

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

July 13, 2016

1:07 p.m.

Wasilla LIO

MEMBERS PRESENT

Senator Bill Stoltze, Chair
Senator John Coghill, Vice Chair (via teleconference)
Senator Charlie Huggins
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Lesil McGuire

OTHER LEGISLATORS PRESENT

Representative Lynn Gattis (via teleconference)
Representative Cathy Tilton (via teleconference)

COMMITTEE CALENDAR

SENATE BILL NO. 5001

"An Act relating to the Alaska Permanent Fund Corporation, the earnings of the Alaska permanent fund, and the earnings reserve account; relating to management of the budget reserve fund (art. IX, sec. 17, Constitution of the State of Alaska) by the Alaska Permanent Fund Corporation; relating to procurement by the Alaska Permanent Fund Corporation; relating to the mental health trust fund; relating to deposits into the dividend fund; relating to the calculation of permanent fund dividends; relating to unrestricted state revenue available for appropriation; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB5001

SHORT TITLE: PERM. FUND: DEPOSITS; DIVIDEND; EARNINGS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

07/11/16 (S) READ THE FIRST TIME - REFERRALS
07/11/16 (S) STA, FIN

07/13/16

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STA AT 1:00 PM WASILLA LIO

WITNESS REGISTER

EMMA POKON, Attorney IV
Special Assistant to the Attorney General
Office of the Attorney General
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Via teleconference, introduced SB 5001 and answered questions on behalf of the administration.

WILLIAM MILKS, Assistant Attorney General
Civil Division
Labor and State Affairs Section
Department of Law
Juneau, Alaska

POSITION STATEMENT: Via teleconference, answered questions related to SB 5001 on behalf of the administration.

ANGELA RODELL, Executive Director and Chief Executive Officer
Alaska Permanent Fund Corporation (APFC)
Juneau, Alaska

POSITION STATEMENT: Via teleconference, answered questions and described how SB 5001 affects the Alaska Permanent Fund Corporation.

ACTION NARRATIVE

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CHAIR BILL STOLTZE called the Senate State Affairs Standing Committee meeting to order at 1:07 p.m. Present at the call to order were Senators Wielechowski, Huggins, Coghill (via teleconference), and Chair Stoltze.

SB 5001-PERM. FUND: DEPOSITS; DIVIDEND; EARNINGS

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CHAIR STOLTZE announced the consideration of SB 5001 and noted that this is the governor's self-described cornerstone legislation. He relayed that he cleared the docket to hear this bill, just as he did with the governor's original bill, and assumed the committee would hear from Commissioner Hoffbeck, the attorney general and all of the governor's financial experts. "Unfortunately, the governor's administration has prioritized

other activities" he said, so the committee will have teleconference participation from Assistant Attorney General Pokon and Assistant Attorney General Milks. He stated that the documents for this hearing include a letter from the administration outlining the reasons that activities other than the introduction of the governor's cornerstone bill are being prioritized. He expressed hope that Ms. Pokon and Mr. Milks would give a comprehensive review of the bill and respond to the questions from the committee.

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SENATOR HUGGINS commented that if the revenue commissioner is not slated to testify today, the appearance is that the governor is not looking for a solution.

CHAIR STOLTZE added that he wanted the committee and the public to know that "We have a few manacles and handcuffs on us as we start this process." He noted that the governor does have a representative from the Mat-Su Valley who is present.

SENATOR COGHILL advised that he was listening via teleconference.

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EMMA POKON, Attorney IV, Special Assistant to the Attorney General, Office of the Attorney General, Department of Law, Anchorage, Alaska, speaking via teleconference, introduced herself and Assistant Attorney General Bill Milks who will be able to respond to questions on any legal issues that arise today.

CHAIR STOLTZE asked, in lieu of the Department of Revenue, if she will be providing information on the fiscal impacts of SB 5001.

MS. POKON replied that Commissioner Hoffbeck asked her to convey his regrets for not being available this afternoon. She relayed that he would be happy to meet with people in the Mat-Su Valley and the delegation as time permits.

CHAIR STOLTZE asked if he characterized SB 5001 correctly when he called it cornerstone legislation.

MS. POKON replied as follows:

The Alaska Permanent Fund Protection Act, in its different variations over the course of the last few

sessions, has been an important bill [and] it continues to be. It does provide the biggest part of the switching to the fiscal situation today.

CHAIR STOLTZE asked Ms. Pokon to proceed with her presentation. He reminded Ms. Pokon of the committee's constraints and warned that deferred questions cause some problems, especially during a special session.

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MS. POKON stated that SB 5001 will look familiar to the committee as it mirrors the committee substitute for SB 128 that passed the Senate. The committee heard both SB 128 and Senator McGuire's SB 114 earlier this year, although the CS that came out of Senate Finance is a little different from the bills that this committee heard. She explained that her intention is to provide a concise, technical overview and a few points on the purpose of the legislation.

CHAIR STOLTZE asked her to remind the public of the overlying purpose and philosophy of the bill and then address the technical aspects.

MS. POKON said that as oil prices have remained low and the state has drawn down the balance in the CBRF [Constitutional Budget Reserve Fund], it has become evident that there will be a need to draw from the Permanent Fund Earnings Reserve. As a consequence, the administration wants to provide a framework for doing that in a way that will support public services while protecting the dividend and the fund; ultimately, that will set the state on a more positive fiscal path. She stated that is the purpose and the philosophy behind the bill in its original formulation and the bill that is before you today; to achieve this end, the basic provisions in the bill can be broken into four categories: 1) a formula for calculating how much can be withdrawn from the earnings reserve on a sustainable basis, 2) deposits to the corpus of the fund, 3) a new dividend formula, and 4) management provisions and authority of the Alaska Permanent Fund Corporation.

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She said the formula starts with a sustainable percent-of-market-value draw (POMV) from the earnings reserve to the general fund; this is 5.25 percent of the average fund value in the first 5 of the last 6 years. In the second step of the formula the POMV calculation is reduced by \$1 for each \$1 over \$1.2 billion in production taxes and royalties that are

deposited in the general fund. She noted that this is a provision that appeared in the State Affairs committee substitute for SB 114 and laid the foundation for a compromise bill that both the administration and members of the legislature thought they could support. She said the idea is that as oil prices recover and there is less need to rely on the permanent fund, the withdraw would be reduced; this provision also addresses the volatility issue, which is a key piece of the legislation.

MS. POKON detailed that the second element of the bill addresses deposits to the corpus of the permanent fund. First, the royalties that are deposited to the corpus of the fund are reduced to the constitutional 25 percent amount rather than the current 30 percent. There is also a savings rule when oil prices peak or the state has more money than expected; those peak revenues would be divided between the corpus of the permanent fund and the CBRF. If unrestricted revenues exceed the amount the Legislature appropriates, the excess would be split between the permanent fund corpus and the CBRF. Finally, the funds in the earnings reserve that exceed four times the POMV draw will be transferred back into the corpus.

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She said the third element of the bill is the dividend formula; initially it sets the amount at \$1,000 for three years and after that the formula is based on 20 percent of the POMV draw and 20 percent of the royalties that are deposited in the general fund. She said she believes the foundation for this provision came out of CSSB 114 and shows that the committee's work was appreciated and constructive. The administration believes that the 20/20 formula will produce dividends of about \$1,000 into the future.

