

ALASKA STATE LEGISLATURE  
**SENATE STATE AFFAIRS COMMITTEE**

May 6, 2003  
3:45 pm

**MEMBERS PRESENT**

Senator Gary Stevens, Chair  
Senator John Cowdery, Vice Chair  
Senator Fred Dyson  
Senator Gretchen Guess

**MEMBERS ABSENT**

Senator Lyman Hoffman

**COMMITTEE CALENDAR**

HOUSE BILL NO. 14 am

"An Act relating to an absence from the state while providing care for a terminally ill family member for purposes of determining eligibility for a permanent fund dividend; and providing for an effective date."

MOVED SCS HB 14(STA) OUT OF COMMITTEE

SENATE BILL NO. 203

"An Act relating to certain administrative hearings; and establishing the office of administrative hearings and relating to that office."

MOVED CSSB 203(STA) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 81(STA)

"An Act relating to motor vehicle emissions and to inspection decals and fines relating to motor vehicle emissions; and providing for an effective date."

MOVED CSHB 81(STA) 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.

MOVED CSSJR 18(STA) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

HB 14 - See State Affairs minutes dated 4/29/03 and 5/1/03  
SB 203 - No previous action to record.

HB 81 - See Transportation minutes dated 4/28/03  
SJR 18 - See State Affairs minutes dated 5/1/03

**WITNESS REGISTER**

Jim Pound  
Staff to Representative Hugh Fate  
Alaska State Capitol, Room 128  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Testified on HB 14

Dave Stancliff  
Alaska State Capitol, Room 111  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Introduced SB 203

Benjamin Brown  
Alaska State Chamber of Commerce  
217 2<sup>nd</sup> Street  
Juneau, AK 99801  
**POSITION STATEMENT:** Testified on SB 203

Rick Urion  
Director, Division of Occupational Licensing  
Department of Community & Economic Development  
PO Box 110800  
Juneau, AK 99811-0800  
**POSITION STATEMENT:** Testified on SB 203

Andrew Hemenway  
Hearing Officer: Procurement & Longevity Bonus  
Department of Administration  
PO Box 110200  
Juneau, AK 99811-0200  
**POSITION STATEMENT:** Testified on SB 203

Kevin Jardell  
Assistant Commissioner  
Department of Administration  
PO Box 110200  
Juneau, AK 99811-0200  
**POSITION STATEMENT:** Testified on SB 203

Representative Kevin Meyer  
Alaska State Capitol, Room 513  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor HB 81

Charles Hosack  
Deputy Director, Division of Motor Vehicles  
Department of Administration  
PO Box 110200  
Juneau, AK 99811-0200  
**POSITION STATEMENT:** Testified on HB 81

Scott Leist  
No address provided  
**POSITION STATEMENT:** Testified on HB 81

Ron King  
Program Manager, Air Non-Point & Mobile Sources  
Department of Environmental Conservation  
410 Willoughby  
Juneau, AK 99801-1795  
**POSITION STATEMENT:** Testified on HB 81

James Armstrong  
No address provided  
**POSITION STATEMENT:** Testified on HB 81

Robert Storer  
Executive Director, Alaska Permanent Fund Corporation  
Department of Revenue  
PO Box 110400  
Juneau, AK 99811-0400  
**POSITION STATEMENT:** Testified on SJR 18

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

**ACTION NARRATIVE**

**TAPE 03-26, SIDE A**

**CHAIRMAN GARY STEVENS** called the Senate State Affairs Committee meeting to order at 3:45 pm. Present were Senators John Cowdery, Gretchen Guess, Fred Dyson and Chair Gary Stevens. The first order of business to come before the committee was HB 14.

#HB 14

**HB 14-PERMANENT FUND ALLOWABLE ABSENCES**

CHAIR GARY STEVENS explained that the committee substitute (CS)

removes all reference to the term canon law and lists specific family members that could accompany a terminally ill family member out of state and maintain eligibility for the Alaska Permanent Fund Dividend.

SENATOR FRED DYSON made a motion to adopt \D version CS of HB 14 and there was no objection.

JIM POUND, staff to Representative Fate, reported the sponsor had no objection to the CS as proposed.

SENATOR JOHN COWDERY made a motion to move SCS HB 14(STA) from committee with individual recommendations and asked for unanimous consent. There being no objection, it was so ordered.

