

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

February 9, 2017

3:30 p.m.

**MEMBERS PRESENT**

Senator Mike Dunleavy, Chair  
Senator David Wilson  
Senator Cathy Giessel  
Senator John Coghill  
Senator Dennis Egan

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

**SENATE BILL NO. 5**

"An Act prohibiting groups controlled by a legislator from soliciting and accepting contributions or from making certain contributions and expenditures during a regular or special legislative session; and prohibiting some lobbyists from making campaign contributions to certain groups."

- MOVED CSSB 5(STA) OUT OF COMMITTEE

**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

**PREVIOUS COMMITTEE ACTION**

**BILL: SB 5**

**SHORT TITLE: POLITICAL CONTRIBUTION LIMITS/PROHIBITION**

**SPONSOR(S): SENATOR(S) MEYER**

01/09/17	(S)	PREFILE RELEASED 1/9/17
01/18/17	(S)	READ THE FIRST TIME - REFERRALS
01/18/17	(S)	STA, JUD
01/31/17	(S)	STA AT 3:30 PM BUTROVICH 205

01/31/17 (S) Heard & Held  
01/31/17 (S) MINUTE(STA)  
02/09/17 (S) STA AT 3:30 PM BUTROVICH 205

BILL: SJR 1

SHORT TITLE: CONST AM: GUARANTEE PERM FUND DIVIDEND  
SPONSOR(S): SENATOR(S) WIELECHOWSKI

01/09/17 (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

**WITNESS REGISTER**

ANDREE MCLEOD, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 5.

SENATOR KEVIN MEYER  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SB 5.

SENATOR BILL WIELECHOWSKI  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SJR 1.

RICK HALFORD, representing self  
Chugiak, Alaska

**POSITION STATEMENT:** Testified in support of SJR 1.

**ACTION NARRATIVE**

3:30:31 PM

**CHAIR MIKE DUNLEAVY** called the Senate State Affairs Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Giessel, Egan, Wilson and Chair Dunleavy. Senator Coghill arrived during introductory comments.

**SB 5-POLITICAL CONTRIBUTION LIMITS/PROHIBITION**

3:31:09 PM

CHAIR DUNLEAVY announced the consideration of SB 5. [Version 0 committee substitute (CS) was adopted 1/31/2017.]

CHAIR DUNLEAVY opened public testimony on SB 5.

[3:31:57 PM](#)

At ease

[3:32:31 PM](#)

CHAIR DUNLEAVY called the committee back to order.

[3:32:51 PM](#)

ANDREE MCLEOD, representing self, Anchorage, Alaska, testified in support of SB 5. She opined that SB 5 will close a loophole in political action committees (PACs). She said there was a reason why the Campaign Reform Act of 1996 was enacted to prohibit lobbyists from certain activities. She pointed out that Article 1 in the Legislative Declaration of Lobbying finds and declares that the operation of responsible representative democracy requires that the fullest opportunity be afforded to the people to petition their government and so lobbyists have a right to do what they do.

She set forth that the extortion scheme that has been brought up by "Gabby's PAC" is bad and totally corrupts the process. She pointed out that extortion is the practice of obtaining something, especially money, through force or threats. She said there are high moral and ethical standards among public servants in the legislative branch and assuring the people's trust, respect, and confidence is important. She stated that a fair and open government requires legislators to conduct the public's business in a manner that preserves the process's integrity and avoids conflicts of interest or even appearances of conflicts of interest. She said in order for the rules governing conduct to be respected, the code must be administered fairly and without favoritism.

She remarked that "heavy leaning" on legislators by the Rules chair has occurred and allowing it to continue is egregious. She noted that the Rules chair controls the door of the bills that go on the floor. She detailed that the Ethics Act says that a legislator may not, through inference or anything else, threaten, state or imply that they take or withhold a legislative action including support or opposition to a bill as a result of a person's decision to provide or not provide a political contribution. She opined that anybody who has been a

Rules chair understands the nuances, but her understanding has been that some heavy leaning has occurred on lobbyists.