She said the fourth element relates to the Alaska Permanent Fund Corporation's (APFC) authority. First, the authority to manage and invest the CBRF will transfer from the Department of Revenue to the Alaska Permanent Fund Corporation. Second, the APFC is added to the list of agencies that are exempt from the procurement rules. Finally, the corporation is able to adopt its own regulations regarding procurement.

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She presented the following Sectional Analysis for SB 5001:

Section 1: Legislative intent to reevaluate the use of permanent fund earnings in three years. This matches

with three years of \$1,000 dividends, after which the legislature will revisit the issue.

Section 2: Directs the Alaska Permanent Fund Corporation (APFC) to adopt regulations similar to the state's procurement code.

Section 3: Adds the APFC to the list of state agencies that are exempt from the general state procurement code.

Section 4: Transfers the authority to manage and invest the constitutional budget reserve fund (CBRF) from the Department of Revenue to the APFC.

Section 5: Requires the APFC to report the balance and returns of the CBRF annually.

CHAIR STOLTZE asked audience members to raise their hand if they did not understand or had a question about any of the provisions.

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MS. POKON continued the sectional analysis as follows:

Section 6: Dedicated deposits of royalties to the corpus are reduced from about 30 percent of the total received to the constitutional minimum of 25 percent. Currently, 25 percent of royalties from old leases and 50 percent of royalties from new leases are deposited into the corpus, which comes out to about 30 percent of total royalties.

Section 7: Requires the APFC to determine the net income of the earnings reserve account (ERA) and excludes unrealized gains or losses from the definition of "net income." This is consistent with current practice.

Section 8: (b) Provides the first part of the draw formula - the POMV. Defines the maximum amount available for distribution each year as 5.25 percent of the average year-end market value of the Permanent Fund (including the ERA, but not the *Amerada Hess* funds) for the first five of the last six years.

(c) Provides the second part of the draw formula - the limit. Under the draw limit, for every \$1 over \$1.2 billion of variable oil and gas revenue (production taxes and royalties) received in the general fund, \$1 is subtracted from the POMV calculation in (b). The limit does not apply to the 20 percent of the POMV that goes to dividends.

Section 9: Conforming amendment that clarifies that the *Amerada Hess* funds are not included in the draw calculation in Section 8.

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SENATOR WIELECHOWSKI noted that Section 9 amends AS 37.13.145(d) but it's a point of contention that AS 37.13.145(b) has a requirement that APFC "shall transfer from the ERA to the dividend fund," and the governor vetoed the appropriation. He asked Ms. Pokon's position whether passing the law would authorize a future governor to veto the amount of the \$900,000 permanent fund.

MS. POKON replied that the attorney general's office believes that the appropriation for the dividend may be vetoed. She specified as follows:

It has been the practice of the Legislature to appropriate those monies from the ERA to the dividend fund and with many of these provisions being accomplished through an appropriation-obviously the power of appropriation rests initially with the Legislature so if a particular legislature were to choose to appropriate.

CHAIR STOLTZE interjected that the power of appropriation rests exclusively with the Legislature.

MS. POKON apologized for the misstatement and restated that while the administration is setting out a long-term financial plan for preserving the value of the permanent fund, future legislatures would have the authority to appropriate a different amount.

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SENATOR WIELECHOWSKI asked how much revenue the statutory change will generate for the state each year.

MS. POKON replied the total transfer this year will be \$2.4 billion, with 20 percent going to the dividend and \$1.92 billion to general fund purposes. The amount of revenue that is generated on an annual basis continues to be dependent on the investment earnings of the fund. She reiterated that the provision establishes the framework for the transfer from the earnings reserve to the general fund.

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SENATOR WIELECHOWSKI asked if it is correct that the Legislature could take money out of the earning reserve without passage of SB 5001.

MS. POKON answered yes.

SENATOR WIELECHOWSKI asked if transferring \$2.4 billion to the general fund still leaves a deficit of about \$2 billion.

CHAIR STOLTZE commented that it would help to have Pat Pitney or Commissioner Hoffbeck participate in the hearing.

MS. POKON replied that her understanding is that in addition to the transfer of funds from the earnings reserve to the general fund, there is approximately \$1.2 billion in other state revenues; altogether it would be about \$3.2 billion so a deficit remains. She remarked that there will continue to be a need to have a conversation about how to fill the gap between the current budget and what revenue we expect to have on an annual basis.

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CHAIR STOLTZE asked if the administration will continue to have discussions about how to reduce the gap.

MS. POKON responded that the gap can be closed by reducing expenditures or increasing revenue.

SENATOR WIELECHOWSKI remarked that one of the concerns that former Governor Jay Hammond had and many Alaskans have is that you're taking \$2 billion out of the earnings reserve, there is still a \$2 billion deficit, and there will continue to be multi-billion dollar deficits in future years. He asked what is to stop a future governor from a veto or a future legislature from taking more out of the dividend.

MS. POKON responded that Senator Wielechowski's question is a question for future legislatures and future governors to answer.

She specified that the endeavor for the legislation is to set up a sustainable plan for using the permanent fund.

CHAIR STOLTZE opined that the bill's title was vague. He asked if the bill's title was a marketing label or attention should not be paid to the title.

MS. POKON explained that setting up a framework for how to use the fund is intended to keep it from being used in an arbitrary or unplanned way. She asserted that setting up a long-term financial plan around the permanent fund helps ensure that we're not spending down available funds.

SENATOR WIELECHOWSKI related that he spoke with an economist recently who expressed concern that cutting the dividend to \$1,000 this year will take about \$7 million out of the economy. He remarked that with declines in oil prices and federal revenues, more money is coming out of the economy and that economist expressed that this could tip the state into a severe recession. He asked if the administration had done any modeling on the impact of removing \$7 million from the economy.

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MS. POKON replied that she understands that Gunnar Knapp with ISER [Institute of Social and Economic Research] conducted an analysis of the short-term impacts and the report reflects that other actions also have short-term impacts. She reiterated that the focus of SB 5001 is to set up a long-term plan that preserves the fund and ensures a dividend going forward rather than having a larger dividend for just a few years.

SENATOR WIELECHOWSKI asked if the administration would support a constitutional amendment guaranteeing the dividend if the bill were to pass.

MS. POKON answered that she could not speak to the governor's position.

SENATOR WIELECHOWSKI asked if she had any data on the amount of money that will be lost due to reduced garnishments as a result of the reduced dividend.

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MS. POKON replied there probably are no solutions to a problem this large that won't have consequences. She pointed out that the dividend was roughly \$800 just a few years ago and it will go up and down under the current formula.

SENATOR WIELECHOWSKI restated his question.

MS. POKON answered that she is not aware of any such analysis.

CHAIR STOLTZE reminded members that the Legislature asked the Office of Management and Budget and the Department of Revenue for a detailed analysis of the impact the loss of the dividend has on the economy. He specified that the analysis is part of the Legislature's due process to help alert folks that are affected by this, but a response has not been received in about eight months and that leads to unhealthy suspicion.

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SENATOR WIELECHOWSKI asked how long savings will be extended if SB 5001 were to pass.

MS. POKON replied that she does not know but asserted that SB 5001 will not solve all of Alaska's fiscal problems. She set forth that more work needs to be done and how long the savings last will depend on the result of that additional work.

SENATOR HUGGINS stressed that the question regarding savings has to be answered.

CHAIR STOLTZE concurred with Senator Huggins.

UNIDENTIFIED SPEAKER asked what the governor's definition is for "sustainability."

