

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

March 24, 2015

8:45 a.m.

**MEMBERS PRESENT**

Senator Bill Stoltze, Chair  
Senator Charlie Huggins  
Senator Lesil McGuire  
Senator Bill Wielechowski

**MEMBERS ABSENT**

Senator John Coghill, Vice Chair

**COMMITTEE CALENDAR**

SENATE BILL NO. 75

"An Act allowing federally recognized tribal governments to receive contributions from permanent fund dividends."

- MOVED SB 75 OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 3

Proposing amendments to the Constitution of the State of Alaska to increase the number of members on the judicial council; relating to the initial terms of new members appointed to the judicial council; and relating to the confirmation of members of the judicial council.

- MOVED SJR 3 OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 35(STA)

"AN ACT ESTABLISHING MARCH 27 AS GREAT ALASKA GOOD FRIDAY EARTHQUAKE REMEMBRANCE DAY."

- SCHEDULED BUT NOT HEARD

SENATE BILL NO. 22

"AN ACT ESTABLISHING MARCH 27 AS GREAT ALASKA GOOD FRIDAY EARTHQUAKE REMEMBRANCE DAY."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 75

SHORT TITLE: PFD CONTRIBUTIONS TO TRIBAL GOVERNMENTS

SPONSOR(s): SENATOR(s) STEVENS

03/16/15 (S) READ THE FIRST TIME - REFERRALS  
03/16/15 (S) STA, FIN  
03/24/15 (S) STA AT 8:30 AM BUTROVICH 205

BILL: SJR 3

SHORT TITLE: CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL

SPONSOR(s): SENATOR(s) KELLY

01/21/15 (S) PREFILE RELEASED 1/9/15  
01/21/15 (S) READ THE FIRST TIME - REFERRALS  
01/21/15 (S) STA, JUD, FIN  
02/19/15 (S) STA AT 9:00 AM BUTROVICH 205  
02/19/15 (S) Heard & Held  
02/19/15 (S) MINUTE(STA)  
03/24/15 (S) STA AT 8:30 AM BUTROVICH 205

**WITNESS REGISTER**

SENATOR GARY STEVENS

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** SB 75 sponsor.

DOUG LETCH, Staff

Senator Stevens

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Provided an overview of SB 75.

MELISSA BORTON, Tribal Administrator

Native Village of Afognak

Kodiak, Alaska

**POSITION STATEMENT:** Supports SB 75.

JERRY BURNETT, Deputy Commissioner

Alaska Department of Revenue

Juneau, Alaska

**POSITION STATEMENT:** Addressed fiscal note questions for SB 75.

HEATHER SHADDUCK, Staff

Senator Kelly

Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided an overview of SJR 3.

SENATOR PETE KELLY  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** SJR 3 sponsor.

TOM WAGNER, representing himself  
Juneau, Alaska

**POSITION STATEMENT:** Opposes SJR 3.

KENNETH FISHER, representing himself  
Juneau, Alaska

**POSITION STATEMENT:** Supports SJR 3.

DAVID LANDRY, representing himself  
Anchorage, Alaska

**POSITION STATEMENT:** Opposes SJR 3.

MARK ANDREWS, representing himself  
Fairbanks, Alaska

**POSITION STATEMENT:** Opposes SJR 3.

MARGARET SIMONIAN, representing herself  
Anchorage, Alaska

**POSITION STATEMENT:** Opposes SJR 3.

ALISON ARIANS, representing herself  
Anchorage, Alaska

**POSITION STATEMENT:** Opposes SJR 3.

GRANT CALLOW, representing himself  
Anchorage, Alaska

**POSITION STATEMENT:** Opposes SJR 3.

SUZANNE DIPIETRO, Executive Director  
Alaska Judicial Council  
Anchorage, Alaska

**POSITION STATEMENT:** Explained the Judicial Council's procedures for judicial selection.

NANCY MEADE, General Counsel  
Alaska Court System  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to SJR 3.

**ACTION NARRATIVE**

8:45:44 AM

**CHAIR BILL STOLTZE** called the Senate State Affairs Standing Committee meeting to order at 8:45 a.m. Present at the call to order were Senators McGuire, Huggins, and Chair Stoltze.