MS. MCLEOD summarized that corruption is going on and it has to stop immediately. She said passing SB 5 will close the loopholes. She asked that legislators not leave any ambiguities in any definitions of what a "group" is. She asserted that leaving the current situation unchecked, dysfunction and corruption ensues.

[3:37:18 PM](#)

CHAIR DUNLEAVY closed public testimony on SB 5.

[3:37:28 PM](#)

At ease

[3:38:02 PM](#)

CHAIR DUNLEAVY called the committee back to order. He asked Senator Meyer, the bill's sponsor, to provide his closing comments on SB 5.

SENATOR KEVIN MEYER, Alaska State Legislature, Juneau, Alaska, summarized as follows:

The purpose of this legislation is to break as little new ground as possible. We are not trying to do a comprehensive restructuring or overhaul of our campaign finance laws. We are not trying to prohibit legislators from forming PACs, they will still be able to do that under this legislation.

We only want to address the loophole that came to everyone's attention last fall during the election process and put some sideboards on legislator control groups; this was obviously brought to our attention in Anchorage by the Anchorage Daily News, and the Democratic party took action and filed a complaint to APOC, and others too have voiced concern and complaints about this. I think all of us should be concerned about it as well because it does kind of taint the whole process, especially down here in Juneau. These legislators that have PACs should operate in line with how other elected officials are required, ourselves. We cannot take contributions while we are in session and we cannot take them from lobbyists unless the lobbyist lives in our district.

So basically, SB 5 does two things: disallows a lobbyist's contributions, except a lobbyist can still contribute to candidates in their home district; and it prevents fundraising and expenditure activity during the legislative session.

[3:40:16 PM](#)

SENATOR GIESSEL moved to report CS for SB 5, version 30-LS0112\0, from committee with individual recommendations and attached fiscal note(s).

CHAIR DUNLEAVY announced that without objection, CSSB 5(STA) moved out of the Senate State Affairs Standing Committee.

[3:40:36 PM](#)

At ease

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

[3:42:05 PM](#)

CHAIR DUNLEAVY called the committee back to order and announced the consideration of SJR 1.

[3:42:28 PM](#)

SENATOR BILL WIELECHOWSKI, Alaska State Legislature, Juneau, Alaska, sponsor of SJR 1, provided an overview of the resolution as follows:

This resolution would put a vote to the people of Alaska asking whether to put the permanent fund dividend (PFD) and inflation proofing into the Alaska Constitution.

Why put the PFD into the Constitution? I think fundamentally this is the only way to truly protect the dividend and the corpus. We've heard for the last year that we need to restructure the permanent fund in order to protect the dividend; I'm not going into the merits of that, but I'll just say a few things about that.

What we've learned recently is the only way to truly protect the dividend is to put it into the constitution. I think many Alaskans were shocked when the governor cut everyone's PFD by over a thousand dollars last year with a stroke of his pen; this veto is the subject of a lawsuit, but the reality remains

that if the Supreme Court upholds the superior court decision, then any future governor can veto the permanent fund dividend down to whatever level he or she chooses.

The governor has proposed a bill known as the Permanent Fund Protection Act, that bill would restructure the permanent fund and permanently reduce the PFD amount to roughly a thousand dollars; but, contrary to the name of the bill, there's absolutely no protection for the dividend.

If the court accepts the governor's interpretation of the law, the Legislature could pass the Permanent Fund Protection Act in April of this year and the governor could veto that amount, the promised amount, from a thousand dollars down to five-hundred dollars a month later if he chooses, or even to zero if he chooses; in fact, under the Permanent Fund Protection Act under the governor's interpretation of the law, any future governor could veto the permanent fund dividend down to whatever level he or she chooses, there's absolutely no protection for the permanent fund dividend under this bill or any other bill that's currently going through this building.