MS. POKON first provided more information on the balance of the CBRF and the rate it would be spent down. She reported that as of the end of the last fiscal year there was about \$6.5 billion in the CBRF. She added that approximately \$200 million in investment revenue can be expected over the course of FY2017 leaving a balance of \$6.7 billion at the end of FY2017; however, the draw from the CBRF is \$3.2 billion, leaving \$3.5 billion at the start of the next fiscal year.

She said the definition of "sustainability" is to withdraw an amount from the earnings reserve that does not exceed a rate that degrades the inflation-adjusted value of the fund over time. She added that some earnings stay in the fund so it grows at least at the pace of inflation.

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CHAIR STOLTZE asked if the administration believes the current budget spending level is sustainable over time.

MS. POKON answered that additional work needs to be done to solve the budget gap and whether that ultimately is resolved through additional cuts or additional revenues, is something that will depend on the work of the Legislature and the administration going forward.

CHAIR STOLTZE said the fundamental question is whether spending is sustainable under the models the administration has developed.

MS. POKON stated the governor's full fiscal plan set out the administration's proposal for reaching sustainability; that proposal included this bill, but SB 5001 is just part of the proposal.

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CHAIR STOLTZE remarked that talking about the myriad of taxes and using the permanent fund dividend can occur, but the discussion is incomplete without talking about spending levels. He asked if the committee can assume that the governor believes that the budget he submitted is a sustainable amount.

MS. POKON pointed out that the governor's fiscal plan, taken in its entirety, would put the state in a sustainable budget situation. She relayed that the governor has been clear in saying that the fiscal plan is written in pencil, not pen. She set forth that the governor's fiscal plan is part of an ongoing conversation and deliberation with the Legislature and the people of Alaska. She restated that Commissioner Hoffbeck offered to meet with the Valley delegation as time permits.

CHAIR STOLTZE clarified that the committee meeting is not a meeting of the Valley delegation and even if it was, that would not take care of the concerns of the State Affairs Committee. He asserted that the committee is doing its legal responsibility under our Uniform Rules, dealing with the subject matter assigned by the Senate president on the governor's cornerstone piece of legislation.

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MS. POKON replied that Chair Stoltze's point is well taken and the exchange she had with the commissioner focused on the fact that the committee hearing is occurring in Wasilla. She assured Chair Stoltze that the commissioner would be happy to meet with the people interested in discussing the bill.

SENATOR WIELECHOWSKI pointed out a finding by the Rasmuson Foundation that cutting the permanent fund is very regressive because it takes an equal amount from each person, regardless of their income. He asked if Ms. Pokon agreed with the Rasmuson Foundation's finding.

MS. POKON replied that there are multiple elements in the governor's fiscal plan and the challenge is a multibillion dollar problem and only one multibillion dollar tool to address it; other pieces contribute, but not at that level.

UNIDENTIFIED SPEAKER questioned why someone from the governor's office wasn't either at the hearing or on the phone to answer questions.

CHAIR STOLTZE said the question is very much on point, but Ms. Pokon is in a rough position.

UNIDENTIFIED SPEAKER stated that he would like to see Governor Walker in the witness chair.

CHAIR STOLTZE remarked that he shares that frustration, but his preference would have been to have Ms. Pitney present the bill. He added that he hoped that the media would be more interested in covering the hearing.

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MS. POKON continued the sectional analysis as follows:

Section 10: (e) Plans an annual appropriation from the ERA to the general fund in an amount not to exceed the amount determined by the draw formula in Section 8.

(f) Plans for funds in the ERA over 21 percent (4 times 5.25 percent) of the fund's value to be transferred to the corpus.

Section 11: Establishes a new dividend formula. Dividends are comprised of 20 percent of the full 5.25 percent POMV in Section 8 and 20 percent of prior year royalties that have gone to the general fund.

Establishes a "savings rule" that plans for excess UGF revenues (those exceeding UGF appropriations) to be deposited in the CBRF and the permanent fund corpus.

CHAIR STOLTZE asked Ms. Pokon to describe the sources of the royalties and the amount this year.

MS. POKON explained that royalties are payments arising out of leases. SB 5001 lists mineral lease rentals, royalties, royalty sale proceeds, net profit shares, federal mineral revenue sharing payments, and bonuses received by the state from oil, gas, and minerals.

CHAIR STOLTZE asked what the amount of the royalties are for FY2017.

MS. POKON answered that her recollection is \$560 million would go to the general fund.

CHAIR STOLTZE asked if that calculates to \$112 million.

MS. POKON replied that she believes that's correct, then 20 percent of the POMV draw would be an additional \$480 million. She noted that a subsequent section sets the dividend at \$1,000 per person for the next three years.

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SENATOR WIELECHOWSKI asked if his calculation is correct that the dividend would be about \$800 without the \$1,000 provision.

MS. POKON replied yes and added that is why the \$1,000 provision is in the bill. She noted that Department of Revenue modeling indicates that dividends will be about \$1,000 into the future. She detailed that Section 1 expresses legislative intent to revisit the topic in three years, which correlates with the three-year \$1,000 dividend provision; that provision came from the Senate Finance committee substitute.

CHAIR STOLTZE commented that the governor endorsed it by putting it in the current bill.

MS. POKON agreed.

UNIDENTIFIED SPEAKER referenced Senator Wielechowski's calculation of an \$800 dividend under current revenues and asked where the other \$200 will come from to bring the dividend to \$1,000.

MS. POKON replied that the funds were appropriated from the ERA this year just as they were for the dividend.

UNIDENTIFIED SPEAKER asked if the bill provides a maximum dividend of \$1,000, but it's not a guaranteed amount.

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MS. POKON answered that the language in the bill says the dividend will be \$1,000.

CHAIR STOLTZE commented that it's subject to veto.

MS. POKON confirmed the administration's position is that the governor has the authority to veto appropriations.

SENATOR WIELECHOWSKI read Section 15 that says the dividend "shall be \$1000" for three years, and asked if Ms. Pokon agrees that the governor could veto it down to \$500 next year and \$200 the following year.

MS. POKON replied that the intention is to support the \$1000 dividend [for fiscal years 2017, 2018, and 2019].

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SENATOR WIELECHOWSKI pointed out that "shall" legally means a person is required to do something but her position is that "shall" means "may" in this circumstance.

MS. POKON answered that the framework is set out in statute, but it is subject to appropriation by the Legislature and the governor has authority to veto an appropriation.

CHAIR STOLTZE, noting that the dividend is "capped" in the fourth fiscal year, asked Ms. Pokon to explain the difference between "guaranteed" and "capped." He asked if the governor's intent is to hold the dividend down to the capped level if revenues grow substantially.

MS. POKON clarified that the formula does not cap the dividend; however, if oil prices spike or production increases through the royalty component of the formula, dividends would also increase, potentially well beyond \$1,000 per person. Additionally, if the fund increases due to robust investment revenues, the POMV portion of the formula would go up, also creating the potential for dividends of more than \$1,000.

SENATOR WIELECHOWSKI asked if the language in Section 15 means that the \$1,000 dividend applies to the upcoming dividend.

MS. POKON answered yes.

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SENATOR WIELECHOWSKI asked if she believes that any of the language in Section 15 is ambiguous and added that someone could say they are due a full dividend in October 2016.

MS. POKON replied that she did not believe there is any ambiguity. She specified that the intent is for the dividend fund to distribute \$1,000 to each eligible Alaskan.

CHAIR STOLTZE noted that Representative Gattis, Representative Tilton and the Executive Director of the Permanent Fund Corporation, Angela Rodell, are listening online.

SENATOR COGHILL remarked that the audience participation was instructive.