**SB 75-PFD CONTRIBUTIONS TO TRIBAL GOVERNMENTS**

8:46:16 AM

**CHAIR STOLTZE** announced that the first order of business would be SB 75.

8:46:19 AM

**SENATOR GARY STEVENS**, Alaska State Legislature, Juneau, Alaska, sponsor of SB 75 sponsor, provided an overview as follows:

SB 75 is legislation that attempts to expand the popular Permanent Fund Dividend's "Pick.Click.Give." program. The idea is to include federally recognized tribal governments and it also subjects those tribal governments to those same rules, same regulations that apply to all other entities, \$250 enrollment is currently applied to each of those participants.

8:47:06 AM

**DOUG LETCH**, Staff, Senator Gary Stevens, Alaska State Legislature, Juneau, Alaska, reiterated that SB 75 is straight forward legislation that would add tribal governments to the list of eligible recipients. He explained that "Pick.Click.Give." was currently reserved for 501(c) nonprofit organizations. He detailed that while tribes are considered tax exempt organizations that are eligible to receive tax deductible donations under Internal Revenue Code (IRC) Section 7871 and are listed in Revenue Procedure 2008-55, the tribes do not meet the current designation to participate in "Pick.Click.Give." without a change in statute.

He explained that SB 75 would impact potentially the 229 federally recognized tribes in Alaska, organizations that offer a variety of services to tribal members and residents of their villages. He noted that the tribes are often the largest and many times the sole service providers in villages that offer services and activities designed for the benefit of their community. He detailed that activities are generally geared

towards youth development, low income families, the elderly, and victims of violence. He said having the ability to be listed in Pick-Click-Give would make it easier for tribes to access local contributions and could help the public understand the importance of the tribal programs.

He noted that one of the benefits from the "Pick.Click.Give." program is that people make donations before seeing their Permanent Fund Dividend (PFD) check. He opined that making a donation is easier when applying for a PFD where the money is not missed on the other end. He said when the "Pick.Click.Give." bill was enacted in 2008, the program has made millions of dollars available to eligible organizations over the years. He pointed out that \$2.8 million from some 27,000 Alaskans was donated the previous year. He said the Department of Revenue has projected that approximately \$3 million will be donated to eligible organizations through the "Pick.Click.Give." and the PFD program later this year. He summarized that tribal governments would like the opportunity to participate as well.

[8:47:35 AM](#)

SENATOR WIELECHOWSKI joined the committee meeting.

[8:49:51 AM](#)

SENATOR STEVENS explained that the idea came from the native village of Afognak and noted their letter of support submission. He noted that a letter of support was received from the Chickaloon Village Traditional Council. He added that several other tribal governments are expected to support the bill.

CHAIR STOLTZE stated that he would like to have the Department of Revenue's position on the record prior to sending the bill on its way.

SENATOR STEVENS replied that he understood Chair Stoltze's request. He said Mr. Burnett, Deputy Commissioner for the Department of Revenue, will be available later in the meeting.

CHAIR STOLTZE said the bill will be held until Mr. Burnett addresses the committee.

[8:52:24 AM](#)

MELISSA BORTON, Tribal Administrator, Native Village of Afognak, Kodiak, Alaska, explained the village's support for the bill as follows:

We are one of ten federally recognized tribes located on the island. My tribe, like many other tribes in Alaska, hosts several different youth activities that we fundraise for annually. In addition to youth activities, we also provide social service programs, tutoring programs, language revitalization programs, substance abuse prevention, domestic violence prevention, and child abuse and neglect prevention programs. All of our tribe's programs are geared toward the betterment of our community and the development of our youth; sometimes that is specific to our tribal members and sometimes it's for the greater community, it's not always geared towards our tribal members. We regularly get asked if we participate in the "Pick.Click.Give." program because Alaska residents are now appreciating how easy it is to give portions of their PFD towards non-profits. However, as you know, the current legislation restricts our eligibility. Tribes under IRS Code Section 7871 are afforded the same rights as states and are eligible to accept charitable contributions. However, because we aren't a 501(c)(3) organization, this often times limits our ability to apply for certain foundation grants and also limits our fundraising through certain crowdfunding websites. Tribes having the ability to be listed as eligible organizations under "Pick.Click.Give." would give us another avenue to fund our various programs, bring awareness to the greater Alaskan community about the importance of tribal programs, and further strengthen the relationship between the state government and Alaska tribes.

MS. BORTON summarized that the Native Village of Afognak had discussions with the Rasmuson Foundation as well as a scheduled meeting with the Alaska Federation of Natives to solicit support for the bill.

SENATOR WIELECHOWSKI asked if contributions to a federally recognized tribe are tax deductible.