Even assuming the Supreme Court reverses the Superior Court decision and says the governor cannot veto the PFD, the PFD is still subject to the whim of the Legislature and future legislatures who can currently legally change the amount of the PFD or eliminate the PFD at any time, I don't think many Alaskans realize that. So the absolute only way to protect the permanent fund dividend is to put it in the constitution and that is what this resolution provides.

It's important to remember that the PFD reflects Alaskans' ownership share in our oil wealth. While the current value of the Alaska Permanent Fund is \$56.4 billion as of yesterday, it's important to put this amount into perspective. Article IX, section 15 of the Alaska Constitution requires that at least 25 percent of mineral-lease rentals, royalties, royalty-sale proceeds, and federal-mineral revenue sharing payments and bonuses received by the state go into the permanent fund. We have passed a statute that says 50

percent of royalties for certain fields after a certain year go into the permanent fund, but this is a relatively small amount.

In the whole scheme of revenue received by the state, the amount of revenue into the permanent fund is a very small amount, and I'll just give you some numbers to reflect this:

- 100 percent of state property taxes go to the government.
- 100 percent of corporate income taxes go to the government.
- 100 percent of production taxes go to the government.
- The state typically gets 12.5 percent ownership share or royalty for our oil, of that 75 percent goes to government.
- 3.125 percent ownership share goes to Alaskans from all of the revenue that is generated from: taxes, corporate income taxes, severance taxes, and royalties.
- Of the roughly \$527 billion in oil that has flowed down the pipeline, approximately 5 percent has gone into the Alaska Permanent Fund.

Much has been said about the impact of the PFD on individuals, businesses, and our economy, but I'll mention a couple of points that I think are really critical. According to the Institute of Social and Economic Research-University of Alaska Anchorage's (ISER) recent study that they did, tens of thousands of Alaskans are removed from poverty because of the PFD. Alaska has the lowest income inequality in the United States because of the PFD and according to ISER the PFD creates thousands of jobs in Alaska.

Very briefly on inflation proofing, one of the people who were very instrumental in the creation of the permanent fund and dividend program was Elmer Rasmuson and he referred to inflation as, "That thief in the night." Inflation proofing is responsible for a large portion of the current value of the permanent fund. I believe we should continue to protect the corpus by inflation proofing.

There are three-essential statutes that create the permanent fund dividend program: AS 37.13.145, AS 37.13.140, and AS 43.23.025; under this resolution these statutes are essentially put into the constitution to constitutionally require the PFD be paid at its current formula and inflation proofing continue.

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SENATOR COGHILL remarked that the resolution will break new ground in that a constitutional right is established rather than a statutory entitlement. He asked that Senator Wielechowski address the topic of inflation proofing the fund as well.

SENATOR WIELECHOWSKI replied that the resolution does nothing other than what is currently being done statutorily by placing the formula into the constitution. He noted that the way inflation proofing is done is rather than include the current statutes that are lengthy, the constitutional amendment simply states that the Legislature shall provide for inflation proofing. He asserted that the Legislature would still have the discretion to determine what the level of inflation proofing would be. He added that the earnings reserve account would be placed into the constitution, but the Legislature would still have the ability to use the excess revenue that is in the earning reserve.

He provided the committee with calculations that support the affordability of a payout from the permanent fund as follows:

- Assumes a rate of return of 6.75 percent.
- Assumes a rate of inflation of 2.2 percent.
- \$1 billion can be used per year to provide for government services.
- Inflation proofing is still provided for at the same level.
- Earnings reserve account would actually rise slightly.

SENATOR COGHILL noted that a tension exists in the use of earnings from the permanent fund and its impact on what is available for payout. He said the tension is going to be between the right of a dividend and what is formulaically available.