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#SB 203

**SB 203-OFFICE OF ADMINISTRATIVE HEARINGS**

DAVE STANCLIFF, staff to Senator Gene Therriault, stated the current administration would like to separate the individuals or agencies that adjudicate regulations and those that promulgate regulations. In Alaska there are a number or types of hearing officers (adjudicators) and hearing examiners and SB 203 deals with adjudicators that make the decisions when someone contests administrative law.

Other states have found that by providing protection, separation and autonomy for their adjudicators, the work quality and decisional processes improve significantly. The sponsor has worked extensively with the administration to develop a system of centralized hearing officers that is cost effective and minimally disruptive for existing employees. SB 203 establishes that system within the Department of Administration.

RCA, workers compensation and tariff functions were excluded due to the need for high expertise or long-term institutional knowledge. Included was the option for commissioners to assign final decision-making authorities to an adjudicator. However, the new rules that will likely be based on the judicial code of conduct apply to all hearing officers in the state, even those that don't fall within the central panel.

Adjudicator decisions would be final unless the commissioner determines that some other action should be taken. In such instances, the commissioner would be required to take action within 30 days and substantiate the facts in the public record.

The Alaska Association of Administrative Law Judges and Hearing Officers examined the bill and had seven recommendations. He noted the recommendations were listed in a blank committee substitute (CS).

CHAIR GARY STEVENS asked for a motion to adopt the CS as the working document.

SENATOR GRETCHEN GUESS made a motion to adopt CSSB 203 \Q version and there was no objection.

CHAIR GARY STEVENS asked Mr. Stancliff if he had additional comments.

MR. STANCLIFF emphasized that part of the reason for selecting the proposed model was because it is cost effective. The bill includes a liberal transition phrase to allow the administration to proceed deliberately and not incur heavy costs. That would be accomplished by having existing agency hearing officers and their support staff transfer to the central location. He opined the increased efficiencies would overcome associated startup costs.

BENJAMIN BROWN spoke on behalf of the Alaska State Chamber of Commerce in support of SB 203 to assert that the bill would be an investment in long-term cost savings and efficiencies. More importantly, it would provide transparency and consistency to the Alaska citizens.

The state chamber works with the administrative law process as individuals and businesses on a daily basis. When dissatisfaction with an agency decision occurs, it is problematic that the appeal must be made to that same agency. SB 203 creates a transparent, bright-line office of centralized hearings, which would make it much easier for Alaskans to know that impartiality is at play and the hearing officer has no inside agenda.

When legislative research prepared an assessment of all the hearing functions done by state agencies, they found that the disparity in the turnaround time ranges from several weeks to over a year. SB 203 would standardize turnaround times and record keeping, which would work to everyone's benefit.

**4:00 pm**

CHAIR GARY STEVENS asked whether the new system would protect the hearing officer from agency influence by removing the hearing officer from the agency.

MR. BROWN replied that it would remove the appearance of impropriety. Although his experience is that there isn't a lot of undue influence exercised, there is both the appearance and the potential.

SENATOR JOHN COWDERY asked whether hearing decisions have legal standing.

MR. BROWN explained that an administrative hearing decision is the final administrative law or agency action before it is appealed to a court.

SENATOR COWDERY asked if a hearing officer petitions the court for enforcement of decisions.

MR. BROWN said a court order could be obtained if an administrative hearing decision were ignored.

RICK URION, Director of the Division of Occupational Licensing, testified in support of SB 203. His division has just one hearing officer and a caseload that is far too large for one individual. Because of this, one of the largest problems the division faces is the time it takes to reach final adjudication. In some instances, it has taken over a year for the entire process.

In the interest of speedy adjudication of issues in his department, he urged passage of SB 203.

CHAIR GARY STEVENS asked whether the number of cases in his department was consistent.

MR. URION replied the caseload is consistently steady. He added they have had no difficulty with perceived or real impropriety; they simply don't have enough people to handle the load.

ANDREW HEMENWAY, hearing officer with the Department of Administration, stated he worked with Mr. Stancliff and Mr. Jardell from the Commissioner's office to craft the legislation. He explained that they removed selected functions such as RCA, the worker compensation board and fisheries commission from consideration because they have existing hearing officer panels and therefore more flexibility in handling caseloads. Beyond that, they looked at the range of decisions that hearing officers make to determine whether or not the decisions were policy oriented or fact oriented. The latter seemed to be more appropriate to include in the central panel system and the policy oriented decisions were initially left out.

