

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

March 23, 2010

9:01 a.m.

**MEMBERS PRESENT**

Senator Linda Menard, Chair  
Senator Kevin Meyer, Vice Chair  
Senator Hollis French  
Senator Albert Kookesh  
Senator Joe Paskvan

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 282

"An Act relating to the amount of the transfer from the earnings reserve account of the Alaska permanent fund for 2010 permanent fund dividends; and providing for an effective date."

- MOVED SB 282 OUT OF COMMITTEE

SENATE BILL NO. 249

"An Act relating to official action by electronic transmission, to records, and to public records."

- MOVED SB 249 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 282

SHORT TITLE: PERMANENT FUND DIVIDEND AMOUNT FOR 2010

SPONSOR(S): SENATOR(S) WIELECHOWSKI

02/17/10	(S)	READ THE FIRST TIME - REFERRALS
02/17/10	(S)	STA, FIN
03/23/10	(S)	STA AT 9:00 AM BELTZ 105 (TSBldg)

BILL: SB 249

SHORT TITLE: PUBLIC RECORDS/ELECTRONIC TRANSMISSIONS

SPONSOR(S): SENATOR(S) ELLIS

02/01/10	(S)	READ THE FIRST TIME - REFERRALS
----------	-----	---------------------------------

02/01/10 (S) STA, JUD  
03/23/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

SENATOR BILL WIELECHOWSKI  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Sponsor of SB 282.

LAURA ACHEE, director of communications  
Permanent Fund Corporation (PFC)  
Juneau, AK

**POSITION STATEMENT:** Provided information for SB 282.

SENATOR JOHNNY ELLIS  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Sponsor of SB 249.

MAX HENSLEY  
Staff to Senator Ellis  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Provided information for SB 249.

GLENN COOK, deputy director  
Division of Libraries, Archives and Museums  
Department of Education and Early Development  
Juneau, AK

**POSITION STATEMENT:** Expressed concerns about SB 249.

RACHAEL PETRO, deputy commissioner  
Department of the Administration  
Anchorage, AK

**POSITION STATEMENT:** Provided information for SB 249.

**ACTION NARRATIVE**

9:01:11 AM

**CHAIR LINDA MENARD** called the Senate State Affairs Standing Committee meeting to order at 9:01 a.m. Present at the call to order were Senators French, Paskvan and Menard.

**SB 282-PERMANENT FUND DIVIDEND AMOUNT FOR 2010**

[9:01:57 AM](#)

CHAIR MENARD announced the first order of business to come before the committee would be SB 282.

SENATOR WIELECHOWSKI, sponsor of SB 282, said Alaskans have relied on their annual Permanent Fund Dividend (PFD) checks since 1977. Many Alaskans are relying more heavily on this year's PFD due to the economic downturn. SB 282 will ensure that Alaskans receive a full dividend this year.

SENATOR MEYER joined the meeting.

SENATOR WIELECHOWSKI explained that the PFD is calculated by a formula that considers the average amount the fund's investments have earned over the past five years. A current statute preventing the PFC from paying out more than 50 percent of the fund's earnings reserve in any given year could be invoked for the first time ever this year due to the market downturn over the last couple years. This means the full calculated amount could not legally be appropriated from the earnings reserve even though sufficient funds exist. When SB 282 was initially filed, enough money was in the earnings reserve to pay out the full dividend; however, considering the 50 percent limitation, the account was several hundred million short of the necessary amount. That gap is now smaller but still exists.

SB 282 addresses only 2010 by transferring one half of 21 percent of the net income of the five year dividend average calculated for fiscal years 2006-2010 from the earnings reserve account to the dividend account.

[9:04:58 AM](#)

This issue should not be a problem in 2011 because inflation proofing is expected to be zero. Alaskans deserve to receive the full benefit from the state's oil revenue during these tough economic times. SB 282 will ensure Alaskans receive their full dividend for 2010 in the event that earnings fall below the threshold required for a full payout.

SENATOR KOOKESH joined the meeting.