SENATOR WIELECHOWSKI explained that the intent was to track the constitutional provision as closely as possible to the current statutory formula. He detailed that a provision in section 2, page 2, line 10, says:

On the last day of each fiscal year, 50 percent of the income available for distribution calculated under this subsection, or the balance in the account, whichever is less.

SENATOR WIELECHOWSKI said the words in the provision are actually new words and are not currently in the statute. He specified that the wording clarifies ambiguous language in the current statute in order to say that if funds are not available to provide a dividend, then available funds can only be provided. He said fortunately there never has been a problem with the state not being able to pay out a dividend and inflation proof the fund.

He detailed that current projections by the Permanent Fund Corporation are that the \$57 billion fund will continue to earn 6.75 to 7.0 percent per year with the earnings reserve balance growing to \$10 billion or \$11 billion if inflation is 2.2 percent and the government annually draws \$1 billion. He set forth that the projection results in maintaining a significant "four times cushion," an amount preferred by the Permanent Fund Corporation and the governor. He said the question becomes determining what the government's draw will be. He admitted that a government draw that exceeds \$1 billion may result in a reduction of the earnings reserve account.

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SENATOR COGHILL remarked that taking any draw from the earnings reserve would impact the following year. He inquired what the impact would be if there was a constitutional right to a dividend.

SENATOR WIELECHOWSKI acknowledged that any draw from the earnings reserve will decrease the future dividends.

SENATOR COGHILL commented that he is pondering the impact from establishing a constitutional right and how the change to the earnings reserve will be dealt with.

SENATOR WIELECHOWSKI remarked that the purpose of the bill is not to advocate using the earnings reserve, but to establish trust with the Alaskan people. He asserted that Alaskans have a fear that after restructuring the permanent fund that the Legislature will come back for the rest in a few years. He added that the other fear is the dividend is subject to veto and legislative change. He set forth that constitutionally

protecting the dividend will establish trust with the people of Alaska.

SENATOR COGHILL commented that establishing a constitutional right for an individual benefit will be highly targeted and wondered how the IRS will see that. He inquired what the state's tax liability becomes if the dividend is established as a constitutional right.

SENATOR WIELECHOWSKI replied that he has considered what Senator Coghill posed. He noted that he has a legal opinion that was provided by Greg Renkes, former Alaska attorney general, and the law firm of Steptoe and Johnson. He summarized that the opinion says that a constitutionally-protected dividend would not have any impact on the state's IRS tax-free status and added that he has not seen an opinion that says otherwise.

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CHAIR DUNLEAVY asked to confirm that SJR 1 would constitutionalize the decades-old calculations.

SENATOR WIELECHOWSKI answered yes.

CHAIR DUNLEAVY commented that there was an understanding that the decades-old calculation would be left alone and last year the calculation was interrupted. He said as a result of the interruption there is question as to whether the dividend and the fund itself are now protected. He summarized that Senator Wielechowksi is trying to protect the dividend through constitutionalizing.

SENATOR WIELECHOWSKI replied as follows:

I've thought about other ways that you could possibly do it, I can't think of any other way you can "lock, stock, and barrel" protect the dividend other than putting it in the constitution. You can't pass a statute because you can't bind future legislatures from changing it; I certainly had thought all along that this was when they created the permanent fund they were creating a dedicated fund which allowed for a dedicated stream of income which means that the governor couldn't veto it.

There's a Supreme Court case we think that is directly on point, Hickel v. Cowper, that will be decided in some time which says this is not an appropriation,

that the transfer of funds from the earnings reserve account to the dividend fund is not an appropriation, the transfer of the funds from the earning reserve account for inflation proofing is not an appropriation, it's what the court has previously held and if it's not an appropriation it cannot be vetoed by the governor. We feel pretty strongly about that, but you never know what the court will do and this is the only way. If you want to truly protect it, if truly protecting the permanent fund is where the Legislature wants to go, this is the only way that you can do it.

