

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

April 7, 2018

10:00 a.m.

**MEMBERS PRESENT**

Senator John Coghill, Chair  
Senator Mia Costello  
Senator Pete Kelly  
Senator Bill Wielechowski  
Senator Mike Shower

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Senator Cathy Giessel

**COMMITTEE CALENDAR**

**SENATE JOINT RESOLUTION NO. 1**

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund, establishing the earnings reserve account, and relating to the permanent fund dividend.

- HEARD & HELD

**SENATE BILL NO. 127**

"An Act relating to criminal law and procedure; relating to controlled substances; relating to victims of criminal offenses; relating to probation; relating to sentencing; relating to treatment program credit for time spent toward service of a sentence of imprisonment; relating to the Violent Crimes Compensation Board; relating to permanent fund dividends; relating to electronic monitoring; relating to penalties for violating municipal ordinances; relating to parole; relating to community work service; relating to revocation, termination, suspension, cancellation, or restoration of a driver's license; relating to the duties of the commissioner of corrections; relating to the duties of the Department of Health and Social Services; relating to civil in rem forfeiture actions; providing for an effective date by repealing sec. 193, ch. 36, SLA 2016,

sec. 79, ch. 1, 4SSLA 2017, sec. 81, ch. 1, 4SSLA 2017, and sec. 83, ch. 1, 4SSLA 2017; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 214

"An Act relating to criminal law and procedure; relating to controlled substances; relating to victims of criminal offenses; relating to probation; relating to sentencing; relating to treatment program credit for time spent toward service of a sentence of imprisonment; relating to the Violent Crimes Compensation Board; relating to permanent fund dividends; relating to electronic monitoring; relating to penalties for violating municipal ordinances; relating to parole; relating to community work service; relating to revocation, termination, suspension, cancellation, or restoration of a driver's license; relating to the duties of the commissioner of corrections; relating to the duties of the Department of Health and Social Services; relating to civil in rem forfeiture actions; providing for an effective date by repealing sec. 193, ch. 36, SLA 2016, sec. 79, ch. 1, 4SSLA 2017, sec. 81, ch. 1, 4SSLA 2017, and sec. 83, ch. 1, 4SSLA 2017; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

#### PREVIOUS COMMITTEE ACTION

BILL: SJR 1

SHORT TITLE: CONST AM: GUARANTEE PERM FUND DIVIDEND

SPONSOR(S): SENATOR(S) WIELECHOWSKI

01/18/17	(S)	PREFILE RELEASED 1/9/17
01/18/17	(S)	READ THE FIRST TIME - REFERRALS
01/18/17	(S)	STA, JUD, FIN
02/09/17	(S)	STA AT 3:30 PM BUTROVICH 205
02/09/17	(S)	Heard & Held
02/09/17	(S)	MINUTE(STA)
03/07/17	(S)	STA AT 3:30 PM BUTROVICH 205
03/07/17	(S)	Moved SJR 1 Out of Committee
03/07/17	(S)	MINUTE(STA)
03/08/17	(S)	STA RPT 1DNP 4NR
03/08/17	(S)	NR: DUNLEAVY, EGAN, GIESSEL, WILSON
03/08/17	(S)	DNP: COGHILL
02/28/18	(S)	MOTION TO DISCHARGE FROM JUD COMMITTEE FAILED Y6 N14
03/07/18	(S)	MOTION TO DISCHARGE FROM JUD COMMITTEE FAILED Y7 N13

04/06/18 (S) UR 48(A) REQUEST RECEIVED  
04/06/18 (S) JUD WAIVED PUBLIC HEARING NOTICE, RULE  
23 UC  
04/07/18 (S) JUD AT 10:00 AM BELTZ 105 (TSBldg)

#### WITNESS REGISTER

#### ACTION NARRATIVE

[10:00:41 AM](#)

**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 10:00 a.m. Present at the call to order were Senators Costello, Kelly, Wielechowski, and Chair Coghill. Senator Shower joined the committee soon thereafter.

[10:01:02 AM](#)

CHAIR COGHILL stated that the committee would hear three bills. Senator Wielechowski will introduce SJR 1 and the intention is to lay it aside and deal with public testimony later. Next, Senator Costello will introduce SB 127 regarding criminal justice reform. Finally, HB 214 dealing with the Alaska Safe Children's Act and naming it Bree's Law will be heard. He related that his normal practice is to hear the introduction of bills and to deal with public testimony later. He added that it was unfortunate that many people were notified that public testimony would be taken but that was not his intention.

#### SJR 1-CONST AM: GUARANTEE PERM FUND DIVIDEND

[10:02:09 AM](#)

CHAIR COGHILL announced the consideration of SJR 1.

