

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

May 15, 2003  
8:45 a.m.

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Scott Ogan, Vice Chair  
Senator Gene Therriault  
Senator Hollis French

**MEMBERS ABSENT**

Senator Johnny Ellis

**COMMITTEE CALENDAR**

SENATE JOINT RESOLUTION NO. 3

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

MOVED CSSJR 3(JUD) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 18

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

HEARD AND HELD

SENATE BILL NO. 170

"An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 171

"An Act relating to certain suits and claims by members of the military services or regarding acts or omissions of the organized militia; relating to liability arising out of certain search and rescue, civil defense, homeland security, and fire

management and firefighting activities; and providing for an effective date."

SCHEDULED BUT NOT HEARD

CONFIRMATION HEARINGS:

Marianne Stillner - Select Committee on Legislative Ethics;  
William Granger - Board of Governors of the Alaska Bar  
CONFIRMATIONS ADVANCED

**PREVIOUS ACTION**

SJR 3 - See Judiciary minutes dated 3/19/03 and 5/9/03.  
SJR 18 - See State Affairs minutes dated 5/1/03 and 5/6/03.  
SB 170 - See Judiciary minutes dated 4/15/03 and 4/24/03.

**WITNESS REGISTER**

Senator Dyson  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of SJR 3.

Mr. Bob Storer, Executive Director  
Alaska Permanent Fund Corporation  
Department of Revenue  
PO Box 110400  
Juneau, AK 99811-0400  
**POSITION STATEMENT:** Supported SJR 18.

Mr. Bob Bartholomew, Chief Operating Officer  
Alaska Permanent Fund Corporation  
Department of Revenue  
PO Box 110400  
Juneau, AK 99811-0400  
**POSITION STATEMENT:** Supported SJR 18.

Mr. Dean Guaneli, Chief Assistant Attorney General  
Legal Services Section  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300  
**POSITION STATEMENT:** Commented on SB 170.

**ACTION NARRATIVE**

**TAPE 03-48, SIDE A**

SJR 3-CONST AM: APPROPRIATION/SPENDING LIMIT

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at 8:50 a.m. Present were Senators Ogan and French. Senator Therriault arrived momentarily. The first order of business to come before the committee was SJR 3.

SENATOR FRENCH moved to adopt CSSJR 3(JUD), version H.

SENATOR OGAN objected for purposes of discussion.

SENATOR DYSON, sponsor of SJR 3, said this version was the result of recommendations from the Office of Management and Budget. There is a list of things that are excluded and they deleted the one about program receipts. The escalator would now be the CPI plus one quarter of the change in population and divides by two for the average. The growth that would be allowed would be something less than the CPI. Any growth in the budget above that requires a three quarter vote of the Legislature.

One of his constituents asked him what the penalty was for a government that ignored this. He said he was open to suggestions.

CHAIR SEEKINS said both Finance Committee chairs consider this to be a very serious matter. They said their intent, once they receive the bill, would be to hold public hearings on it throughout the interim and bring a constitutional amendment back next session that would take into consideration all of the different economic factors, which he thought was a wise plan.

SENATOR OGAN commented that if you change the vote to a 7/8 majority, you essentially empower two or three members of the Senate as a mini-minority to hold everyone else hostage.

SENATOR DYSON countered with the argument that it gives a small number of people the power to stop more spending and that is a powerful tool.

SENATOR OGAN responded that was the philosophy of the constitutional budget reserve (CBR) and it's had the opposite effect, depending on who the minority is.

SENATOR DYSON pointed out that page 2, line 21, said if the expenditures are more than appropriated, the governor can reduce them. He assumed, if there are attempts to circumvent the

spending cap, that various public interest groups would be in court to seek an injunction.

SENATOR FRENCH said he was interested in how this would impact the state budget and wanted to look at 1992 general fund spending and apply this formula. The difficulty with any mechanical approach is if you make it too tight, you're always jumping around the exceptions and if you make it too loose, it doesn't work.

SENATOR THERRIault said that the Finance Committee could send the bill back to the Judiciary Committee after they run the spreadsheets. He then motioned to pass CSSJR 3(JUD) from committee with individual recommendations. There was no objection and it was so ordered.

9:06 to 9:08 at-ease

#### CONFIRMATION HEARING

VICE CHAIR OGAN announced that Marianne Stillner was up next for confirmation to the Select Committee on Legislative Ethics.