MS. BORTON answered yes. She noted that donations are accepted from private and corporate contributors. She said she has verified with the Internal Revenue Service's tribal liaison in Anchorage that contributions to a federally recognized tribe are tax deductible.

[8:55:25 AM](#)

CHAIR STOLTZE closed public testimony and announced that he would set SB 75 aside until the Department of Revenue testifies to get their position on record.

**SJR 3-CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL**

[8:56:13 AM](#)

CHAIR STOLTZE announced that the next order of business before the committee is SJR 3.

[8:56:37 AM](#)

HEATHER SHADDUCK, Staff, Senator Kelly, Alaska State Legislature, Juneau, Alaska, stated that SJR 3 has 3 main goals:

1. Create the possibility of better regional representation on the Alaska Judicial Council.
2. Protect the Chief Justice of the Alaska Supreme Court from a conflict of interest or even the perception of a conflict of interest in the selection of his or her future colleagues or allies in certain issues that might come before them.
3. Make attorney members of the Judicial Council minimally accountable to the people by requiring legislative confirmation, just like every other regulatory or quasi-judicial board or commission.

CHAIR STOLTZE asked if Senator Kelly wanted to add anything.

[8:57:29 AM](#)

SENATOR PETE KELLY, Alaska State Legislature, Juneau, Alaska, SJR 3 sponsor, replied no.

CHAIR STOLTZE announced that the committee will go through public testimony and see what the will of the committee is. He noted that Senator McGuire is anxious to continue deliberation for the resolution in the Judiciary Committee.

SENATOR MCGUIRE asked Senator Kelly if SJR 3 differed from the previous year's version.

SENATOR KELLY answered that SJR 3 was the same as the resolution introduced the previous year.

SENATOR MCGUURE asked if there had been any changes.

MS. SHADDUCK explained that during the previous year, an amendment was added during the committee process that required attorney members to be confirmed.

SENATOR KELLY specified that the House version had the confirmation requirement.

[8:58:23 AM](#)

CHAIR STOLTZE announced that the committee would take public testimony on SJR 3.

[8:59:01 AM](#)

TOM WAGNER, representing himself, Juneau, Alaska, stated that he was a lawyer and has practiced law in Alaska for 34 years. He proclaimed that Alaska's system of judicial selection was not broken and did not need to be fixed. He said Alaska's judicial selection system is one of the best systems in the country and SJR 3 would weaken the system. He specified that SJR 3 would cause harm as follows:

- Increasing the Judicial Council's size from six to nine people would cause difficult interaction to do business, be less efficient, and increase expenses.
- Create a perception that lawyers would dominate the process and non-lawyers would be overrun. Lawyers are just like other Alaskans.
- Politicize the judicial selection process during the Judicial Council's nomination process.

MR. WAGNER stated that the Judicial Council's nomination process was meant to be non-partisan where the applicants' credentials are evaluated in a non-political type of way. He summarized that the second part of the judicial selection process where the governor makes a selection was political and governors know how to do politics.

[9:02:38 AM](#)

KENNETH FISHER, representing himself, Juneau, Alaska, announced that he was representing no other organization. He stated his support for SJR 3. He disclosed that he serves on the Board of Regents of the University of Alaska. He remarked that his perspective was from someone who serves on a similarly constituted board or committee. He pointed out that the Board of Regents and the Judicial Council are one of the few boards or committees identified in Alaska's constitution.

He detailed that he was appointed to the Board of Regents in 2009. He remarked that SJR 3, if approved, would add numbers to the Judicial Council by increasing the number to 10. He said SJR 3 would ensure greater geographical representation across the state in addition to producing better and more robust deliberations. He stated that contrary to the previous testimony, more people will improve a body's discussions and deliberations. He noted that the 11 regents on the Board of Regents ensures robust exchanges on many policy issues.

He said the main reason for his support was his belief that SJR 3 would provide a better structure for good government by incorporating a greater level of accountability into Alaska's judicial process. He opined that the Judicial Council was an unelected and unaccountable organization which makes appointments for the majority of the council if the Chief Justice is a member in good standing. He added that Alaska Bar Association members from outside of Alaska are impacting the state's decision by having a role in the selection process and not the legislature.

MR. FISHER summarized as follows:

Society should do what our founders did by building structures in our founding documents that hold accountable with check and balances. The legislature should have the authority and responsibility to confirm Judicial Council appointments so that Alaskans can hold somebody accountable for those decisions.

