVE HEINZE stated for record that she would like to clarify the main difference between this resolution and the initiative, which was defeated in 1999. She explained that she sees this resolution as a way to protect the dividend, and that is far from [the purpose of the resolution] that was before the voters in 1999.

Number 3814

REPRESENTATIVE GRUENBERG stated for the record that the resolution that will be passing out of the committee deletes on page 1, line 10, the word "in". He said that he missed some of the discussion on the bill and asked for clarification on this. He also asked for clarification on the language on page 2, line 5, where it says "the first five of", and asked why is the last year of the preceding six years being eliminated. Why will a five-year reference be used, instead of a six-year average, once removed.

Number 3923

BOB BARTHOLOMEW, Chief Operating Officer, Alaska Permanent Fund Corporation, explained that the line to which Representative Gruenberg is referring defines which five-year-average will be used. The objective of going back and not using the most recent fiscal year is to allow the legislature and the governor to know at the time the budget is being prepared exactly what is available.

REPRESENTATIVE GRUENBERG responded that answers his question. He stated he has no objection to moving the resolution.

CO-CHAIR WHITAKER objected for the purposes of continuing the discussion of the resolution.

Number 4013

CO-CHAIR HAWKER acknowledged Representative Kohring's personal position against the bill, his statesmanship, and true courage. He said he appreciates his willingness to move a bill forward that he does not support, knowing that it will ultimately be placed before the people of Alaska for a concurrence vote. Co-Chair Hawker said that he hopes all the members of the body will take a lead from Representative Kohring in his demonstration of

true statesmanship in this matter. Co-Chair Hawker removed his objection.

Number 4103

REPRESENTATIVE WILSON commented for the record that this is a step to protect the permanent fund dividend and will help to assure continuity and stability in the dividend that will not be there otherwise.

REPRESENTATIVE HOLM pointed out that percent of market value is not a very well understood term. He said he believes it is very important that it is made clear what it does and does not do, and how volatile it is.

With no further objections, CSHJR 26, as amended, was reported out of the House Special Committee on Ways and Means.

**ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Ways and Means meeting was adjourned at 8:30 a.m.