9:11 to 9:15 - at ease

MS. MARIANNE STILLNER participated via teleconference and stated that she felt she had a responsibility to donate some of her energy and ability to a broader purpose than herself. She thought it would be very interesting and challenging to serve on the Select Committee.

SENATOR OGAN asked her to comment on her nursing education.

MS. STILLNER responded that she got her undergraduate degree at the University of Detroit and became a public health nurse in inner city areas of Detroit and Oakland, California and on the Windford Indian Reservation. She got her Masters in Child Psychiatric Nursing at Boston University, working as a psychiatric nurse practitioner for the Yukon-Kuskokwim Health Corporation. She explained that she moved around a lot, because of her husband's career in the medical field and public health service and advised that she is neutral politically.

SENATOR OGAN asked why she thought her name was forwarded.

MS. STILLNER replied that a friend, Ellen Campbell, suggested her name to Judge Carpeneti. She added that she was challenged by the thought of looking at human behavior in the gray areas.

SENATOR THERRIAULT asked if she had any thoughts on ethics statutes in general and their application to the Legislature.

MS. STILLNER assumed he was referring to the statutes that were sent to her on the various codes of ethics, which she felt was a good source for referral in problem solving.

SENATOR THERRIAULT asked how she thought the codes should be applied within the capitol building and what kind of filters she would run allegations through in her own mind.

MS. STILLNER replied that she imagined it would be somewhat similar to how she deals with applicants and students at the university. There are protocols, rules and statutes that provide the foundation and the boundaries and within that there has to be a very objective approach to making decisions about behaviors.

SENATOR THERRIAULT asked if she could think of an instance, when she was a nurse, that was not anticipated, but she still had to make things work.

MS. STILLNER replied yes and those things happen frequently.

SENATOR THERRIAULT said that there was a particular problem in applying ethics statutes to the Legislature. He wanted someone who understood the process that gets legislators to a decision at the end of the day and who could make a fair decision when passing judgment.

MS. STILLNER replied that she could be fair and didn't have any preconceived ideas about any of the legislators.

SENATOR FRENCH asked why she didn't come in to see them today since she lives at Auke Bay.

MS. STILLNER replied that she was in yesterday, but that today she has two meetings. This is also her last day at the university for the summer and she is leaving town this afternoon.

SENATOR FRENCH asked if she had been involved in legislative matters at all or worked on a political campaign.

MS. STILLNER replied no.

SENATOR FRENCH asked if she was comfortable sitting in judgment of people.

MS. STILLNER replied that it isn't a very pleasant task, but she has done it. She had served on a grand jury in Bethel Alaska.

SENATOR THERRIAULT moved to pass Ms. Stillner's name to the full body for consideration. There were no objections and it was so ordered.

9:26 - 9:28 a.m. - at ease

**SJR 18-CONST. AM: PF APPROPS/INFLATION-PROOFING**

VICE CHAIR OGAN announced SJR 18 to be up for consideration.

MR. BOB STORER, Executive Director, Alaska Permanent Fund Corporation, said they have always felt that inflation proofing was an important issue in the Permanent Fund to make sure that all generations benefit equally from it. To date, the fund has been fully inflation proofed. The board has unanimously recommended memorializing inflation proofing in the constitution. They propose doing that by adjusting how much can be appropriated in any single year to no more than five percent of the total fund. That computation is based on five percent of the five-year moving average of the market value of the Alaska Permanent Fund Corporation. This formula is consistent with about 70 percent of the foundations and universities across the country. They believe they can earn a real rate of return over time of five percent in excess of inflation.

He explained that the status quo only inflation proofs the principal of the fund and it consists of royalty mineral money, revenues, special appropriations and inflation proofing. The Legislature has always inflation proofed the fund and the three components are almost all equal. Right now the principal is about \$22 billion. They want to limit the amount that can be appropriated from the real income of the fund over time. "Under the status quo, the entire earnings reserve can be appropriated and that can vary from year to year."

In other years, when the earnings reserve comprised about 25 percent of the fund, a quarter of the fund could have been appropriated, but if that happened in the last couple of years

when the earnings reserve was actually negative, then there would be nothing available for appropriation. He said that the earnings reserve right now is about \$2 billion, which is a product of the last six weeks.