[9:05:55 AM](#)

SENATOR WIELECHOWSKI asked if Mr. Fisher's comments are on behalf of the University of Alaska.

MR. FISHER answered no. He noted that his comments were his own.

SENATOR WIELECHOWSKI asked to confirm that Mr. Fisher works as the senior representative for the U.S. Environmental Protection Agency (EPA) in Alaska.

MR. FISHER answered yes.

SENATOR WIELECHOWSKI asked if Mr. Fisher believes that the EPA's actions in the State of Alaska are constitutional.

MR. FISHER replied that presumptively so, but added that he was not at the meeting to speak about EPA policy.

SENATOR WIELECHOWSKI noted that Mr. Fisher spoke a lot about violating the constitution. He asked Mr. Fisher if he thought what the EPA is doing in Alaska is constitutional.

MR. FISHER inquired when he had mentioned violating the constitution.

SENATOR WIELECHOWSKI pointed out that Mr. Fisher talked about trying to establish a better constitutional balance.

MR. FISHER replied yes, regarding better accountability and the legislature should have a role.

CHAIR STOLTZE asserted that the committee is not trying to run a tribunal. He pointed out that he has some problems with the way the court system runs things.

SENATOR WIELECHOWSKI remarked that he has a right to ask the witness a question.

CHAIR STOLTZE stated the he thinks Senator Wielechowski was going beyond the bounds.

SENATOR WIELECHOWSKI specified that Mr. Fisher brought constitutionality into play when he talked about what was and what was not constitutional. He reiterated that he has a right to ask the question.

[9:07:16 AM](#)

CHAIR STOLTZE announced that the committee will stand at ease.

[9:07:43 AM](#)

CHAIR STOLTZE called the committee back to order. He asked if Mr. Fisher had any other comments to make.

MR. FISHER stated that he thanked Senator Huggins for a comment he made prior to the committee meeting.

SENATOR HUGGINS thanked Mr. Fisher.

[9:08:23 AM](#)

DAVID LANDRY, representing himself, Anchorage, Alaska, announced that he opposes SJR 3. He revealed that he was a general contractor in Anchorage and has been in business for about 30

years. He said one of his concerns about SJR 3 is the dismissal of professional knowledge that attorneys bring to the table during a judicial selection process. He remarked that as a contractor, when the time comes to replace a subcontractor or vendor, his first order of business is to talk with other contractors to get their assessments of who does good work. He said he seeks the opinion of knowledgeable professionals in order to inform and make his decisions. He set forth that the Judicial Council's current makeup and balance makes use of professional experience in a similar way. He stated that the Judicial Council was currently in good balance. He noted that most cases that come before a judge have attorneys on opposing sides of an issue or lawsuit. He said even though opposite outcomes are often sought, attorneys share in the benefit from competent and fair judges.

MR. LANDRY opined that the underlining assumption of SJR 3 is that fellow Alaskans and the Alaska Bar Association are getting together to pull an ideological fast-one on everyone else does not make sense. He said Alaska Bar Association members are just as diverse as any other group of Alaskans.

He set forth that attorney members of the Judicial Council are the crux of the merit-based selection system. He opined that attorney members are in a unique position to know which judicial candidates are up to the task of running fair and professional courts. He said regarding an attorney confirmation, giving the legislature the ability to cherry-pick which attorneys are to be allowed or disallowed on the Judicial Council injects politics into the most merit orientated part of the merit-based system. He remarked that proponents of legislative confirmation seek to inject political considerations into the one crucial part of the process that does not come under the political influence. He stated that he does not see confirmation being a pro forma process if SJR 3 passes, but rather a political screening.

He stated that his bottom line as a business person is that fair courts are good for business. He declared that he was already receiving what he sought from the Alaska Court System. He said what the state's founders intended has largely come to pass where a judiciary is free of scandal and political cronyism. He summarized that SJR 3 puts fair and professionally handled courts into jeopardy.

[9:11:25 AM](#)

SENATOR MCGUIRE pointed out that Mr. Landry stated his belief that all three provisions of the bill would inject cronyism into

the process. She asked Mr. Landry if he believed that adding average Alaskan citizens would qualify for his statement.