In terms of the financial impact and efficiency of the hearing function, he said that his perception is that as his caseload goes up efficiency goes down. Consolidating the hearings would spread the caseload so the various agencies could get a consistent level of service and the hearing officers could have a consistent caseload.

He referenced Senator Cowdery's previous question and made it clear that under this legislation the hearing officer would issue the proposed decision, it would go to the agency for adoption and enforcement would be up to the agency. The hearing officers have no role in the investigation or enforcement.

CHAIR GARY STEVENS asked what the qualifications were for hearing officers and whether they were all attorneys.

MR. HEMENWAY replied that hearing officers must be attorneys for hearings conducted under the Administrative Procedure Act, which accounts for less than 50 percent of all administrative hearings. There is no statutory requirement that the hearing officers be attorneys in any other hearings.

He noted that all hearing officers that would transfer under the transitional provisions of the legislation are attorneys.

CHAIR GARY STEVENS asked how professional standards would be improved.

MR. HEMENWAY said the bill would formalize the current practice that hearing officers are attorneys with two years practice. With hearing officers in a central panel, an in-house training process could be created that might not be financially feasible in a single agency.

KEVIN JARDELL, Assistant Commissioner of the Department of Administration, reported they have had success with the independent hearing officer for tax appeals that works largely with oil and gas tax issues. Industry believes they are treated more fairly at hearings even though the win loss record has not changed. He said they look forward to the same success with the proposed centralized panel.

He acknowledged that the financial picture is incomplete, but they project a net increase of about \$136,000 in the phase one personnel shift. Once they receive the financial data from the minor boards and commissions that can't justify a single hearing officer and have been contracting private attorneys, they feel

confidant they will show a great savings and the public will realize increased response efficiency.

CHAIR GARY STEVENS asked if the plan is to eventually expand to agencies that aren't currently included.

MR. JARDELL replied they want the system to be expansive enough to ensure that it has a chance to work, but small enough to be manageable. They hope to continue to bring in agencies to increase efficiencies and not bring in agencies that are working well on their own.

SENATOR COWDERY asked how they develop time limits for the hearings.

MR. JARDELL said the timeline was 180 days at one time, but the attorney general suggested making it just 90 days. Some hearings are certainly more complicated in nature and take more time to develop the record. The concept in the bill is to address a majority of the cases, give the public a quick turnaround and if an agency needs a greater amount of time then do it through regulation and justify the need.

SENATOR GRETCHEN GUESS asked for assurance that the bill wouldn't change the way regulations are created.

MR. STANCLIFF replied SB 203 does not address the creation of regulation.

MR. HEMENWAY clarified that the legislation would provide that the chief hearing officer would promulgate the procedural regulations that govern the hearing.

MR. STANCLIFF noted that evidence from other states indicates that when the adjudication bar is high, more care is taken in the promulgation and enforcement of regulations.

SENATOR GUESS noted the commissioners of education, HESS and DNR weren't listed in the transitional language even though the departments were included. She asked if this was because those departments don't have a hearing officer.

MR. STANCLIFF explained that Tamara Cook [Director, Legislative Legal Services] developed the list and although changes might still be made, the sponsor didn't want to "create any different flow, administratively, in these conforming statutes."

SENATOR GUESS asked for a list of those not included. She then

commented she found it interesting that the Department of Administration was willing to assume the function and asked why the Department of Law wasn't selected.

MR. STANCLIFF said they deferred to the national organization that created the model.

MR. HEMENWAY pointed out the Department of Administration already has some legal functions and certain labor relations. The Department of Law is primarily a prosecutorial function of government and placing adjudication there might create the appearance of conflict.

MR. STANCLIFF stated they were trying to keep the function in a neutral place.

SENATOR GUESS asked to whom the chief would report.

**SIDE B**

**4:30 pm**

MR. STANCLIFF replied the Legislature would review the budget of the new entity and the attorney general would review any complaints made against the chief administrative hearing officer.

SENATOR GUESS asked if there was a reason that the chief hearing officer wouldn't be approved by the Legislature.

MR. STANCLIFF replied that although they opted for legislative approval initially, Tamara Cook advised it is a gray area and the Attorney General's Office determined it might stand a weak constitutional test. To avoid controversy, they removed the confirmation process.

SENATOR GUESS noted that hearing officers are partially exempt and asked whether that is a change.