[10:02:18 AM](#)

SENATOR BILL WIELECHOWSKI, Alaska State Legislature, Juneau, Alaska, sponsor of SJR 1, stated that this resolution would allow the people of Alaska to vote on whether to enshrine the current calculation and inflation-proofing of the Alaska Permanent Fund Dividend (PFD) in the Constitution of the State of Alaska. That is the only way to truly protect the dividend.

He related that many Alaskans were shocked when the governor cut the permanent fund dividend by over \$1,000 in 2016. Then the legislature cut it again last year. When this was challenged, the Alaska Supreme Court held that the governor and legislature could adjust the dividend as they wished. This means there is

absolutely no protection for the permanent fund dividend unless it is put in the constitution. That is what SJR 1 does.

He said it's important to remember that the PFD reflects Alaskans' ownership share in the state's oil wealth. The current value of the Alaska Permanent Fund is roughly \$60 billion and Art. IV, Sec. 15 of the Alaska Constitution - the Permanent Fund constitutional amendment - requires that at least 25 percent of mineral lease rentals, royalties, royalty sale proceeds, federal mining revenue-sharing payments, and bonuses received by the state go into the permanent fund. He noted there is a statute that says that 50 percent of royalties for certain fields after a certain year go into the permanent fund, but it is a relatively small amount.

SENATOR WIELECHOWSKI refuted the claim that the PFD is an entitlement. He pointed out that the subsurface rights in Alaska belong to the people collectively and that there is a constitutional obligation under Art. VIII, Sec. 2 to ensure that these resources are utilized "for the maximum benefit of the people." He said the authors of the 1982 Permanent Fund Dividend legislation understood this very clearly and tied the current PFD to this constitutional obligation. They understood that every Alaskan had a right to their share of the oil wealth and the best, most efficient way to do that was through a dividend program.

He posited that in the scheme of things Alaskans have gotten a very small share of the oil wealth. He pointed out that 100 percent of state property taxes, corporate income taxes, and production taxes go to state government, as well as 75 percent of all royalties. The royalty rate is typically 12.5 percent and the people get just a 25 percent share of that. This means just 3.125 percent of the value of Alaska's oil goes to the permanent fund. Alaskans only get 50 percent of the earnings generated from those contributions. The rest is available for government and remains available to government under SJR 1.

He shared several points to illustrate the impact the PFD has on individuals, businesses and the economy. The Institute of Social and Economic Research (ISER) at UAA found that tens of thousands of Alaskans are removed from poverty because of the PFD. Alaska has the lowest income inequality in the nation because of the PFD. ISER also found that the PFD creates thousands of jobs in Alaska.

SENATOR WIELECHOWSKI said inflation proofing is responsible for a large portion of the current value of the permanent fund and he believes the corpus of the fund should continue to be protected through inflation proofing. He said three essential statutes create the permanent fund dividend program - AS 37.13.145, AS 37.13.140, and AS 43.23.025. SJR 1 essentially places these statutes in the constitution to constitutionally require the PFD be paid at its current formula and inflation-proofing to continue.

He offered to answered questions.

[10:05:45 AM](#)

SENATOR SHOWER joined the committee.

[10:07:38 AM](#)

CHAIR COGHILL requested a sectional analysis.

SENATOR KELLY stated that the conflation of the dividend and subsurface rights is an interesting but incorrect opinion. He maintained that that was never the intent of the founders of the dividend. He reminded members that the Hammond plan that capped the dividend at \$1,250 was intended to protect the corpus of the dividend from raids and it has been successful.

[10:08:37 AM](#)

SENATOR WIELECHOWSKI said the former statement has some inaccuracies, based on his research of the minutes associated with the constitutional creation of the permanent fund as well as the bill that created the permanent fund dividend program.

In the creation of the permanent fund there was very clear intent by the legislature when it passed CSHJR 39 to allow for the payment of dividends to the people of Alaska. They put a letter of intent in the record on March 24, 1976 where they specifically said they were adding language to "give future legislatures the maximum flexibility in using the fund's earnings - ranging from adding to the fund principal to paying out a dividend to resident Alaskans."

In the minutes from April 8, 1982, Representative Terry Gardner from Ketchikan stated that there was a need to distribute oil wealth to the people of Alaska. The Permanent Fund Dividend was directly tied to the responsibility under the constitution, Art. VIII, Sec. II. The constitutional obligation to provide for the maximum benefit for the people. In the letter of intent, Chairman Al Adams said that the payment of dividends shall have

first call on 50 percent of the income of the permanent fund, regardless of whatever other uses the income is put to. That letter of intent still exists and is still binding. However, the dividend program does not have first call anymore under recent decisions by the legislature. He opined that that is a clear violation of the legislative intent.

10:11:31 AM

SENATOR KELLY clarified that the point he was making was that the founders of the dividend did not link it to subsurface rights. He said he was in the legislature at the time and Senator Wielechowski didn't have the benefit of being an Alaska resident at that time. It was about protecting the permanent fund from a raid because it gave people a stake in it. It had nothing to do with subsurface rights.