MR. LANDRY answered that he does not have a problem with adding average Alaskans who are attorneys or non-attorneys. He specified that he does not want judicial selection to have a super-majority of political appointees as called for in SJR 3. He remarked that he would not have a problem with the balance remaining the same with additional members. He specified that adding a super-majority of gubernatorial appointments is court-packing. He said he wants to go into a court with confidence that a smart, knowledgeable, and fair judge was running a courtroom that could handle complicated business law issues. He remarked that a courtroom with a judge that is a political crony is not going to work and is not good for business.

9:13:15 AM

MARK ANDREWS, representing himself, Fairbanks, Alaska, disclosed that he is a candidate for the Bar Association's Board of Governors. He explained that Alaska has what is called the Missouri Plan, a plan that started in Missouri in 1940 and remains in effect in Missouri after 75 years. When the Alaska Constitutional Convention considered the Missouri Plan, the plan was considered to be the best idea of the time for judicial selection. He said currently there are 34 states and the District of Columbia using the Missouri Plan as the model for some or all of the judicial vacancies. He noted that he concurred with Mr. Wagner that Alaska's judicial selection system was not broke. He detailed that the Judiciary Council's process is a way to balance the separations of powers. He conceded that there is politics in the system, but added that the best way to get politics out of the system would be to look at the results of the system. He said Alaska should be proud of the quality of its judiciary system produced by the current system. He summarized that that Alaska's judiciary is competent, free of corruption, and does not need fixing.

9:15:28 AM

MARGARET SIMONIAN, representing herself, Anchorage, Alaska, noted that she has been an Anchorage based attorney for 15 years in addition to being a mom and lifelong Alaska resident. She declared her opposition to SJR 3. She remarked that a fundamental misunderstanding exists regarding what goes into bars, deliberations and votes, both for the Judicial Council's attorney members and for candidates for judicial positions. She stated that she has strong political views, but her views are not the things that inform how she rates a candidate for a

judicial position in any way. She said how fair, hardworking, intelligent, and careful judges are directs her life and all lawyers' lives every day in very specific ways; that is why lawyers are in the best position to judge other lawyers who hope to go to that level of their careers.

9:20:33 AM

ALISON ARIANS, representing herself, Anchorage, Alaska, she stated that she was born and raised in Alaska and is a small business owner in Anchorage of the "Rise and Shine Bakery." She noted that she is not an attorney. She read the following statement:

As a small business owner, I appreciate efficiency, a limited bureaucracy, and expert advice. I agree with the way our Judicial Council works now; adding more people to the group will add significant expense to the travel budget of this group. I'm comfortable with asking people with law degrees to evaluate their peers, the combination seems efficient the way it is. I respect the Chief Justice's opinion if necessary for him or her to vote, to know whether a judge is well qualified for a job. Also, I think the citizen members on the group deserve a little more credit for being able to make good recommendations to their group and to back them up; it's only been 16 times out of 1,149 votes when the Chief Justice sided with the attorney group against the public members and it looks to me like the group worked very well, since 99 percent of the time, that's not happening. For several years I volunteered as a court appointed special advocate, I acted as volunteer guardian ad litem for children and that is the only experience I have in front of a judge, I was impressed by the caliber of our judges then and want to retain that kind of high quality. It's important to me that the judges making decisions about the future of our citizens are evaluated by their merit, not by their political leanings. When I vote for the judges, I want to be able to know that the judges I vote for are well qualified and I believe that the Judicial Council as it stands is effective and efficient.

9:22:35 AM

GRANT CALLOW, representing himself, Anchorage, Alaska, explained that he is an attorney that has been in practice in Anchorage for 37 years. He noted that during the past 25 years he has

represented the State of Alaska as a member of the Uniform Law Commission. He stated his opposition of SJR3. He revealed that his father was a Supreme Court justice in Wisconsin and noted that Wisconsin has an elected system for judges. He noted that his father is against Wisconsin's system due to politicization and he is working with other Supreme Court justices for a constitutional change that is more in line with the Alaska's constitution. He questioned a previous comment that SJR 3 would increase attorney accountability. He asserted that SJR 3 would do the opposite where politicization leads to less accountability. He summarized that SJR 3 would be a step backwards in terms of having a fair and impartial judiciary.

[9:26:45 AM](#)

CHAIR STOLTZE asked if anyone else would like to testify. He announced that hearing requests, public record was closed.

[9:27:53 AM](#)

SENATOR MCGUIRE moved that the committee move SJR 3 out of committee with individual recommendations and attached fiscal notes on to the Judiciary Committee.

CHAIR STOLTZE objected for discussion purposes.