MR. STANCLIFF said, no they're classified. To make the panel work they need to be partially exempt or exempt employees, but they need some protection. As a model, they chose the Division of Election employee model, which is statute AS 39.

MR. HEMENWAY clarified that some of the hearing officers are now classified while others are partially exempt. It varies and an ancillary benefit to this is standardization in job function.

SENATOR GUESS asked what the difference is between exempt and partially exempt.

MR. STANCLIFF replied he didn't have an answer.

MR. HEMENWAY said he was told it is simply pay scale.

SENATOR GUESS expressed the following concerns with regard to future administrations:

- The governor would have control over the chief, not the Legislature
- Partially exempt employees serve at the pleasure of the governor

MR. STANCLIFF replied they welcome creative suggestions and as the bill moves through the committee process, they are open to exploring different ideas.

MR. HEMENWAY said the chief hearing officer is appointed for a fixed term, which gives some insulation from the political process while providing some accountability. Although hearing officers are exempt, they are entitled to the same protections any other state employee would have. If they are to be discharged, there must be a hearing and it must be for cause. The main impact of the exempt status is at hiring.

SENATOR GUESS referred to page 3, line 13 of the CS and said that, as a legislator, she would like to know whether the process is working.

MR. STANCLIFF agreed with the point and said it is their intent that legislators know how well the process is working and whether or not the public is satisfied.

SENATOR GUESS asked how the chief would prioritize the workload.

MR. STANCLIFF replied the chief would determine areas of expertise, the workloads and cross training needs. One of the major efforts of the job would be to determine how to efficiently work through the caseload. He admitted the key to success is to hire the right person for the job the first time around.

SENATOR GUESS pointed out a discrepancy between page 5, line 25

and page 8, line 2 and said it was unclear who would have choice in the matter. She asked whether an agency would have the choice of having their complaint go to the central office and would the central office have the choice of taking that complaint.

MR. STANCLIFF said they envisioned it that way.

MR. HEMENWAY explained the hearings that are listed on pages 4 and 5 would be mandatory. Others are at the discretion of the receiving agency.

SENATOR GUESS expressed concern about setting up a separate agency to conduct hearings and make rulings because there are many ways the agency could say they didn't agree with the decision.

MR. STANCLIFF said that is addressed on page 8. They decided on the decisional process whereby the decision of the hearing officer stands if action isn't taken within 30 days. Page 8, line 24 might provide comfort in that it eliminates the temptation to make an arbitrary reversal of a hearing officers' decision.

MR. HEMENWAY said that from the administration's policy point of view, it's very important that the final decision authority be retained with the final decision maker. The key is that the final decision maker is the person who is accountable to the executive branch and ultimately to the people.

SENATOR GUESS asked if that means she doesn't have to worry about page 8, line 21 that says the agency may return the case to the hearing officer, take additional evidence or make additional findings.

MR. STANCLIFF replied that this is largely the same language that is in existing law under the Administrative Procedures Act.

SENATOR GUESS asked if there is an appeal by either party before going to the court system.

MR. STANCLIFF said that under most statutes there is the opportunity to request reconsideration.

SENATOR GUESS asked for the difference between a hearing officer and a hearing examiner and why there was a decision to group the officers and not the examiners.

MR. STANCLIFF explained that a hearing examiner resolves disputes for an agency while a hearing officer is an adjudicator between two parties that are in direct dispute.

MR. HEMENWAY opined the difference is semantic. When he looked at the classification system he couldn't tell the difference and administrative law judge is another name that is sometimes used.

SENATOR GUESS noted that agency is a term used throughout the bill while commissioner is the term used throughout the testimony. She asked whether they were synonymous.

MR. STANCLIFF replied the buck with the agency ultimately stops at the commissioner's desk.

SENATOR GUESS pointed out there is a difference between what happens within an agency and what happens at a commissioner level.

MR. HEMENWAY said the hearing function is an agency function. The final decision maker is usually, but not always, the commissioner. The terminology that is used is to avoid identifying any individual because it could be any person within the agency who currently has the final decision making authority.

CHAIR GARY STEVENS announced he wanted to move the bill to the Judiciary Committee for consideration.

SENATOR COWDERY made a motion to move CSSB 203(STA) and attached fiscal notes from committee with individual recommendations. There being no objection, it was so ordered.

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#HB 81

**HB 81-MOTOR VEHICLE EMISSIONS INSPECTION**

REPRESENTATIVE KEVIN MEYER, bill sponsor, explained the bill streamlines existing law by improving enforcement, providing consistency between overseeing departments and providing relief from the extraneous testing requirements.