CHAIR MENARD asked if Senator Wielechowski was concerned that a precedent would be set for future similar situations.

SENATOR WIELECHOWSKI replied that ultimately the way in which the PFD is paid out needs to change. "We have enough money to

pay out the full dividend, however the way the law is written, we can't pay out the full dividend". With oil high, and costs and expenses high, Alaskans will not be happy if they do not get their full dividend.

SENATOR PASKVAN asked what the loss per PFD might be.

SENATOR WIELECHOWSKI replied that when SB 282 was initially filed, the fund was short over \$100 million, equaling several hundred dollars to PFD's. The gap has closed to \$50 million, roughly equaling an \$80 shortfall per PFD. Whether the gap will open or close between now and June is unknown.

SENATOR MEYER said a lot of things can happen between now and June 30th. In 2003, the same concern existed but the market improved. He is concerned about tinkering with a system that has been working for nearly 30 years.

[9:08:58 AM](#)

SENATOR WIELECHOWSKI replied that oil prices are high, a \$10 million savings account and \$2.2 billion surplus exist. It will be difficult to tell Alaskans they do not get their full PFD this year because of a provision that the fund must have twice as much as the payout amount.

SENATOR MEYER said he warns people that the PFD fluctuates and not to count on it. He has been telling his constituents, "It's out of our hands; we have a system set up. You don't want us to intervene because we'll screw it up". He understands Senator Wielechowski's purpose, especially considering the economy, but it is a slippery slope.

[9:11:55 AM](#)

SENATOR FRENCH asked about the policy debate or rationale behind the statute that no more than 50 percent of the money in the earnings reserve account be paid out.

LAURA ACHEE, director of communications, Permanent Fund Corporation (PFC), replied that she does not know what the legislative intent was for the 50 percent limitation. That section of statute has not been altered since the 1980's.

SENATOR FRENCH clarified that the 50 percent limitation is the rule that would prevent a full payout of the dividend this year.

MS. ACHEE replied yes. The ultimate point of the statute is that no more than 50 percent of the balance of the earnings reserve may go to the PFD in any given year.

SENATOR FRENCH suggested that part of the rationale was to ensure that money was available for inflation proofing which is paid from the same account.

MS. ACHEE agreed and said that statute stipulates the next step after paying the PFD is to calculate and pay inflation proofing.

SENATOR FRENCH said 2010 is a year of historically low inflation and little demand for inflation proofing. He asked what amount might be appropriated for inflation proofing this fiscal year.

MS. ACHEE replied that the rate used for this year is zero; the PFC will not make an inflation proofing transfer on June 30th of this year.

[9:16:00 AM](#)

SENATOR FRENCH summarized that plenty of money is in the earnings reserve account to pay the PFD but the 50 percent rule is holding this up. Paying out the full PFD would not result in any loss to the permanent fund because no money from that account is needed for inflation proofing this year.

MS. ACHEE said that is correct.

CHAIR MENARD said the PFD is utmost on all constituents' minds and the Legislature should look at getting the full PFD to constituents.

SENATOR MEYER asked what year the same situation existed previously.

MS. ACHEE replied 2003. She said, "the cupboard was bare" and paying the dividend at all was a concern. The issue was solved by early 2003 after markets recovered dramatically.

SENATOR MEYER asked if 2010 is similar to 2003. He said these past five years seem to be doing better than the tech bubble bursting in 2001-2003.

[9:18:35 AM](#)

MS. ACHEE replied that the dividend calculation has two parts: the five year average calculation, and the presence of the money to pay it. In 2003, regardless of the five year calculation, the

earnings reserve was empty. In 2010, regardless of the calculation, the earnings reserve account, according to statute, does not have enough money to pay the projected dividend amount.

Since 2003, the Attorney General (AG) has issued an opinion that moved unrealized gains and losses out of the earnings reserve to principle. In 2003, unrealized gains would have been part of the earnings reserve and would have caused that dramatic swing. Now, only realized gains and losses are booked to the earnings reserve, meaning the balance of that fund is more stable.