CHAIR STOLTZE announced that his objection was removed and asked if any other committee members objected. He noted that SJR 3 would be more thoroughly vetted in the Senate Judiciary Committee.

SENATOR WIELECHOWSKI announced his objection and asked if the committee would hear from the Alaska Judicial Council.

CHAIR STOLTZE pointed out that he just asked if there were any more people and nobody stepped forward.

SENATOR WIELECHOWSKI noted that a representative from the Judicial Council was in the room and asked that the committee hear from them.

[9:29:16 AM](#)

CHAIR STOLTZE stated that he was not going to beg the Judiciary Council to come up and noted that he asked if there was anybody here to testify.

SENATOR WIELECHOWSKI reiterated that he would like to hear from the Judicial Council.

CHAIR STOLTZE replied that he did not see anyone jumping up. He remarked that the court system has been very arrogant and not wanting to testify.

SENATOR WIELECHOWSKI announced his objection to Chair Stoltze's comment. He stated that Chair Stoltze's characterization was completely inappropriate. He added that calling the court system arrogant was completely inappropriate.

CHAIR STOLTZE replied that the court system has refused to engage in any individual discourse and had previously stated that their role was not to interact with the legislature. He announced that Senator Wielechowski's objection has been noted. He asked that the advocate for the Judicial Council to come forward.

[9:30:02 AM](#)

At ease

[9:30:24 AM](#)

CHAIR STOLTZE called the committee back to order.

SUZANNE DIPIETRO, Executive Director, Alaska Judicial Council, Anchorage, Alaska, explained the Judicial Council as follows:

- Consists of six members.
- All attorney members were born and raised in Alaska or were long time attorney members.
- Procedures for judicial selection are among the most transparent in the country.
- Judicial selection applications are 20 pages and list: education experience, work experience, credit reports, and criminal history checks.
- Applicants' non-confidential information is posted on the Judiciary Council's website for public review.
- Information from the public is continuously solicited via phone calls, letters, and website e-mails.
- Alaska Bar Association members are surveyed to rate applicants on specific qualities: legal ability, temperament, integrity, fairness, and suitability of experience. Survey results are posted on the Judiciary Council's website.
- Questionnaires are submitted to people who have litigated against applicants on specific cases.
- Interviews are scheduled with all applicants.

- Public hearings are held in the location of the vacancy in order to hear public testimony on what types of qualities sought in a judge and the challenges faced by the community.

[9:32:58 AM](#)

MS. DIPIETRO summarized the Judicial Council's judiciary selection process as follows:

- The Judicial Council votes in public. 19 of 38 other judicial selection commissions do not vote in public.
- Applicants' names and biographies are posted on the Judicial Council's website. Only 14 other judicial selection committees post applicants' information.
- Focus is placed on the candidates' qualifications. Due to the council's focus on qualifications, members have a high rate of agreement about nomination decisions, approximately 81 percent of the time.
- Votes on an applicant are unanimous or almost unanimous due to the focus on applicant qualifications.
- The Chief Justice rarely votes. In the past 30 years, the Chief Justice has only voted 6 percent of the time.
- Over the past 30 years, attorney/non-attorney splits have only occurred 16 times out of 11,049 votes.
- Chief Justices have sent more than one applicant's name to the Governor 75 percent of the time.

[9:34:32 AM](#)

SENATOR MCGUIRE asked to confirm that Ms. DiPietro is the Executive Director for the Judicial Council.

MS. DIPIETRO answered correct.

SENATOR MCGUIRE asked if the Judicial Council is taking a formal position on SJR 3.

MS. DIPIETRO replied that the Judicial Council has not taken a formal position and specified that she is at the committee meeting to provide information.

SENATOR MCGUIRE noted that she appreciated Ms. DiPietro's response that the Judicial Council has remained neutral. She asked Ms. DiPietro if the legislature made changes to the Judicial Council if she would service the additional public members in a professional manner.

MS. DIPIETRO answered yes.

CHAIR STOLTZE added that the people would ultimately decide whether or not to change the Judicial Council. He asserted that the Judicial Council does get involved in politics and pointed out situations relating to advertising, discussions about the content of web pages, election pages on another bill, and removing parties. He asked if the Judicial Council should be more agnostic and just put the ratings down without a recommendation for or against.

MS. DIPIETRO replied that the statutes simply says that the Judicial Council may make a recommendation on retention and the council has historically made recommendations to assist the voters, which the voters can take or leave.