MS. POKON returned attention to the sectional analysis explaining that the second part has the "savings rule;" that is the provision that would plan for excess unrestricted general fund revenues to be deposited equally between the CBRF and the permanent fund corpus.

CHAIR STOLTZE asked what the philosophy was for selecting those accounts.

MS. POKON explained that the provision was added by the Senate Finance Committee and she was not aware of their reasoning, but the administration supports it as well as other variations of the savings rule.

UNIDENTIFIED SPEAKER asked if the 50/50 rule is automatic or if the excess funds would be available for legislative appropriation

MS. POKON answered that the bill provides for the transfers to occur by appropriation.

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CHAIR STOLTZE commented that a constitutional provision could make something automatic.

MS. POKON agreed and added that each year the Legislature has the authority to decide whether or not to appropriate in that year.

CHAIR STOLTZE asked if an OMB director and a finance chair could tag team and figure out how to spend the appropriation.

MS. POKON opined that spending was the judgement of the Legislature.

She continued the sectional analysis as follows:

Section 12: Conforming language requiring the APFC to adopt regulations to implement Section 2. She reminded the members that section directs the corporation to adopt regulations similar to the state's procurement code.

Section 13: Is conforming language that excludes mental health trust fund income from the draw formula in Section 8. She added that those funds that are part of a trust will continue in their current framework.

Section 14: Is conforming language that provides that once the funds are appropriated from the ERA to the dividend fund, the Department of Revenue will distribute the dividend checks without further appropriation.

Section 15: Provides that notwithstanding low oil prices today, the permanent fund dividends will be \$1,000 for fiscal years 2017, 2018, and 2019.

Section 16: Is a conforming amendment that reflects that funds are appropriated to the dividend fund.

Section 17: Provides that once the funds are appropriated from the ERA to the dividend fund, the Department of Revenue shall pay dividends each year without a separate appropriation.

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SENATOR WIELECHOWSKI requested an explanation of the language in Section 17, page 8, line 4.

MS. POKON replied the language originated from the CS that came out of the Senate Finance Committee. She said her understanding is that it is a clarification in statute that reflects how DOR has been interpreting the statute.

SENATOR WIELECHOWSKI asked if the current practice is that payment of the dividend does not require appropriation.

MS. POKON replied that her understanding is that an appropriation from the ERA to the dividend fund is required. The language in Section 17 reflects the current practice which is that after the appropriation, the Department of Revenue follows the formula and distributes individual dividend checks to eligible Alaskans.

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SENATOR WIELECHOWSKI stated that he found it is interesting that an appropriation is not needed to disburse \$1.5 billion.

SENATOR HUGGINS asked what the process would be if the phrase "without further appropriation" was not inserted in Section 17.

MS. POKON replied that the process would be the same and pointed out that the language was for clarification.

CHAIR STOLTZE asked if the language is critical.

MS. POKON answered that the language is not critical, but provides clarification.

SENATOR WIELECHOWSKI asked if Ms. Pokon would define the annual payment of the permanent fund dividend checks as an appropriation under existing law.

MS. POKON answered that the current practice has been to appropriate the full amount from the ERA to the dividend fund and then the Department of Revenue distributes the checks.

SENATOR WIELECHOWSKI asked if for 30 years the state has allowed the automatic transfer of up to \$1.5 billion from the dividend fund to the people of Alaska without an appropriation.

MS. POKON restated that an appropriation from the ERA is required.

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SENATOR WIELECHOWSKI asserted that there is an appropriation from the ERA to the dividend fund but for more than 30 years there has been no appropriation from the dividend fund to the people of Alaska.

MS. POKON replied that her understanding is that that has been the practice and deferred further comment to Mr. Milks.

SENATOR WIELECHOWSKI expressed interest in hearing from Mr. Milks.

WILLIAM MILKS, Assistant Attorney General, Civil Division, Labor and State Affairs Section, Department of Law, Juneau, Alaska, speaking via teleconference, explained that the practice for the last 30 years is that the Legislature passes an appropriation bill that provides the sum of money that will be paid out of the ERA for the payment of permanent fund dividends.

SENATOR WIELECHOWSKI summarized that there are two appropriations: an appropriation from the ERA to the dividend fund and an appropriation from the dividend fund to the people of Alaska. He asked which appropriation the Legislature has made for the past 30 years.

MR. MILKS answered that this year, for example, the Legislature passed HB 256 that provided for an appropriation from the ERA to the dividend fund for the payment of permanent fund dividends; that has been the practice for the past 30 years and reflects the basic constitutional framework of the State of Alaska. He added as follows:

The Legislature has the appropriation authority. Spending funds must go through legislative appropriation, and attached to that is the constitutional provision that gives the governor limited role on appropriation, which is the ability to strike or reduce an appropriation.

SENATOR WIELECHOWSKI asked what is being changed by adding the language in Section 17, page 8, line 4.

MR. MILKS answered the language was probably added in the Senate Finance Committee. He agreed with Ms. Pokon that it is not necessary, but it clarifies the current process.

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SENATOR WIELECHOWSKI asked if there would still need to be an appropriation from the ERA to the dividend fund if the bill passes, or would it happen automatically.

MR. MILKS answered yes. He specified that there must be an appropriation and that reflects the constitutional framework of the State of Alaska.

SENATOR WIELECHOWSKI asked if it is his opinion that the language really does not change anything.

MR. MILKS answered as follows:

I think we're agnostic on that issue. It's in there, it's not in there; the process is as it's been historically.

CHAIR STOLTZE asked if the governor has the legal ability to pause the distribution of a dividend once it's been appropriated if the governor has not exercised a veto.

MR. MILKS replied that he was not familiar with the concept of "pause."

CHAIR STOLTZE specified that "pause" is a new term he's heard recently. He again asked Mr. Milks if he thinks the governor could "pause" a portion of a dividend distribution.

MR. MILKS responded that the constitution set up the framework where the Legislature appropriates and included in the provision is the authority for the governor to exercise a line-item veto.

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CHAIR STOLTZE remarked that he is trying to figure out how new powers permeate when they get established. He continued as follows:

Clearly the governor has asserted those powers on projects. Do you think he has that power on the dividend if he decides that there's too much money going to the private sector and government needs it worse?

MR. MILKS replied that the provision in the constitution speaks for itself. He pointed out that there is an appropriation for the dividend and the governor can reduce that.

CHAIR STOLTZE asked if the governor has the constitutional power, after the dividend has been appropriated, to unilaterally decide to reduce all or a portion of it. He provided an example as follows:

Much like he can stop a project that has been duly appropriated from going forward-after he's signed the appropriation or another governor has signed it.

MR. MILKS answered that the payment of the dividend requires an appropriation, and there is a process for a veto and veto override that results in a sum that is paid pursuant to the statute.

CHAIR STOLTZE asked if the governor is on wobbly constitutional ground if he pauses or unilaterally cancels a construction project that's already been appropriated.

MR. MILKS replied that he explained the process for the dividend that results in a set sum that is paid to Alaskans pursuant to the statute.

SENATOR WIELECHOWSKI said AS 37.13.145(b) says, in part:

The corporation shall transfer from the ERA to the dividend fund.

He asked if there is another section that says someone shall pay out the permanent fund dividend.

MR. MILKS replied the dividend fund statute.

MS. POKON added that it is AS 43.23.055 and the formula that determines each individual check is set out in AS 43.23.025(a).