CHAIR MENARD asked if the dividend calculation is still six or seven months away.

MS. ACHEE said it's about four months away.

SENATOR MEYER asked if the PFC has any projections.

MS. ACHEE replied that the dividend is probably calculated at \$791 million, based in part on a stream of regular income every month and not including any gains from selling an asset. In November, that stream of regular income was not going to add up to be enough. Since then, movement in the portfolios has resulted in some gain and the account is now short only \$50 million. The CFO thinks that gap is or will be closed; that information will not come until the end of the month.

[9:22:58 AM](#)

SENATOR PASKVAN said inflation proofing is expected to be zero. The law, with respect to inflation proofing, is not being changed; the cap at 50 percent is the problem. The earnings reserve account is \$50 million short of being able to pay out the full PFD. He asked what percentage, above the 50 percent cap, does would the additional pay out constitute.

MS. ACHEE said the PFC is projecting a \$790 million dividend and ending the year at \$1.5 billion. \$790 million is more than half of \$1.5 billion. The \$50 million shortfall is about 3 percent, or a small percentage, of the overall earnings reserve.

[9:25:35 AM](#)

SENATOR PASKVAN said the permanent fund now is \$35 billion. He asked what a 1 percent inflation protection would calculate out to.

MS. ACHEE replied that historically, when inflation has been in the 2 and 3 percent range, about \$800 million to \$1 billion has

been paid to inflation proofing. When considering inflation proofing in the future, she suggested looking at the total volume of the principle because the percentage is multiplied against that principle, which has grown huge. Going forward, bigger and bigger numbers will be thrown off on inflation proofing even if we stay in a stationary environment. Any positive percentage is going to throw off a big number for inflation proofing.

SENATOR PASKVAN said the gap between the \$791 million and the forecasted \$1.5 billion is \$700 million or 2 percent of the \$34 billion. There is enough for a 2 percent inflator if needed, but this year it is zero.

MS. ACHEE said even if a full dividend is paid this year, over \$700 million will be left in the earnings reserve.

CHAIR MENARD asked if Ms. Achee felt this legislation was a mute point.

MS. ACHEE replied that creating the dividend and the 50 percent rule were the Legislature's call. Whether or not to put this mechanism in place is also. The PFC is neutral.

[9:29:08 AM](#)

MS. ACHEE said Mr. Burns, executive director of the PFC, felt that letting the Legislature know about the gap was crucial even though he felt confident that the gap would be made up.

SENATOR MEYER read from SB 282 and asked if one-half of 21 percent of the net income is the right number to get us to where we want to be.

MS. ACHEE replied that the dividend calculation is one-half of 21 percent of the net income. SB 282 says you will pay out the calculated dividend regardless of what statutes say.

[9:31:17 AM](#)

CHAIR MENARD closed public testimony.

SENATOR FRENCH moved to report SB 282 from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

At ease from 9:32 a.m. to 9:34 a.m.

**SB 249-PUBLIC RECORDS/ELECTRONIC TRANSMISSIONS**

CHAIR MENARD announced the consideration of SB 249.

9:34:20 AM

SENATOR JOHNNY ELLIS, sponsor of SB 249, said the bill strengthens and clarifies current law regarding access to and preservation of public records. Current statutes have three different definitions of a public record which causes confusion: one is for maintenance of records, another for access to records and a third definition relates to criminal statutes. SB 249 creates a consistently broad definition of a public record. The definition explicitly includes electronic transmission, clarifies the duty of state agencies to preserve records and the ability of the public to access records that are required to be preserved. SB 249 explains that impeding the preservation of or access to public records is a violation of existing criminal law. SB 249 amends the executive branch Ethics Act to require state employees to use state email for state business. This codifies, in statute, the goal of Commissioner Kreitzer's (Department of Administration) current policy. Senator Ellis said he supports the Parnell Administration's current policy and feels enshrining it in statute is important.

SB 249 limits the fees the state can charge for access to public records to the actual cost of duplication, without an inflated cost of labor, putting Alaska in line with 14 other states. He mentioned news reports of "fairly stunning" amounts of money required of citizens or journalists wanting to access public records. High fees are a barrier to access of public information.