CHAIR STOLTZE responded that given that the recommendation is a statutory authority, maybe the legislature should look at the statute in order to keep the council pure and agnostic in order to keep the council out of politics.

[9:37:12 AM](#)

NANCY MEADE, General Counsel, Alaska Court System, Anchorage, Alaska, said she is representing the Court System. She stated that the Alaska Court System (ACS) is opposed to SJR 3 because fundamentally ACS depends on the Judicial Council to screen applicants in order to provide good judges. She said the ACS' core mission is to provide a fair and just forum for people to have their disputes adjudicated by the best possible judges. She provided reasons to support her claim to retain the current system as follows:

- The Court System has a strong bench because the Judicial Council has done a good job in naming the most qualified applicants.
- The Court System does not have a bench that is marred by kickbacks and scandals.
- The Judicial Council's process is non-partisan.
- There have not been any problems with lawyer members on the Judicial Council.

MS. MEADE pointed out that the governor's selection process from the candidates deemed qualified by the Judicial Council is appropriately political. She remarked that the Judicial Council has reached consensus approximately 96 percent of the time and is not split or marked by factions. She asserted that having partisan considerations earlier in the candidate process has the

potential to provide names that are not necessarily the best qualified. She pointed out that candidates selected by the Judicial Council come from every end of the political, educational, and social spectrum. She noted that most cases that come before the court for resolution have nothing to do with politics.

She summarized that the Court System believes that there is no need to amend the constitution. She cautioned that problems may be created where considerations are added that are not appropriate for the selection and retention of judges.

[9:41:51 AM](#)

SENATOR MCGUIRE pointed out that the decision regarding changes to the Judicial Council will go to the voters. She asked why it is appropriate for the Judicial Council's public members to be subject to legislative hearings and confirmations, but not the attorney members. She inquired why the resolution's proposed changes would politicize a process any more than it already is politicized. She pointed out that the Judicial Council's three public members are fully vetted throughout the committee process. She added that there is nothing in SJR 3 that changes the fact that the Judicial Council will continue to select the names that will go forward to the governor. She specified that the SJR 3 would change the Judicial Council's composition of those who get to make selection. She questioned how SJR 3 would corrupt the Judicial Council. She queried why the Court System was resistant to trying a different way when only three more public Alaskans are added to the Judicial Council. She opined that having attorneys go through a public hearing process would actually be more public and transparent.

[9:44:56 AM](#)

MS. MEADE replied that adding three members would make the Judicial Council imbalanced where six governor appointees are of a similar mind of the governor. She cautioned that the governor's appointees could vote as a block to ensure that the governor's views dictate name selection rather than on merit. She added that having attorney members go through legislative confirmation would lead to political questions rather than caring about getting the best judges. She maintained that focus should be based on the judicial applicants' merits and not on politics. She summarized that the proposed change has the potential to change things in a very negative way as opposed to leaving the emphasis on merit.

SENATOR MCGUIRE noted that she had made a motion.

9:48:22 AM

SENATOR WIELECHOWSKI objected to moving SJR 3 out of committee and stated the following:

Our constitution is one of the best constitutions in the United States; it was developed over 50 years ago when we learned from all of the mistakes from all of the other states. Amending the constitution is not something you take lightly, it is something that you do when something is seriously broken. Is our constitution broken in regards to how we pick judges? No, the facts are very clear on that and you can look at the documents that we have been provided by the court system. There have been 1,149 votes as of January 22, 2015 that the Judicial Council has taken, 1,149 votes; of those 1,149 votes, there have been exactly 16 ties, 16 ties out of 1,149 votes between attorneys and public members, and where the Chief Justice had to vote to decide whether or not to forward a name on to the governor for appointment, of those 16 votes, the Chief Justice voted 9 times. So, we are dealing with 9 times in a 30 year history out of 1,149 votes when you've had a split between attorneys and the public members, and the Chief Justice didn't forward it on. In the Judiciary Committee, we're going to those 9 times, because every single one of them there was a good reason why the name wasn't forwarded on; for example, there were times when the people who were applying for the judgeship were rated unsatisfactory. Should that name be forwarded on? Well, the public members said yes, but the Chief Justice wisely said no. In other cases there were incidences where the names put forward were not as qualified as the other members, yet the public members agreed to put them forward. Should that name be forwarded on? Clearly no, we are going to go through each one of those in the Judiciary Committee, this is going to politicize the judiciary, which is one of the best in the nation, and we don't need more politics in the Judiciary. Mr. Chairman, I am maintaining my objection.