MR. STORER explained that there is more stability with this methodology than using a realized income basis for what is available for appropriation and the dividend is computed from realized income. They are very comfortable saying they could do this consistently.

SENATOR OGAN said he heard that the average draw on the Permanent Fund was about four percent.

MR. STORER replied that on average, that's a reasonable statement, but that it is a volatile number.

MR. BOB BARTHOLOMEW, Chief Operating Officer, Permanent Fund, said the way the fund has been invested has changed a lot over the last 20 years.

When the fund was first invested, it was 100 percent in bonds and almost all of the earnings of the fund was cash flow interest income. The formula was designed to work that way. Twenty years later, we're in stocks that have a lot of their return through capital appreciation. We do get dividends, but the majority of the return comes from the growth in the value of the stock....So, early on when we say that the payout for the dividend was roughly about 4 percent of the fund, all our income was coming in in cash and we were paying it all out. Today, that percentage is dropping because a lot of the growth comes from the appreciation of assets and we don't sell our assets. We hold on to real estate for a long time; stocks that are in the index fund - we just hold the index fund. We might hold it for 10 or 12 years. All of that appreciation that's happening in assets does not go into the dividend formula today. So that dividend formula, how much cash income we have is a percentage of our total income, is just dropping. By switching to the payout of market value, we're computing, and we recommend, that all the distributions from the fund take into account the entire fund and the change in value, which is both your cash flow and your appreciation.

MR. STORER added that the fund is about 26 years old and was created after the bear market of 1973 - 74. Very few public funds were invested in the stock market. Basically, the thinking was fixed income and then cobbled from there to go into equities in the early 80s and international equities in around '88 - '89. With equities you can expect a higher return, but more volatility from year to year.

Using a smooth payout of the market value actually creates less volatility than the realized income methodology that we use right now - which goes to the fifth item, which is predictability. What we have learned and what we think is advantageous to decision makers, be it the Permanent Fund or the Legislature, is the look back provision. We are stating that it should be the moving average of the five years of the five prior fiscal years. The advantage to decision makers in the Legislature [is that] when you come into session in January, you will know exactly how much money is available, be it for dividend, government, etc. You will have that knowledge right there.

For those of us at the fund managing the assets, one of the main things you try to do with the hidden costs of the fund is transaction costs. When you're trading your portfolio, if you think of it right now, we won't know how much will be appropriated for the dividend until the computation is completed on June 30. Three weeks later, we'll have to have about one billion dollars liquidated and moved over to the Department of Revenue for processing in the dividend division. We strive very hard to mitigate the effects of transaction costs as much as possible. If we have greater predictability on that fact, we will have the knowledge to be able to address the liquidation in some systematic way which will further reduce the costs associated with liquidating those kinds of assets....

SENATOR OGAN asked if they go with the five percent, what would last year's dividend be versus what it's projected to be.

MR. STORER replied that they looked at that question and came up with two answers. One is that there would be no change in the dividend if the formula for computing the dividend remains the same. There are two formulas, one based on realized income and then one based on the POMV approach. They have strongly

encouraged the Legislature to change the formula of the dividend in a manner consistent with this as well, although he is not advocating that at this time.

He estimated that by using the 50/50 split the dividend would be larger than it is currently until 2010 due to the market volatility. But, the \$1963 dividend from a couple of years ago, would have been smaller.

SENATOR THERRIAULT said the calculation of the dividend is a completely separate issue than what he is proposing. He is just proposing a smoothing method for the cash that is available.

MR. STORER replied that is correct.

SENATOR THERRIAULT said because of the market valley we are in, if they switched the dividend calculation to a smoother model, it would result in higher...

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...it would not allow the valley to be as deep.

MR. STORER replied that is correct; it would smooth out and lines would cross at 2010.

SENATOR THERRIAULT asked what surety he could give them.

MR. STORER answered that they do a lot of modeling of the probabilities of achieving a goal. Every quarter they take all the known information about the fund and look forward 10 - 15 years. They model it through 326 different permutations of different returns, inflation, etc. They also look at a 90 percent probability of it occurring at ten percent probability, etc. He is suggesting a median case of all the permutations.

MR. BARTHOLOMEW added that under current formulas and with the recent extreme volatility, the earnings reserve could go to zero. If that happens, there is no assurance; there could be a zero distribution. The POMV, as proposed, would assure a payout every year. There is actually more assurance and more predictability with the proposed change.