[2:32:50 PM](#)

SENATOR WIELECHOWSKI asked if the governor could unilaterally stop the payment of all or a portion of the dividend to individual Alaskans if he did not veto the appropriation, and instead took action after the transfer of funds went into law.

MR. MILKS reiterated that the process set out in the constitution is that the Legislature has the power of appropriation and the governor's role includes the right to veto "either funding or reduction." He further explained that the constitution governs how appropriations are made and clarifies that a statute passed by one legislature cannot freeze any future legislatures. Each legislature has the ability to exercise its power of appropriation and budgeting needs on a yearly basis.

[2:35:33 PM](#)

CHAIR STOLTZE asked if it is far-fetched to think that a governor could not cite a fiscal crisis and get an attorney general opinion saying the governor has the ability to impound an appropriation after the budget passed into law. He asked if an attorney general decided not to sign would be far-fetched.

MR. MILKS said he already presented his view on the matter. He explained that the constitution sets out how the powers work for spending, appropriations, vetoes, and the statutes. He specified that the statute is followed once there is authorized spending. He pointed out that the focus on today's committee meeting is on the dividend and he has tried to explain how the payment of dividends, in compliance with the constitution, has historically been through the appropriation process. He detailed as follows:

The point at which the governor can step in and influence those dividends is under the constitution's provision for exercise of the veto in reduction of spending.

He said the Legislature has made an appropriation for dividends, there was a veto, and the Legislature has the constitutional ability to override the veto. He summarized that the sum that ultimately results for dividends will be distributed according to the statute.

CHAIR STOLTZE commented, "We've probably run into a brick wall here."

SENATOR WIELECHOWSKI said his understanding is that an attorney general opinion in the early years said the transfer was automatic and a legislative appropriation was not needed.

MR. MILKS agreed that a very early opinion suggested that; but, quickly after that the Department of Law clarified that an appropriation would be necessary. He added that Article IV, Section 16 of the constitution makes reference to appropriations for Alaska permanent fund dividends.

[2:38:44 PM](#)

SENATOR WIELECHOWSKI asked for a copy of the early attorney general opinion.

MR. MILKS agreed to provide a copy.

CHAIR STOLTZE asked Mr. Milks to describe an attorney general opinion and the force of law it has.

MR. MILKS explained that it's the best reasoning at the time on an issue presented to the attorney general. He noted that the opinion on the issue of the permanent fund dividend has been the same for several decades.

CHAIR STOLTZE asked where he would place the opinion on the scale between an advisory mechanism to the chief executive and being impassible and having the force of law.

MR. MILKS replied that the opinions are advisory to the executive branch and carry varying weight. At times the Alaska Supreme Court has given great weight to attorney general opinions and other times they were considered and not given great weight.

[2:41:05 PM](#)

CHAIR STOLTZE opined that an attorney general opinion can often forego the constitutional three readings in both bodies and signing of a bill by the governor. He asked if an attorney general's opinion can have the same force of repealing or making law.

MR. MILKS clarified that an attorney general opinion is not a statute.

CHAIR STOLTZE asked if an attorney general's opinion has a comparative weight in impact.

MR. MILKS replied that an attorney general's opinion is typically an interpretation of what a statute means.

CHAIR STOLTZE remarked that Mr. Milks and his department tend to minimize itself too much.

MS. POKON pointed out that the Department of Law's website has a description of attorney general opinions and what they do.

CHAIR STOLTZE asked Ms. Pokon how she would describe attorney general opinions and the impact they have.

MS. POKON answered that she would agree with everything Mr. Milks stated. She stated that the attorney general is an advisory opinion that sometimes has weight and sometimes does not.

[2:42:39 PM](#)

MR. MILKS emphasized that an attorney-general opinion is important. He said the opinion is the attorney general's consideration of a statute and what it means, but it is the Alaska Supreme Court that sets a range of what the weight of the opinion will be, from "very important" to "must be considered."

MS. POKON continued the sectional analysis as follows:

Section 18: Repeals provisions relating to the CBRF subaccount, the former dividend formula, and the inflation proofing calculation.

Section 19: Repeals Section 15 (\$1,000 dividend) after three years.

Section 20: Provides transition language authorizing the Commissioner of Revenue and the APFC to adopt regulations, policies and procedures to implement this Act.

Section 21: Retroactive effective date of July 1, 2016 for Sec. 6-11 and 13-18.

Section 22: Immediate effective date for remaining sections.

UNIDENTIFIED SPEAKER asked about the summary document and Section 15.

CHAIR STOLTZE summarized that the question asked about the substantive effect of changing the term "will" to "shall" in Section 15.

MS. POKON explained that the intent of the summary document is to reflect the language in the legislation; under this statute, the dividends will be \$1,000 [for fiscal years 2017, 2018, and 2019].

CHAIR STOLTZE, relaying a question from the audience, asked if there is a substantive difference between the terms "will" and "shall."

MS. POKON replied not for these purposes.

CHAIR STOLTZE, relaying a question from the audience, asked if she would describe it as style or substance.

MS. POKON replied that there is a stylistic difference in producing a summary document versus the exact language in the legislation.

CHAIR STOLTZE requested that written explanation be provided.

UNIDENTIFIED SPEAKER expressed confusion about how the terms "constitutional," "statute," "allocation," and "appropriation blend." She perceives statute overrides constitution at points and appropriations are not permanent, but flexible.

[2:46:50 PM](#)

MS. POKON asked if the audience member asked what the respective authority is between the constitution and statutes.

CHAIR STOLTZE added as follows:

And how these different approaches compete with existing constitutional authority.

He acknowledged that none of this legislation changes the constitution.

MS. POKON explained that the constitution is controlling and statutes must follow the provisions of the constitution, or be interpreted such that they do.

SENATOR HUGGINS asked to which department Section 17 refers.

MS. POKON replied that the section refers to the Department of Revenue.

SENATOR HUGGINS asked if she would characterize SB 5001 as a revenue bill.

[2:48:45 PM](#)

MS. POKON described the bill as a financial plan for how to rationally use a fund and the investment proceeds from that fund.

SENATOR HUGGINS suggested it would be worthwhile for Ms. Pokon to explain why the Department of Law is introducing the bill, not the Department of Revenue. "Whose brainchild is this? Give us a little bit of background."

MS. POKON explained that over the course of the last year she had the opportunity to work with the Department of Revenue on the technical work as well as developing the legislation. When Commissioner Hoffbeck was not available, it made sense for her to provide an overview of the bill and answer questions from the committee today.

CHAIR STOLTZE asked if the new attorney general will have an active role in the permanent fund legislation, similar to former Attorney General Richards.

MS. POKON answered that she does not know what the new attorney general will want to do or what role she will play.

CHAIR STOLTZE asked if she had briefed the new attorney general on SB 5001.

MS. POKON replied that she has not had an opportunity to have a conversation with the new attorney general.

CHAIR STOLTZE asked if she is aware that anyone has briefed the new attorney general on SB 5001.

MS. POKON responded that the new attorney general will not come in to the position until next month and she is not aware of any briefing, but the acting attorney general has been briefed.

SENATOR HUGGINS asked if either Governor Hammond or Governor Hickel vetoed part of the permanent fund [appropriation].

[2:52:25 PM](#)

MS. POKON replied that she has not researched Senator Huggins' question.

CHAIR STOLTZE reported that Governor Hammond vetoed the original legislation establishing the permanent fund because it had a statutory framework, he demanded a constitutional amendment and that was approved by the voters in 1976.