CHAIR DUNLEAVY noted that for years the dividend would vary based upon the market conditions and the dividend calculation. He remarked that he cannot recall a time when the people of Alaska complained about the dividend because the calculation was just accepted. He opined that the people got upset when government put their hands inside the process.

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CHAIR DUNLEAVY opened invited testimony.

[4:02:25 PM](#)

RICK HALFORD, representing himself, Chugiak, Alaska, testified in support of SJR 1. He disclosed that he served in the Legislature and was the House majority leader in 1982 when the permanent fund dividend (PFD) passed. He noted that he made the procedural motions and supported the PFD. He detailed the history of the PFD as follows:

As soon as the Hammond administration was over, the Sheffield administration came in and there became a lot of questions. There was an effort through the Sheffield campaign to repeal the dividend and Governor Sheffield had second thoughts about that before he instituted it, but he did start the process of appropriating for the dividend. The only dividend that needed to be appropriated of course was the first dividend because it came from the general fund, the permanent fund hadn't made any money yet and that first dividend was \$1000, or probably \$2500 or \$3000 at today's dollars. Following Governor Sheffield, Governor Cooper proposed cutting the permanent fund in half for an education endowment and its value today of course would have been about half. Then Governor Hickel and Governor Knowles both came in with interest

in alternative uses of the permanent fund, but they had both made commitments to former governor Hammond that they would put any question like that on the ballot and of course Governor Knowles did unsuccessfully. Senator Murkowski became governor and he held the citizens' meeting in Fairbanks on what to do with the permanent fund and the question at the time was should excess earnings of the permanent fund be used for government. After a pretty lengthy set of meetings with some very well-chosen people, they came up with a proposal for a constitutional change that would have been putting the dividend in the constitution as well as changing to a permutation of a percent of market value; but, until this last year when the dividend was severed from the fund by veto, no one had ever thought that that was even a question.

Those of us who were involved originally didn't care if the budget showed the permanent fund amount, but we always knew it was a dedication specifically provided for by the last five or six words constitutional amendment that created the permanent fund which said, "The income of the fund shall be deposited in the general fund 'unless otherwise provided by law.'" Unlike the other dedications or the other appropriations actions you take such as tax credits where it says "subject to appropriation," there's nothing in the inflation proofing or the dividend that requires appropriation and that is the court case we are in, but in terms of how you get there, and I thought Senator Coghill asked some good questions, I'd be interested in responding if he wanted to repeat them because I think those are real questions and I think there are ways to deal with that, but the bottom line is the dividend connects individual Alaskans to the performance of their permanent fund with a sense of pride, empowerment, and responsibility.

The permanent fund is unique in all the world for its success in terms of resource-rich countries; the World Bank, top economists, authors and many examples cited as the best way that a region has dealt with short-term resources. There were lots and lots of opponents to the creation of the permanent fund, it passed with a third of the people against it, it had a lot of political leadership against it, and through the entire time it's been under attack whenever we've been

short of money; but, one of the things that is the most important, probably the most important to the success of the fund has been the connection between the permanent fund dividend and the fund. It's through the dividend that you individualize the impact of public choices to make it a loan package, to make it a mega-project fund, to reduce this or change that, and authorities all the way up to the CIA's World Fact Book say that people in Alaska know more about their fund than anybody else in the world. Dave Rose, the first executive director in his book, "Savings from the Future" said, "The goal of truly permanent savings of resource wealth is just short of impossible." He wrote of vaults within vaults and said it required layers of protection to block the intense temptations of very powerful people," and he went on to say that the strongest defense of all for the Alaska Permanent Fund is the Alaska Permanent Fund Dividend.

I think you have a difficult task, but I think a constitutional amendment is the format to go forward with any changes to this, so that you bring the public with you and we have a solution that will last and not be a source of continuous conflict. The system is the one thing in state government that is held out by virtually everywhere else as a great success.