MR. STORER added that although predictability is important, one of the key things about this proposal is the discipline it brings during the bull market phases. Imposing the limit in the bull markets leaves reserves for the bear market times and one

can comfortably distribute a predictable amount of money however the Legislature deems appropriate.

SENATOR FRENCH asked if they had adopted the POMV model at the outset of the fund, how big would the fund be today.

MR. STORER replied that the key to the answer is that there was only one year in which the fund was 100 percent in fixed income and they paid out more than five percent. "The fund would be the same size."

MR. BARTHOLOMEW said the main difference would be that we wouldn't have the risk of going to zero on June 30 that we have now. He elaborated that the fund made \$1.1 billion in April and that's why we've gone from almost no dividend up to there being enough money for a dividend. "That's the kind of volatility you don't want to have subject to your payout method."

MR. STORER added that we have benefited from an extraordinary bull market during the entire period and the real earnings have been in excess of six percent during that whole period as well.

SENATOR FRENCH said this assumes that the fund makes eight percent per year. In years that make less than eight percent, with a five percent payout, he asked whether that would make the fund go down.

MR. STORER answered yes; they are assuming that they can earn about eight percent over time and that historically inflation has been about three percent. That's how they came up with the figures for demonstration purposes. We are in a period now where our returns are negative and inflation is modestly up he said.

SENATOR FRENCH asked what a period of deflation would do to the model.

MR. STORER replied that there have been two extremes back through 1926: one is deflation and the other is higher inflation.

Both would have an impact on the fund. The higher inflation period, at least the last time commodities rose and so there would probably be higher income coming to the state....One of the keys in portfolio construction is diversification. So, we have about half of the fund invested in equities and the balance is in primarily high quality fixed income securities

and real estate. If deflation was over a short period of time, then we would not be able to achieve our goal, I believe. We'd make money in bonds, but there would be an impact on the stock market. But then the assumption is that we would come out of that and we would achieve our goals again. If you go back to the extreme of the depression, then you're going to have a 5 or 10-year problem. We can't get around that aspect....

MR. BARTHOLOMEW thought Senator French's point was one of the key policy decisions facing the Legislature when they are looking at this proposal. For the benefit of assuring there will be a payout every year, the fund is taking on the risk that in some short term period it could get spent down a little bit, with the idea that it would be built back up in the future. The benefit of that is that you don't have a \$22 billion fund that provides nothing to the state and what would that mean to the economy and to the citizens.

SENATOR FRENCH asked if using this model would moot the Attorney General's pending decision on what earnings are.

MR. BARTHOLOMEW said that opinion would have an affect until November 2004.

SENATOR THERRIAULT asked them to comment on the proposal to simply freeze the statute that was first put into place when the fund was invested only in bonds.

MR. STORER responded that with regard to the dividend payout, it's not really compatible with contemporary investment thinking. It would create a problem longer term.

SENATOR THERRIAULT asked him to comment on the potential scrutiny from the IRS.

MR. STORER replied that there were a lot of discussions in the 80s about the taxability of the fund. To keep a low profile, one of the things they did was make it distinct that the Permanent Fund Corporation managed the assets of the fund and that any appropriations would occur on a year to year basis through the legislative process. The corporation was constructed in a way to keep that autonomy as well. Legal opinions have always said there is a risk if the dividend was memorialized in the constitution so it was not for a government purpose.

CHAIR SEEKINS inserted that he intended to hold SJR 18 through the interim for further work.

MR. STORER commented that he didn't think that SJR 18 increased the risk of the fund being attacked by the IRS. However, SJR 19 talks about placing a dividend commitment into the constitution and would present a question.

SENATOR THERRIAULT said he understood and agreed with him.

CHAIR SEEKINS said they would hold SJR 18 for further work.

CHAIR SEEKINS announced that the next order of business was a confirmation hearing for Mr. William Granger.

### CONFIRMATION HEARING

MR. WILLIAM GRANGER, nominee for the Board of Governors of the Alaska Bar Association, said this would be his second term and that he currently works for Wells Fargo Bank.

SENATOR THERRIAULT asked what his duties at the bank were.

MR. GRANGER replied that he is a senior vice president in loan administration.

SENATOR FRENCH asked him to comment on his interest in continuing with the Board of Governors for the Alaska Bar Association.