SENATOR HUGGINS asked who has vetoed part of the permanent fund or the permanent fund that was allocated to the citizens of the state by the legislature.

MS. POKON replied that she is unaware of that having happened in the past.

SENATOR HUGGINS clarified that he is asking for the name of who has vetoed.

MS. POKON responded that she did not know the answer.

SENATOR HUGGINS asked about within the last 60 days.

MS. POKON apologized that she was thinking about the history of the fund. She specified that Governor Walker did veto a portion of the dividend appropriation.

[2:54:42 PM](#)

UNIDENTIFIED SPEAKER asked a question that was not audible.

CHAIR STOLTZE asked Senator Wielechowski to provide an explanation.

SENATOR WIELECHOWSKI summarized that the Legislature passed a piece of legislation creating a permanent fund and the late Governor Jay Hammond vetoed it because he wanted the matter to go before the voters. The voters subsequently enshrined the Alaska Permanent Fund in Section 9.15 of the Alaska Constitution. He said the argument comes from the last sentence of that section:

All income from the permanent fund shall be deposited
in the general fund unless otherwise provided by law.

He said in 1982 the Legislature set up the permanent fund dividend through a series of statutes. One of the more important of those is AS 37.13.145(b); that statute says the Alaska Permanent Fund Corporation shall transfer from the ERA to the dividend fund. Soon thereafter, an attorney general opinion said the transfer from the corporation to the dividend fund is automatic. A side note in the [1994] Alaska Supreme Court decision, Hickel et al v. Cowper also said the transfer from the earnings reserve to the dividend fund happens automatically. A few years later a different attorney general issued an opinion saying the transfer from the ERA to the dividend fund should be through legislative appropriations. He added as follows:

For roughly 30 years the legislature has been
appropriating the amount necessary to pay the
[dividend] and no governor in the history has vetoed
this.

SENATOR WIELECHOWSKI argued that the intent was that the transfer would be automatic so there is nothing for the governor to veto. He spoke with the people at the Alaska Permanent Fund Corporation and they said they transferred the amount the governor suggested, not the full amount of the dividend; when he asked why, they said it was based on the attorney general's opinion. He opined that if there was a legal claim at this point, it would be against the APFC, not the governor, because the law says the corporation shall transfer the funds, it does not say the corporation may transfer the funds, "They didn't do it. They're violating the law."

[2:59:12 PM](#)

SENATOR WIELECHOWSKI said his discussions with people who were there in the early days indicate that their intent was to make it an automatic transfer. He remarked that he does not know how a court would rule and added as follows:

I feel that based on the legislative intent that I've heard, yeah the court would rule in our favor. That this can be vetoed and the Permanent Fund Corporation has to transfer it.

He confirmed that he is gathering all the history on the matter.

CHAIR STOLTZE commented that, whichever way this is decided, the decision will be a footnote in the statutes.

SENATOR WIELECHOWSKI opined that if the Legislature does not overturn the veto, there is a good chance there will be a lawsuit.

UNIDENTIFIED SPEAKER asked if the bill is really necessary to make it so that the legislature can say, 'We're going to use the earnings reserve.' or is it only the governor that can do it.

CHAIR STOLTZE asked Ms. Pokon to respond by summarizing the rationale for this mechanism as opposed to a direct appropriation from the earnings reserve fund.

[3:01:29 PM](#)

MS. POKON answered that she believes this is a process, in partnership with the Legislature, to set out a plan in statute for the dividend. She added as follows:

We have acknowledged a number of times in committee hearings, the Legislature has actually been very

disciplined in following the statutory terms about how we manage the earnings of the permanent fund.

MS. POKON said SB 5001 recognizes the imminent point:

Where the Legislature and the administration wouldn't have any choice but to be looking to the earnings reserve for UGF [unrestricted general fund].

She summarized that the intent was to prepare for that in partnership with the Legislature.

[3:03:13 PM](#)

SENATOR HUGGINS thanked Ms. Pokon and Mr. Milks for their work on the bill and emphasized the importance of resurrecting the philosophy of "partnering" between the administration and the Legislature because it has diminished over the last couple of years. He asserted that the only group of people that suffer without partnering are the people of Alaska.

UNIDENTIFIED SPEAKER stated that she believes the Legislature has bent over backwards to partner.

[3:05:00 PM](#)

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[3:19:29 PM](#)

CHAIR STOLTZE reconvened the meeting and announced the committee would hear from Angela Rodell, the Executive Director of the Alaska Permanent Fund Corporation. He noted that Ms. Rodell is a former commissioner of the Department of Revenue and also did consulting work for the Senate Finance Committee.

ANGELA RODELL, Executive Director and Chief Executive Officer (CEO), Alaska Permanent Fund Corporation (APFC), Juneau, Alaska, stated that SB 5001 does change some things for the corporation, but does not change or affect the mission of the fund that was set out 40 years ago. She explained as follows:

We will still manage the permanent fund core investments and we will do that using a prudent investor rule to maximize the value and protect the fund for this and all future generations of Alaskans.

She set forth that the first change for the corporation is to provide increased flexibility to manage some investments by creating an exemption to the state procurement code. She said

the corporation currently is allowed to hire investment managers without having to go through the procurement code, but it must go through the procurement code to make direct investments and to get certain types of expertise that is unrelated to the investment but provides insight into the investment itself. She cited the investment in Juno Therapeutics as an example. She detailed that APFC wanted to hear from scientists and doctors about the validity of the science or medicine, but that would have to go through the lengthy state procurement process, which works at odds with making timely investment decisions. She said the new process would be similar to the state procurement code with the proposals passing the Board of Trustees, going through a regulatory procedure, passing regulations, and taking public comment.

MS. RODELL detailed that the second change affecting the corporation is to transfer management of the Constitutional Budget Reserve Fund (CBRF) from the Treasury Division of the Department of Revenue to the Alaska Permanent Fund Corporation; this would allow the corporation to invest the CBRF in the same investment strategy and asset allocation as the permanent fund itself.

CHAIR STOLTZE asked Ms. Rodell to discuss how the CBRF is managed long term versus short term and how the APFC and the Senate Finance Committee jointly agreed on this provision.

[3:23:40 PM](#)

MS. RODELL explained that under current statute most of the CBRF must be invested in short-term assets, although the commissioner of revenue does have the ability to invest in longer-term investments, such as more stocks, if the fund is not expected to be used in the next five years. She detailed that the limitation with the current statute is that there is an expectation that the reserve fund will be used inside of five years due to the state's current fiscal picture. She asserted that the expectation under SB 5001 is that the ability to use some of the ERA will allow the CBRF to be invested a little longer term. She reiterated that the CBRF would be managed alongside the permanent fund and in the same assets, generating funds to transfer out of the ERA to assist with the state fiscal plan along with funding the dividend in the future.

SENATOR WIELECHOWSKI asked if the corpus, the earnings reserve fund, and the permanent fund dividend fund are invested differently or in the same pool.

MS. RODELL answered that the corpus and the ERA are invested by the corporation as one pool; through accounting procedures, they are allocated a portion of the principal and investment earnings. The dividend fund is held, managed, and invested by the Department of Revenue.

CHAIR STOLTZE cited the constitutional amendment former Governor Frank Murkowski introduced for a percent of market value payout that many people thought was aggressive at 5 percent. He cited an article in the April 6, 2016 issue of the Journal of Commerce that said some of the retirement management funds were not meeting expected goals; conceding this was not an apples-to-apples comparison, he asked Ms. Rodell to discuss her professional opinion about the proposed [5.25 percent] payout.