9:37:42 AM

SENATOR FRENCH said he still saw three definitions of public record in Sections 1,3 and 7 of SB 249. He asked if the three definitions have substantial differences.

MAX HENSLEY, staff to Senator Ellis, replied that the committee packet contains a side-by-side reading of the three existing definitions. SB 249 proposes that all definitions are the same.

SENATOR MEYER commented that constituents often feel that public records should be free and that a charge prohibits access. However, providing the material does cost the state. He asked if SB 249 is a happy medium.

9:40:24 AM

SENATOR ELLIS replied that SB 249 proposes charging for the cost of the duplication and not for the staff time or salaries of state employees. Every state grapples with this issue.

SENATOR MEYER said Senator Ellis has found the balance but some would say even the duplicating costs should not be charged.

CHAIR MENARD commented about frivolous lawsuits, copies and the need to say "enough is enough" and consider what is reasonable. She asked if "electronic transmissions" in the title is overly broad.

SENATOR ELLIS replied that the term is used commonly but he is open to more specification.

CHAIR MENARD asked if other states use "electronic transmissions".

SENATOR ELLIS replied he believed so.

MR. HENSLEY said SB 249 uses "electronic transmissions" because technology changes. This language can apply to any adopted technologies. He noted that every state has a public records law, many of which do not specify electronic records but have been interpreted to include electronic records.

[9:43:47 AM](#)

CHAIR MENARD asked if SB 249 would affect all branches of state government and state personnel.

MR. HENSLEY replied that SB 249 would affect different parts of state government slightly differently. The requirement to use official email for official business is an amendment to the executive branch Ethics Act. Courts and the Legislature have separate versions. The ability to access public records would apply to all of state government. The definition of personnel that is used is a public officer, which is a person with the ability to make a decision. For example, the staff secretary would not get in trouble for not properly maintaining or preserving records; it would be the person who has the responsibility to make a decision on behalf of the state.

SENATOR PASKVAN said that the Health Insurance Portability and Accountability Act (HIPAA) went to great lengths to allow patients to have access to records because prohibitive fees and charges were being imposed. He said SB 249 puts a cap on costs, thereby allowing access to public records.

[9:46:47 AM](#)

SENATOR ELLIS said he has tried to be responsive to policy questions and issues and not to re-plow old ground or drag personalities in. The current administration has a policy in place that SB 249 seeks to make permanent. A policy that changes from administration to administration is not easily understood. The current administration's policy makes sense and the Legislature should deliberate about putting it into statute.

CHAIR MENARD asked if SB 249 has any pushback.

SENATOR ELLIS answered no.

SENATOR FRENCH said Section 2 [amending AS 39.52] of SB 249 commands that the public records system be used to conduct state official business. He asked what happens if a public officer does not do what the statute says to do.

[9:49:44 AM](#)

SENATOR ELLIS said Section 6 on page 4 of SB 249 addresses Senator French's question.

MR. HENSLEY said Section 6 [which repeals and reenacts AS 40.25.125] is a reference to existing criminal law which refers to the destruction or impairment of public records. By establishing the electronic records are public records, public officers have a duty to ensure that electronic documents are included in the public records system. Noncompliance falls into additional criminal punishments.

SENATOR FRENCH asked what AS 11.56.815 and 11.56.820 refer to [as mentioned on page 4, line 19 in Section 6 of SB 249].

SENATOR ELLIS said he does not have that information.

SENATOR FRENCH asked if Senator Ellis sees these problems being solved by the criminal system or the Ethics Act.

SENATOR ELLIS replied, "a mix of the two".

[9:51:48 AM](#)

SENATOR FRENCH said AS 11.56.815 is tampering with public records in the first degree, a class C felony. AS 11.56.820 is tampering with public records in the second degree, a class A misdemeanor.

[9:52:25 AM](#)

CHAIR MENARD opened public testimony.