The purpose for increasing the fine from \$200 to as much as \$500 is to improve compliance. The benefit is that the air stays clean and Alaska continues to qualify for federal street and highway money.

The bill removes the exemption from alternative fuel vehicles and

requires that the registration period not extend beyond the expiration period on the emission certificate. When the title of a pre-1987 vehicle is transferred, the emissions test requirement is changed from not more than a year old to not more than two years old, which removes extraneous testing.

He said HB 81 is a consumer protection bill in that Anchorage and Fairbanks residents can be assured that the car they're buying isn't a lemon. Inspection decals must be displayed on windshields and the inspection record must be on file at DMV. If a car isn't compliant, the dealer must be able to explain why it is not. The bill expands enforcement of the emission standards to include DMV, DEC and the municipalities of Anchorage and Fairbanks.

SENATOR JOHN COWDERY asked what happens if the inspection decal is lost.

RON KING, manager of the Air Non-Point & Mobile Sources Program, said replacement decals would be available through the local inspection emissions programs in both municipalities. The systems are computer-linked so they could verify that the vehicle was in compliance.

CHUCK HOSACK, Deputy Director of the Division of Motor Vehicles, testified via teleconference in support of HB 81 because it would reduce the public's confusion with regard to inspections.

SENATOR COWDERY asked what the process would be if you lived in Anchorage, but registered your car in Juneau.

MR. HOSACK explained the residence address of the vehicle owner is used as the basis for inspection requirements. There is a waiver for vehicles that are used outside the emission area, but once the vehicle is returned to the emission inspection area it would require inspection.

SCOTT LEIST from Fairbanks testified via teleconference to ask whether all vehicles in the inspection area would need emission testing and would the tests be required annually.

RON KING, program manager with the Department of Environmental Conservation, replied the inspection programs would remain the same. In Fairbanks, cars that were built after 1974 must be inspected and in Anchorage the requirement is that cars built after 1967 must be inspected. By statute, the emission test is and would remain a biannual program.

MR. LEIST expressed support for the bill.

JAMES ARMSTRONG from Anchorage expressed support for the

legislation.

SENATOR GRETCHEN GUESS made a motion to move HB 81 and attached zero fiscal note from committee with individual recommendations. There being no objection, it was so ordered.

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#SJR 18

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

CHAIR GARY STEVENS asked for a motion to adopt the committee substitute (CS) for SJR 18.

SENATOR GRETCHEN GUESS made a motion to adopt CSSJR 18 as the working document. There being no objection, it was so ordered.

ROBERT STORER, Executive Director of the Alaska Permanent Fund Corporation, stated that the Permanent Fund Board of Trustees has concluded there is a need for a constitutional amendment to adjust inflation proofing on the Alaska Permanent Fund. Limiting the amount of funds that could be appropriated in any given year would do that. They propose the methodology be changed to a percentage of market value (POMV), which is consistent in approach with about 70 percent of the endowments and foundations in the country. They suggest limiting the appropriation to no more than five percent of the five year moving average of the total fund.

He noted that copies of a power point presentation were in the members' bill packets and pointed out five key differences.

- Percentage of Market Value offers constitutional inflation proofing and protection of the entire fund. Status quo statutorily inflation proofs just the fund principal.
- The proposed is a spending limit because more than five percent of the five year moving average could be appropriated. Status quo is that the entire earnings reserve may be appropriated.
- POMV improves the stability of the amount that may be appropriated in any given year. Current methodology of using realized income is considerably more volatile than using a POMV.
- Five percent POMV is compatible with the diversified portfolio the fund has in these volatile times. Current methodology was established 26 or 27 years ago when there wasn't a lot of volatility and people thought about fixed

income securities, cash flow and clipping coupons for interest payments.

- Stability means predictability and is very important from year to year for decision makers. Currently the dividend is based on a five year realized income and is a moving average.

SENATOR JOHN COWDERY asked why data from the previous year wouldn't be used.

BOB BARTHOLOMEW, Chief Operating Officer of the Alaska Permanent Fund Corporation, explained that in going back one extra year legislators would know when the session begins in January exactly how much would be available for the budget. Forecasts and predictions wouldn't be necessary.

MR. STORER added the increased predictability works to everyone's advantage by allowing for more informed decisions.

SENATOR COWDERY asked if they thought that dividends were an appropriate use of the fund.