[4:08:20 PM](#)

SENATOR COGHILL stated that establishing a constitutional right had gotten his attention. He said the resolution would juxtapose the first article in Alaska's constitution where the government is the people versus the creation of an individual right to an income stream.

MR. HALFORD replied that the creation of an individual right to a specific formula has some difficulties in at least raising some tax questions. He suggested that the real income that is over inflation could be divided and equally distributed between government and Alaskan citizens. He proposed that the Legislature could say that no more may be drawn from the reserve account for government operations than is equal to the amount that is paid out in dividends; that does not make the dividend an individual entitlement. He added that if a decision is made not to draw anything and not to have a dividend, then the permanent fund would increase. He stated that the key is some semblance of control is maintained. He said the incentive to make the system work is to have equal amounts come out for both

state operations and for the dividend after inflation is taken care of by a real-income standard.

SENATOR COGHILL commented that Mr. Halford brought up some good points that he will ponder. He opined the resolution enters a constitutional area that the state has not gone before. He asserted that having a constitutional right is very different from having a statutory entitlement.

CHAIR DUNLEAVY remarked that his historical view is the fund was set up to save wealth for future generations in perpetuity and the dividend came along a little later, but was a good idea. He asked Mr. Halford if he believes the government still has a right to a portion of the earnings.

MR. HALFORD opined that government has whatever rights it takes, rights that are a compact between those elected and the people. He pointed out that the state of Alaska spent nine-tenths of the greatest resource wealth in North American history on a very small population in a very short time period, one generation. He said he viewed the permanent fund as a trust for the future. He noted that huge arguments ensued on what the purpose of the permanent fund should be, but ultimately an agreement was made to take the money "off of the table" because of the perception of excess spending.

CHAIR DUNLEAVY asked Mr. Halford what he thought the value of the fund would be today if there was never a dividend.

MR. HALFORD opined that the fund would be zero if there had not been a dividend. He asserted that the dividend was the strongest protection for the fund.

CHAIR DUNLEAVY asked if he was surprised by the governor's recent veto of the permanent fund dividend.

MR. HALFORD replied that he was surprised by the governor's veto because he thought it was impossible. He noted that he is a plaintiff in the pending case regarding the governor's veto. He pointed out that there is no language in the dividend law that says, "subject to appropriation." He set forth that the dividend is a dedication specifically allowed for in the constitutional amendment that created the permanent fund. He detailed the debate when the dividend was enacted as follows:

The debate in committee they actually changed the proposal and added the language "unless otherwise

provided by law" because they wanted to be able to use permanent fund income to dedicate to a loan package or to financing package for big-industrial development, or other things, they wanted flexibility that no other money through the general fund has.

CHAIR DUNLEAVY asked Mr. Halford if Senator Wielechowski's attempt to constitutionalize the dividend is a concept that addresses unfinished business.

MR. HALFORD agreed that constitutionalizing the dividend is unfinished business. He admitted that a lot has been learned in the last forty years of what it takes to defend a system. He asserted that the dividend is a complete system that combines management structure, investment rules, and inflation proofing. He pointed out that other huge funds spend their principle at low oil prices.

CHAIR DUNLEAVY asked Mr. Halford what the outcome would be if the resolution is allowed to go to the people.

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MR. HALFORD opined that the result would depend on what the resolution says. He predicted that people will accept a little different formula if the dividend is secured constitutionally in a way that does not endanger the tax status or anything else. He remarked that the he would support something that had the constitutional certainty and could contribute something to state government. He summarized as follows:

You can't get the whole solution from one of the sources, but you can get a big piece of it, that's why the permanent fund has such a big reserve because it makes more than it uses even if the dividend were fully paid and inflation were fully handled.

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CHAIR DUNLEAVY held SJR 1 in committee for future consideration.

[4:21:07 PM](#)

There being no further business to come before the committee, Chair Dunleavy adjourned the Senate State Affairs Standing Committee meeting at 4:21 p.m.