GLENN COOK, deputy director, Division of Libraries, Archives and Museums, said states that do not charge for access to public records raise money to support archives through filing fees charged every time a document is filed. Alaska does not have that system. Extensive record requests could devastate Alaska's archive programs due to staff time. Skelton staffs are already in place; fees allow for hiring assistance.

MR. COOK read from SB 249 [page 2, line 21], amending AS 39.52.135, "a public officer may not send or cause another to send information by electronic transmission within a system of electronic delivery unless the system is operated and maintained by the state." He asked how that relates to cell phones owned personally but partially paid for by the state.

[9:56:04 AM](#)

RACHAEL PETRO, deputy commissioner, Department of the Administration, said she would happy to get a full answer.

MR. HENSLEY said the email system, not the cell phone, would create the record. For example, if your state email is linked to your personal cell phone, it still goes through the state maintained and operated system. The issue would arise if using a private email or other system.

MR. COOK said text messages are not documented through the email system. He said the wording about the use of electronic transmission is broad and suggested that the digital phone system in the state office buildings be excluded; otherwise documentation of all phone conversations could be required.

[9:58:47 AM](#)

MS. PETRO said the meaning of electronic transmission definition in statute needs to be discussed because everything is increasingly digital.

SENATOR FRENCH asked if phone records include numbers called and received or capturing the substance of the conversation.

MR. COOK replied capturing of the actual voice.

SENATOR FRENCH asked if the current phone system keeps record of conversations.

MR. COOK said conversations are captured for a brief period and then not kept or maintained. In the future it could be captured and he questioned the legal implications.

SENATOR FRENCH said it is news to him that conversations are captured on a hard drive even momentarily and he would like more information.

MS. PETRO said the voice over internet protocol phones in place throughout most of state government have the technical capability to record a data transmission. Currently the data is not stored or recorded in any manner. Conversations are not recorded and no data is stored in that regard.

10:02:18 AM

SENATOR KOOKESH asked Mr. Cook if he opposed or supported SB 249. He said he believe the intent of the SB 249 is clear and good. He also questioned if Mr. Cook's opinion is the official stance of his department.

MR. COOK replied that SB 249 has merit as it codifies some things already being done. He is not supportive of dropping the fees for "doing searches" if the cost cannot be picked up in some other way. He said he is not opposed to SB 249 and would love to see free, open records for anyone but the money has to come from somewhere.

SENATOR PASKVAN asked if Mr. Cook has an idea of a fee that would be reasonable.

MR. COOK said Washington and New Jersey charge a \$2 fee per license or anything else that is filed such as a fishing or marriage license. The \$2 goes to the state archives to provide free access to records.

SENATOR PASKVAN asked if Mr. Cook was suggesting that a person who wants to research whether or not someone has a fishing license pays a \$2 flat fee and then the cost of a copy.

10:05:24 AM

MR. COOK replied no. He said he is suggesting that at the time a person purchases a license of any sort, a \$2 fee is paid. That \$2 supports the state archives programs to help maintain and provide access to public records.

SENATOR KOOKESH asked what would work for Mr. Cook if actual costs do not work.

MR. COOK replied that if fees are waived and the ability to bill for extensive research is eliminated, then the money to operate the archives has to come from somewhere else. Eliminating fees opens the door to more frivolous lawsuits and requests, flooding or shutting down a department.

[10:08:14 AM](#)

CHAIR MENARD thanked Mr. Cook for helping the committee to look at things they may not have thought of. She closed public testimony. She said she would like to hold SB 249 and get the sponsor to meet with Ms. Petro and Mr. Cook.

SENATOR KOOKESH said holding SB 249 is not necessary.

SENATOR MEYER agreed with Senator Kookesh. He said his constituents would like free access to all records but it does cost the state. Senator Ellis has found the right solution.

CHAIR MENARD responded that every chairman can change her mind.

[10:10:12 AM](#)

SENATOR MEYER moved to report SB 249 from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

[10:10:27 AM](#)

CHAIR MENARD, seeing no further business to come before the committee, adjourned the meeting at 10:10 a.m.