MR. STORER replied the Board of Trustees has always felt that how the money is appropriated is the providence of the Legislature and they have avoided any discussions or opinions on the subject.

MR. BARTHOLOMEW said he would like to go through the changes between the original legislation and the CS.

**TAPE 03-27, SIDE A**

**5:15 pm**

- The title speaks to the five percent and that the goal is to protect the fund and its purchasing power from inflation. The changes are long term not on a year-to-year basis.
- Page 1, line 10 adds subsection b to the constitution.
- Line 11 the word "principal" is removed, which is a significant policy discussion that the board recommends to ensure an annual distribution.
- Lines 13 and 14 deletes that all income from the permanent fund shall be deposited in the general fund unless otherwise provided. All income will remain in the permanent fund until appropriated subject to the five percent.
- Page 2 subparagraph b adds a sentence that states how the permanent fund will be protected going forward.
- Line 7, section 3 is transitional language and clearly a statement of law that the earnings of the permanent fund

that exist on the date this would pass the vote of the people are part of the permanent fund.

- Section 4 says that at the next general election in November 2004, the voters of the State of Alaska would decide whether changes would be made to the way distributions from the permanent fund are determined.

CHAIR GARY STEVENS asked what happens to the Constitutional Budget Reserve (CBR). He understood that the Earnings Reserve Account (ERA) would disappear into the fund itself.

MR. BARTHOLOMEW explained the CBR is a sub-fund of the general fund and wouldn't be affected by the amendment. Currently, the permanent fund consists of principal and earnings reserve and they are all invested the same and the CS would merge the two and it would be referred to as the fund.

SENATOR FRED DYSON said he hopes to never again see the day that it's a presumptuous statement to say that limiting the appropriation to five percent is inflation proofing, but he would like to hear a comment on that.

MR. STORER said the board spent a great deal of time studying the issue and has determined that limiting the draw to five percent would be the high end to achieve their goal. There are times, like now, that drawing five percent you wouldn't be inflation proofing, but then there are other times that you would earn well in excess of that. The key is that the five percent limit creates discipline in great years. Seventy six years of data indicates that the five percent is achievable over time.

SENATOR DYSON asked how the board plans to educate the voting public.

MR. STORER acknowledged their plans aren't fully developed but the board is sensitive to the issue in statute that prohibits using corporate or fund assets for political purposes. However, they believe it is within their providence to educate the public when they are publicly speaking about the fund performance, which they do on a regular basis.

SENATOR DYSON asked whether it would be legal to do mass mailings to voters or to place ads on TV to inform voters of the option before them when they vote on the proposed constitutional amendment.

MR. STORER said it is his personal opinion that they could not do mass mailings or anything that would create that type of expense

to the fund.

SENATOR DYSON expressed concern that some in the capitol building are pushing for a constitutional amendment to place the dividend in the constitution. He hopes that those people wouldn't characterize SJR 18 as being counter to the protection of the dividend.

MR. STORER replied they believe there is some reasonable probability that placing the dividend in the constitution would jeopardize the tax-exempt status of the fund. While the board has always held that how the money is appropriated is the providence of the Legislature, they would probably stand mute were the dividend to be placed in the constitution.

MR. BARTHOLOMEW said two points are critically important when you educate the public:

- If there isn't leadership coming together from the House, the Senate and the Executive Office, it will be very difficult to get a vote from the public.
- Even though the corporation and the board are silent on how to use the funds, it is important that the Legislature go on record with regard to how they want to use money.

SENATOR JOHN COWDERY asked what size dividend might be assured today were the plan in place six years previous.

MR. STORER said he couldn't give a specific number, but he was comfortable saying it would encompass both the bull market and the bear market and would smooth out the highs and lows.

SENATOR COWDERY asked if the dividend might not be between \$800 and \$1,000.

MR. STORER said the dividend would probably be between \$1,000 and \$1,100 if the fiscal year ended that evening because the earnings reserve is currently about \$1.5 million.

Considering the last five year average of the dividend, using half of the five percent for dividend purposes would give a \$1,000 to \$1,100 dividend.

SENATOR COWDERY remarked, "That would make a lot of people happy and that was free advertising."

SENATOR DYSON made a motion to move CSSJR 18(STA) and attached fiscal note from committee with individual recommendations.

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There being no further business to come before the committee,  
Chair Gary Stevens adjourned the meeting at 5:40 pm.