[3:27:48 PM](#)

MS. RODELL replied that the Department of Revenue has taken the lead on modeling sustainability and the 5.25 payout amount came out of a number of conversations and positions, as opposed to sustainability. She said it is obvious that the more you take the less sustainable the fund will be over time. The unaudited estimate for FY2016 is 1.4 percent, but given all of the turmoil over the course of the fiscal year from the significant impact on the stock market in December through February and the Brexit issues that roiled the markets the last week of the fiscal year, she was pleased with finishing the fiscal year in positive territory; however, the percentage is nowhere near expectations to earn 7 or 7.25 percent to sustain a 5.25 percent draw each year.

She said there are two things in the bill that are worth noting that are relative to the 5.25 percent. First, the corporation will determine what amount is available for distribution. She detailed that there is a straight calculation based on 5.25 percent of five of the preceding six fiscal years to determine the amount of market value. She said it is important to note is that Section 10, line 23 and line 24 of the proposed bill says the Legislature may appropriate up to that amount. She pointed out that if the Legislature is concerned, it could draw less and leave amounts behind. Second, there are caps in Section 8 with the \$1.2 billion if production taxes start to increase. Finally, there is a review provision every three years to make sure the ERA is not being depleted too quickly, amounts are continuing to accrue, and the fund is continuing to grow. What SB 5001 has done is try to balance some of the measures with the higher 5.25 percent draw by countering that with some of these options for future legislators to use.

CHAIR STOLTZE asked if it is dangerous to enshrine the percentage Ms. Rodell would like to produce for the budget as opposed to what is sustainable. He asked Ms. Rodell to candidly discuss the importance of sustainability.

[3:32:55 PM](#)

MS. RODELL replied that without wading into the policy decision of should or shouldn't you draw on the ERA, the one thing that the committee may want to think about regarding spending versus revenue is that Alaska has always found itself in a different position than other states. One of the plusses of a bill like SB 5001, if you choose to draw out of the earnings reserve, is knowing a portion of the revenue, which is really unusual. She pointed out that after payment of a dividend, about \$1.9 billion to \$2 billion would be generated for the state budget; that is not sufficient revenue to fund the budget at this point, given where the unrestricted general fund budget is.

CHAIR STOLTZE asked if it is not inadequate if only revenues and not reductions is looked at.

MS. RODELL agreed with Chair Stoltze but pointed out that in January legislators will start with a known revenue number and then have a discussion about unknown revenues, which are tax revenues that have yet to come in. She summarized as follows:

You're not as reliant as in the past on forecasted revenues for determining a sustainable or appropriate budget.

CHAIR STOLTZE asked what Ms. Rodell believes is a sustainable amount.

[3:35:06 PM](#)

MS. RODELL answered that everybody's definition of "sustainability" is different and her personal priority is not relevant. She added as follows:

We will do what we can to continue to increase the value and to make as much money as we can for the State of Alaska.

CHAIR STOLTZE asked what general cautions she would give.

MS. RODELL cautioned that 5.25 percent is high in today's environment. She said if markets continue to perform as they did

over the last year and returns over the next five years are one to two percent per year and ten-year treasury yields are as low as they have been since World War II, 5.25 percent needs to be recognized as possibly depleting the ERA faster than intended.

3:38:43 PM

CHAIR STOLTZE asked if Ms. Rodell agrees that that ultimately erodes the value of the fund itself.

MS. RODELL answered correct.

CHAIR STOLTZE asked if he is going too far out on a limb to say that an overly aggressive payout could erode the principle just as much as an appropriation.

MS. RODELL opined that Chair Stoltze was going a little too far because the three-year lookback will give a sense that the ERA is eroding to the point that it is not sustaining itself. She summarized as follows:

Personally, I don't think we will ever actually reach that point because there will be alarm bells going off first, that everyone is going to be very aware of and concerned about.

SENATOR WIELECHOWSKI noted that in 2010 there was an issue about not having enough in the ERA to pay the dividend. He asked if SB 5001 fixes that problem so there will always be a dividend, even if it is reduced.

MS. RODELL answered that she would defer to the Department of Law, but her understanding is that under SB 5001 there will always be a dividend. She noted that 20 percent of the dividend comes directly from royalties.

3:42:06 PM

SENATOR WIELECHOWSKI stated that he would like clarification from the Department of Law. He pointed out that this year the amount from royalties was \$112 million and the amount from the earnings was \$480 million and his calculation is that would have resulted in a \$100 dividend.

MS. RODELL replied that she had not looked at the numbers Senator Wielechowski noted.

CHAIR STOLTZE said his historical observation is that the Alaska Permanent Fund Corporation is not intricately involved in the dividend.

UNIDENTIFIED SPEAKER asked if the governor could collateralize the corpus of the fund under the existing permanent fund versus SB 5001.

MS. RODELL clarified that the Board of Trustees has that authority, not the governor.

CHAIR STOLTZE commented that they all serve at the will of the governor and can be replaced without cause.

MS. RODELL clarified that trustees can only be removed for cause.

CHAIR STOLTZE asked Ms. Rodell to describe the makeup of the board.

[3:44:33 PM](#)

MS. RODELL explained that the Board of Trustees is made up of six members: four public members, preferably with a background in finance, the commissioner of the Department of Revenue, and a head of department of the governor's cabinet. Members serve staggered, four-year terms so one seat expires each year. Governor Walker appointed Marty Rutherford to a public seat this year and reappointed Carl Brady to a public seat last year. Bill Moran is the chair of the board and has been serving since 2007, his term will expire in 2018. Larry Cash is the fourth public member and his term will expire in 2017. Revenue Commissioner Hoffbeck serves on the board and Governor Walker appointed former Attorney General Richards to the head of department position. She disclosed that there has been no notice as to who will replace Mr. Richards.

[3:46:46 PM](#)

UNIDENTIFIED SPEAKER asked if the APFC would benefit from a seat on the stock exchange, using index funds with extreme wide diversification, and something near a 4 percent draw.

MS. RODELL explained that about 40 percent of the permanent fund is invested in public equities, using a number of passive index funds along with some active strategies; because, it is important to the corporation to have a very diverse array of investments to maximize returns and not be overly affected by things that happen worldwide, they created an "all-weather

portfolio" that has about 55 percent invested in publicly-traded markets and 45 percent in private market type securities. She detailed that fees are important and they have worked hard to reduce them by taking on more internal management. She pointed out that for 35 years APFC have managed their bond portfolio in-house. She noted that APFC also manages real estate and small pieces of asset classes in-house, thereby reducing fees significantly. She said an important note with regard to the 4 percent payout suggestion, the percent of market value resolution in 2003-2004 was a constitutional amendment that would have drawn on the full value of the fund and would have eliminated the ERA.

MS. RODELL stated that what SB 5001 proposes is a distribution rule on just the ERA. She summarized as follows:

Whatever the percentage is, that amount is only coming out of the ERA, even though it will be calculated on the full amount of the fund plus the ERA.

[3:50:33 PM](#)

CHAIR STOLTZE asked if the ERA is included in the \$53 billion estimated total of the permanent fund.

MS. RODELL answered yes. She specified that the end of the fiscal year, and before any distribution for dividends, the ERA was about \$8.5 billion, and about \$45 billion was in the corpus or principal of the fund.

CHAIR STOLTZE asked what happened to the funds that were appropriated from the ERA and the governor vetoed.