MR. GRANGER said the last three years were challenging and that the body is charged with not only discipline type matters for the bar at large, but the continuing education and support of the group as a whole in the area of rules and regulations and dealing with other groups such as Alaska Legal Services, the pro bono program and the Catholic Social Services Immigrations program. He said he is also a trustee for the Alaska Bar Foundation and that coordinating and assisting other groups in fulfilling their missions is very interesting.

SENATOR FRENCH said he used to be a DA and he frequently heard about the speed or lack thereof in adverse bar actions against license holders who were accused and sometimes convicted of criminal violations. He asked him to comment on the speed with which the Bar Association acts in adverse actions.

MR. GRANGER replied that he has been reasonably pleased with the efficiency and speed of the bar, but a couple of recent cases have dropped through the cracks. He thought that often they operate through committees and subcommittees that are manned by volunteers and that might need some tweaking, but overall he thought they were doing a good job.

SENATOR FRENCH said he thought public confidence in the Bar Association would be increased if adverse bar actions were completed ahead of the appeals process of a criminal prosecution.

MR. GRANGER responded that maybe it is easier for the bar to take action like that after the conviction rather than prior to it.

SENATOR FRENCH agreed with him, but said he didn't know if it was the right thing to do to wait a long time after the trial.

MR. GRANGER added that in those cases, the people are not practicing anyway.

SENATOR OGAN moved to forward Mr. Granger's name to the full body for consideration. There were no objections and it was so ordered.

**SB 170-CRIMINAL LAW/SENTENCING/ PROBATION/PAROLE**

CHAIR SEEKINS announced SB 170, version A, to be up for consideration. He said there were several proposed amendments.

MR. DEAN GUANELI, Chief Assistant Attorney General, said the amendments they have brought forward are a result of discussions they had with both the Senate and the House and offer a number of improvements.

CHAIR SEEKINS said that for them to take any action at this time, they would have to delete sections 1, 2, 3, 4, and 5, which are the most controversial parts of the bill that need a lot of work.

SENATOR FRENCH concurred saying that any change they make in the law of self-defense has to be made very carefully. Some parts of the bill are able to move forward this year.

SENATOR OGAN moved a conceptual amendment to delete sections 1 - 5, ending on page 3, line 6. There was no objection and it was so ordered.

CHAIR SEEKINS said he reviewed section 6 and asked about a person being made aware of their rights at the point of booking.

SENATOR OGAN said he thought it was a little bit of a bullying tactic on the part of law enforcement to not allow an attorney to represent a person, especially if they are under age, inexperienced or mentally incapacitated in some way.

SENATOR THERRIAULT asked Mr. Guaneli how the system would work for a minor or a person with diminished mental capacity and whether there are additional protections.

MR. GUANELI explained that parents of minors have to be contacted. In the case of a mentally diminished person, especially if it is a serious crime, the judge decides whether to admit any confession. Our laws don't give law enforcement the obligation of deciding at the outset whether they have mental problems.

SENATOR THERRIAULT said they are talking about the issue of whether the person has the right to say they want an attorney or that a person outside of the room has the right to say they want their son represented by an attorney.

MR. GUANELI said they believe it ought to be the right of the person, and some third party should not have the right to interject him or herself into that situation.

SENATOR THERRIAULT said under current law, if a parent has an attorney show up when his son or daughter is being questioned, he has to be shown into the room.

MR. GUANELI agreed saying it is the right of the attorney to see the prisoner.

CHAIR SEEKINS asked if anything in section 6 eliminated that right.

MR. GUANELI replied that section 6 makes all of those rights the right of the prisoner to exercise.

CHAIR SEEKINS asked if that came under AS 12.25.150(b).

MR. GUANELI said that is correct. The right to telephone or otherwise communicate with an attorney is a right under current law (page 3, line 8); the right to telephone or otherwise communicate with a relative or friend is also a right. "What changes is, under number 3, the bill says you have a right to visit with an attorney if you request it. The current statute says it's the right of the attorney."

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SENATOR OGAN said he still has trouble with denying anyone the right to talk to an attorney, especially because of a previous remark made by Mr. Guaneli about anyone who commits a crime is mentally ill.

CHAIR SEEKINS said they were running out of time and would hold the bill for further hearings. There being no further business to come before the committee, he adjourned the meeting at 10:35 a.m.