CHAIR STOLTZE asked that a roll call vote be taken.

A roll call vote was taken. Senator Huggins, McGuire, and Chair Stoltze voted in favor of moving SJR 3 from committee; Senator

Wielechowski voted against it. Therefore, SJR 3 moved from committee by a vote of 3 to 1.

[9:50:58 AM](#)

CHAIR STOLTZE moved to report SJR 3 from committee with individual recommendations and attached fiscal note(s). He added that the Senate Judiciary Committee will delve more deeply into SJR 3.

SENATOR HUGGINS commented as follows:

I hope we all appreciate that there's no elite fraternities that are appropriate for any place in us getting to where we need to be when we look at opinions. So, for myself as a guy from a rural area called Mat-Su, I feel perfectly comfortable that my constituents will be celebrating the fact that we are having a conversation about this and looking at how common, everyday citizens who are pretty good people, they are good fishermen, they are good hunters, they are artists, and they pay a few taxes once in a while, and oh by the way, they will standup and be counted. So, in that respect, I am not looking for elite fraternities of people.

SENATOR WIELECHOWSKI asked if the committee was re-debating the issue because SJR 3 had moved out of committee.

SENATOR HUGGINS replied that he was explaining his vote.

CHAIR STOLTZE asked Senator Huggins if he had summary comments.

SENATOR HUGGINS summarized as follows:

As I said earlier, for my constituents, explaining my vote, is that I don't support elite fraternities and I know that my good friends and neighbors would like for us to have this conversation so that they can understand the dynamics, and ever how the debate finishes, and the dust settles on it, that's okay; but, we should not be beyond question about how we've done things and how we do things.

[9:53:05 AM](#)

At ease

**SB 75-PFD CONTRIBUTIONS TO TRIBAL GOVERNMENTS**

[9:54:48 AM](#)

VICE CHAIR HUGGINS called the committee back to order and announced that SB 75 was back before the committee.

[9:55:29 AM](#)

DOUG LETCH, Staff, Senator Stevens, Alaska State Legislature, Juneau, Alaska, stated that Mr. Barnett from the Department of Revenue was present to answer questions that to be entered into the record.

JERRY BURNETT, Deputy Commissioner, Alaska Department of Revenue, Juneau, Alaska.

MR. LETCH explained that Chair Stoltze wanted to hear the department's position on SB 75. He said there was the indeterminate fiscal note, which explained that the new entrants to the program would pay the \$250 fee and be subjected to the same terms as the current participants.

VICE CHAIR HUGGINS pointed out that particular emphasis was on the fiscal note.

MR. BURNETT explained that the fiscal note was indeterminate because the Department of Revenue has no idea how many new entities may come into the program. He specified that there will be some costs associated with the bill, but each entrant will pay a set \$250 fee with 7 percent of the pledges withheld for a management contract. He stated that who the department is taking pledges on behalf of does not matter.

[9:57:01 AM](#)

VICE CHAIR HUGGINS asked Mr. Burnet to restate what the fiscal note impact will be.

MR. BURNETT answered that depending on the number of new entities, each entrant would pay a \$250 fee. He said the department will potentially have some additional costs depending on how many entrants there are, but the fiscal impact is covered.

VICE CHAIR HUGGINS asked hundreds, thousands, or tens of thousands.

MR. BURNETT answered that the department is looking at probably low thousands of dollars; but, it would be paid for by the new

entrants. He added that each year there are different numbers of participants in the "Pick.Click.Give." program because charitable organizations can come and go. He summarized that the new entrants would just be handled the same as any other entity that is covered in the program.

VICE CHAIR HUGGINS asked if Mr. Letch had any additional comments.

MR. LETCH thanked the Native Village of Afognak for bringing the idea forward.

SENATOR MCGUIRE thanked the bill sponsors for bringing the bill forward. She commented that she has personal experience seeing small community tribes providing social services and educational services. She opined that small community tribes are more in touch with community. She added that the donations are tax deductible.

SENATOR MCGUIRE moved to report SB 75 from committee with individual recommendations and attached fiscal note(s).

[9:58:58 AM](#)

VICE CHAIR HUGGINS announced that seeing no objection, SB 75 is reported from the Senate State Affairs Standing Committee.

[9:59:06 AM](#)

There being no further business to come before the committee, Senator Huggins adjourned the Senate State Affairs Standing Committee hearing at 9:59 a.m.