MS. RODELL replied that the corporation has been advised to transfer the amount of the appropriation and hold the remaining amount in the ERA where it will continue to earn a return.

[3:52:19 PM](#)

SENATOR WIELECHOWSKI asked what the interaction is between APFC and the executive branch because there seems to be competing views and perspectives. He asked how independent is the Permanent Fund Corporation when taking legal advice from the Department of Law.

MS. RODELL explained that for administrative purposes, APFC is an executive branch entity that resides within the Department of Revenue. She said the corporation has had in-house general counsel since 2008-2009, and before then was required to use an

assistant attorney general from the Department of Law. The Board of Trustees prepares the budget and it goes through the same hurdles as other department budgets but it is ultimately part of the governor's budget bill. While the corporation has an exemption from the state Personnel Act, it is subject to state procurement, state travel and other requirements so the lines get blurry at times. APFC is a quasi-corporation and an entity belonging to the State of Alaska.

SENATOR WIELECHOWSKI said he contacted the permanent fund office and was told that on the advice of the Department of Law, the transfer from the earnings reserve to the dividend fund was made in the amount that the governor had vetoed. He asked Ms. Rodell if her understanding of what happened is the same.

[3:55:51 PM](#)

MS. RODELL answered that the funds have not been transferred. She specified that the corporation requested guidance from the Department of Law and was told to transfer the vetoed amount in the appropriation bill using the customary process. She added that the corporation typically does not transfer any dividend amount to the Department of Revenue until the books are completely closed for the month of June, generally occurring in August. She said the corporation is pursuing on the same timetable.

SENATOR WIELECHOWSKI asked if she will seek independent legal advice or follow the guidance of the Department of Law.

MS. RODELL answered that the corporation will transfer the appropriated amount, whether it is the amount the governor vetoed or a new amount if the Legislature overrides that veto. She said the corporation is waiting to see what the final amount in an appropriation bill is for transfer.

SENATOR WIELECHOWSKI asked what she expects the payout to be if the Legislature overrides the veto.

MS. RODELL replied that the dividend is calculated by the Department of Revenue.

SENATOR WIELECHOWSKI asked if Ms. Rodell has told what the amount would be.

MS. RODELL answered that she has no idea. She reiterated that APFC has nothing to do with the administration of the dividend. She detailed that the corporation is finished with the dividend

once the lump sum has been transferred. The Permanent Fund Dividend Division within the Department of Revenue administers who gets a dividend and how much.

[3:58:22 PM](#)

UNIDENTIFIED SPEAKER asked a question related to the veto.

MS. RODELL replied that the corporation looked at their cash positions and was planning for a \$1.4 billion transfer that was in the original appropriation bill. The corporation was making plans for liquidity for the transfer when the governor exercised his veto. The corporation asked Department of Law for guidance as to which to look at and were told the appropriation bill. She added as follows:

We looked to the [Office of the] Attorney General for his guidance and we are now in a holding pattern to see what will happen in terms of liquidity and reinvestment opportunities.

She clarified that she spoke with Assistant Attorney General Bill Milks and not Attorney General Richards.

[4:00:07 PM](#)

SENATOR WIELECHOWSKI asked if the trustees discussed transferring the amount that is required under statute instead of taking the advice from the Department of Law.

MS. RODELL answered that the trustees have not had that conversation.

SENATOR WIELECHOWSKI asked if she expects that to happen.

MS. RODELL replied that there has not been a board meeting since the governor's veto, but she believes the board will have the same inclination she has, which is to follow the guidance from the Department of Law and their interpretation of the state law.

SENATOR WIELECHOWSKI opined that Ms. Rodell's reply gets to the question of independence. He specified that the statute is very clear about APFC's obligation. He continued as follows:

Your obligation is that you shall transfer the amount necessary to pay the full dividend from the earnings reserve to the dividend fund.

SENATOR WIELECHOWSKI suggested that it would be prudent to take an independent review of the statute.

MS. RODELL replied that Senator Wielechowski's advice is duly noted.

SENATOR WIELECHOWSKI asked when the Board of Trustees meets next.

MS. RODELL replied there will be a work session on September 2.

UNIDENTIFIED SPEAKER suggested there would be considerable legal savings if SB 5001 were ruled out when the Legislature meets on Friday. The benefits in the bill should be crafted as new legislation to benefit "the exercise and profit possibilities of the Permanent Fund Corporation."

CHAIR STOLTZE said the Finance Committee will probably continue to pursue those things.

4:04:01 PM

UNIDENTIFIED SPEAKER asked what would happen if APFC didn't take the guidance from Department of Law and transferred the full amount.

MS. RODELL specified that it is important to respect the legislative appropriation process and the governor's veto process; while this is sorted out, the money will earn better returns if it stays in the ERA. She detailed that the dividend account the funds earn 30-day Treasury bill cash rates.

SENATOR WIELECHOWSKI stated that the Department of Law keeps saying that an appropriation has to occur. He explained what AS 37.13.145(b) tells APFC to do:

At the end of each fiscal year, the corporation shall transfer from the ERA to the dividend fund the amount that is necessary to pay the dividend. It says 'you shall transfer from the ERA to the dividend fund.'

He said there is money in the ERA, \$8 billion, so there is nothing to appropriate because the money is already sitting there. The statute clearly gives APFC guidance on what to do regardless of whether the governor appropriated \$1.5 billion or \$695 million, it does not matter, because there is still \$8 billion in the ERA.

MS. RODELL agreed that there are plenty of funds available for transfer.

SENATOR WIELECHOWSKI asked Ms. Rodell and the trustees to take an independent look because the statute is crystal clear on what needs to happen. He asserted that the money is there and an appropriation is not needed.

[4:07:39 PM](#)

UNIDENTIFIED SPEAKER asked what happens two years from now if there is a successful lawsuit and Alaskans are owed unpaid dividends.

MS. RODELL replied, hypothetically, the corporation would transfer funds to the dividend fund for distribution, similar to the second distribution that Governor Palin made several years ago. She said APFC would comply with the law and the Permanent Fund Dividend Division would too.

UNIDENTIFIED SPEAKER asked if the 1.4 percent includes all expenses.

MS. RODELL replied that the 1.43 percent is the total return on the fund for FY2016, net of all fees and expenses.

CHAIR STOLTZE asked Ms. Pokon if she had further comments.

MS. POKON answered no.

SENATOR WIELECHOWSKI asked if SB 5001 fixes the problem that has come close to happening in the past, which is that there is no dividend if the earnings reserve drops and there are insufficient funds to pay the dividend.

[4:11:28 PM](#)

MS. POKON explained that with the new dividend formula, there would be paid a transfer from the general fund to the dividend fund. She said the source of the money in the general fund would be 20 percent of the POMV transfer from the earnings reserve and 20 percent of royalties that go into the unrestricted general fund. Under SB 5001 the royalties do not go through the ERA, whereas current procedure is for all the funds for the dividend to transfer from the ERA to the dividend fund.

CHAIR STOLTZE asked if making the payout will be easier because of the smaller dividend.

MS. POKON replied that the dividend will go up if royalties and the value of the fund go up and if they both go down it will be the opposite situation.

SENATOR WIELECHOWSKI asked if there would still be money from royalties, as long as oil flows through the pipeline, even if no money was coming in due to a few consecutive years of a down market.

MS. POKON answered yes.

CHAIR STOLTZE thanked the participants.

[SB 5001 was held in committee.]

[4:15:31 PM](#)

CHAIR STOLTZE adjourned the Senate State Affairs meeting at 4:15 p.m.