SENATOR WIELECHOWSKI conceded that he did not have a recollection of what happened at the time; he was nine-years-old.

CHAIR COGHILL asked Senator Wielechowski to walk through the sectional.

10:12:34 AM

SENATOR WIELECHOWSKI delivered the sectional analysis for SJR 21.

Section 1 - Establishes the Earnings Reserve Account as part of the constitution It will be a separate account in the fund and income from the fund shall be deposited into the ERA as soon as it is received. Money in the ERA may be appropriated only as provided in subsection (b) of bill Section 2.

Section 2 - Adds new subsections to Art. IX, sec.15, Constitution of the State of Alaska. Subsection (b) places the current calculations from AS 17.13.140 into the constitution. Subsection (c) provides that the legislature shall inflation proof the fund. Subsection (d) places the current statute for calculating the dividend into the constitution

Section 3 provides transition language that states that the earnings reserve account established in the 2018 amendments replaces the existing earnings reserve account established by law.

Section 4 says the resolution shall be placed before the voters of Alaska at the next general election, which would be November 2018.

CHAIR COGHILL asked him to go through the calculation in subsection (d) of bill Section 2.

10:15:05 AM

SENATOR WIELECHOWSKI explained that the first sentence of subsection (b) states that the net income of the fund shall be computed annually on the last day of the fiscal year (January 30<sup>th</sup> each year) following generally accepted accounting principles. Unrealized gains or losses are excluded. The second sentence provides that the income available for distribution equals 21 percent of the net income of the fund for the last five fiscal years. This follows the current formula in statute. The rationale for basing the distribution over five years is to smooth increases and decreases based on the performance of the stock market. The distribution may not exceed the balance in the earnings reserve account. The third sentence also tracks the formula in statute. The people of Alaska get 50 percent of the income available for distribution. That is based on the formula of 21 percent over the last five years.

CHAIR COGHILL summarized this would enshrine the methodology for the dividend in the constitution. He asked if this would still allow the remainder to be used for government purposes.

SENATOR WIELECHOWSKI said yes; it simply places the current framework in the constitution. It prohibits the legislature from cutting the dividend and prohibits the governor from vetoing the amount of the dividend.

CHAIR COGHILL asked if he agrees that putting the dividend as the first right diminishes the amount available for government use.

SENATOR WIELECHOWSKI agreed that any use of the earnings reserve does diminish future returns. That's the way it is now.

CHAIR COGHILL expressed reservations about giving the dividend first right.

10:20:07 AM

SENATOR WIELECHOWSKI reiterated that the resolution will guarantee a dividend, it will guarantee inflation proofing, it will guarantee that the corpus of the permanent fund remains

viable, and it provides a significant amount that would be available for government use.

CHAIR COGHILL said his major objection is that the dividend would impact what's available for government.

[10:23:43 AM](#)

SENATOR SHOWER questioned whether enshrining the dividend in the constitution might at some point lead to a discussion about taxation.

SENATOR WIELECHOWSKI said he believes the permanent fund question must be resolved and that will force a robust debate on how to resolve the budget situation. Until that discussion takes place, the legislature will take the easy way out and use the earnings reserve to balance the budget, which will diminish the people's dividends.

SENATOR SHOWER asked if he would also agree that enshrining the dividend in the constitution would limit the amount of money available for government to spend.

[10:27:14 AM](#)

SENATOR WIELECHOWSKI replied it will bring the question to a head and elicit a healthy debate on how to solve the budget problem.

[10:28:04 AM](#)

CHAIR COGHILL said he had been reluctant to hear this proposal, but the rules were used correctly to force a hearing. He said he obviously doesn't agree with this solution, but he does think the assessment of the problem is accurate. He asked the sponsor if he had any concluding comments.

[10:28:55 AM](#)

SENATOR WIELECHOWSKI said this issue won't go away. An unscientific survey of hundreds of constituents showed that 73 percent support enshrining the PFD in the constitution. He said he is open to a better solution, but if the legislature fails to act the voters could make this an action item when they vote in 2020 on whether to hold a constitutional convention.

He said it seems like the committee should take public testimony.

[10:30:19 AM](#)

CHAIR COGHILL restated that he did not intend to take public testimony today and would hold SJR 1 in committee if there were no further comments.

SENATOR WIELECHOWSKI asked if there was a specific date and time when public testimony would be taken.

CHAIR COGHILL replied not at this point.

[10:30:35 AM](#)

SENATOR WIEECHOWSKI moved to report SJR 1 from committee with individual recommendations [and attached fiscal note(s)].

[10:30:43 AM](#)

CHAIR COGHILL objected and adjourned the Senate Judiciary Standing Committee meeting at 10:30 a.m.