

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 22, 2019

1:32 p.m.

MEMBERS PRESENT

Senator Shelley Hughes, Chair
Senator Mike Shower
Senator Peter Micciche
Senator Jesse Kiehl

MEMBERS ABSENT

Senator Lora Reinbold, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 23

"An Act making special appropriations from the earnings reserve account for the payment of permanent fund dividends; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 24

"An Act directing the Department of Revenue to pay dividends to certain eligible individuals; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 34

"An Act relating to probation; relating to a program allowing probationers to earn credits for complying with the conditions of probation; relating to early termination of probation; relating to parole; relating to a program allowing parolees to earn credits for complying with the conditions of parole; relating to early termination of parole; relating to eligibility for discretionary parole; relating to good time; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SB 23

SHORT TITLE: APPROP: SUPP. PAYMENTS OF PRIOR YEARS' PFD

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/16/19 (S) READ THE FIRST TIME - REFERRALS
01/16/19 (S) STA, FIN
02/05/19 (S) STA AT 3:30 PM BUTROVICH 205
02/05/19 (S) Heard & Held
02/05/19 (S) MINUTE(STA)
02/26/19 (S) STA AT 3:30 PM BUTROVICH 205
02/26/19 (S) Heard & Held
02/26/19 (S) MINUTE(STA)
02/28/19 (S) STA AT 3:30 PM BUTROVICH 205
02/28/19 (S) Heard & Held
02/28/19 (S) MINUTE(STA)
03/05/19 (S) STA AT 3:30 PM BUTROVICH 205
03/05/19 (S) Heard & Held
03/05/19 (S) MINUTE(STA)
03/07/19 (S) STA AT 3:30 PM BUTROVICH 205
03/07/19 (S) Heard & Held
03/07/19 (S) MINUTE(STA)
03/12/19 (S) STA AT 3:30 PM BUTROVICH 205
03/12/19 (S) Moved CSSB 23(STA) Out of Committee
03/12/19 (S) MINUTE(STA)
03/13/19 (S) STA RPT CS 1DP 1DNP 2NR 1AM SAME TITLE
03/13/19 (S) DP: SHOWER
03/13/19 (S) DNP: COGHILL
03/13/19 (S) NR: REINBOLD, MICCICHE
03/13/19 (S) AM: KAWASAKI
03/13/19 (S) JUD REFERRAL ADDED AFTER STA
03/14/19 (S) STA AT 3:30 PM BUTROVICH 205
03/14/19 (S) <Bill Hearing Canceled>
03/22/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 24

SHORT TITLE: PFD SUPPLEMENTAL PAYMENTS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/16/19 (S) READ THE FIRST TIME - REFERRALS
01/16/19 (S) STA, FIN
02/05/19 (S) STA AT 3:30 PM BUTROVICH 205
02/05/19 (S) Heard & Held
02/05/19 (S) MINUTE(STA)
02/26/19 (S) STA AT 3:30 PM BUTROVICH 205
02/26/19 (S) Heard & Held
02/26/19 (S) MINUTE(STA)

02/28/19 (S) STA AT 3:30 PM BUTROVICH 205
 02/28/19 (S) Heard & Held
 02/28/19 (S) MINUTE(STA)
 03/05/19 (S) STA AT 3:30 PM BUTROVICH 205
 03/05/19 (S) Heard & Held
 03/05/19 (S) MINUTE(STA)
 03/07/19 (S) STA AT 3:30 PM BUTROVICH 205
 03/07/19 (S) Heard & Held
 03/07/19 (S) MINUTE(STA)
 03/12/19 (S) STA AT 3:30 PM BUTROVICH 205
 03/12/19 (S) Moved CSSB 24(STA) Out of Committee
 03/12/19 (S) MINUTE(STA)
 03/13/19 (S) STA RPT CS 1DP 1DNP 2NR 1AM NEW TITLE
 03/13/19 (S) DP: SHOWER
 03/13/19 (S) DNP: COGHILL
 03/13/19 (S) NR: REINBOLD, MICCICHE
 03/13/19 (S) AM: KAWASAKI
 03/13/19 (S) JUD REFERRAL ADDED AFTER STA
 03/14/19 (S) STA AT 3:30 PM BUTROVICH 205
 03/14/19 (S) <Bill Hearing Canceled>
 03/22/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

BRUCE TANGEMAN, Commissioner Designee
 Department of Revenue
 Anchorage, Alaska

POSITION STATEMENT: Presented SB 23 on behalf of the
 administration.

ED KING, Chief Economist
 Office of Management and Budget
 Office of the Governor
 Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of
 SB 23 and SB 24.

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

POSITION STATEMENT: Answered questions during the discussion of
 SB 23.

ACTION NARRATIVE

[1:32:57 PM](#)

CHAIR SHELLEY HUGHES called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Kiehl, and Chair Hughes. Senator Micciche arrived shortly thereafter. Senator Shower arrived as the meeting was in progress.

SB 23-APPROP:SUPP. PAYMENTS OF PRIOR YEARS' PFD **SB 24-PFD SUPPLEMENTAL PAYMENTS**

[1:33:25 PM](#)

CHAIR HUGHES announced that the first order of business would be SENATE BILL NO. 23, "An Act making special appropriations from the earnings reserve account for the payment of permanent fund dividends; and providing for an effective date" and

SENATE BILL NO. 24, "An Act directing the Department of Revenue to pay dividends to certain eligible individuals; and providing for an effective date."

[Before the committee were the CSSB 23(STA), work order 31-GS1014\M, and the CSSB 24(STA), work order 31-GS1013\M.

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CHAIR HUGHES said that the committee would treat both bills as one agenda item. She stated that these bills were introduced at the request of the governor and have a Judiciary Committee referral due to the constitutional questions raised in the Senate State Affairs Committee.

[1:34:44 PM](#)

BRUCE TANGEMAN, Commissioner Designee, Department of Revenue, Anchorage, stated that these bills have commonly been referred to as the PFD backpay bills. The bills would appropriate the money from the earnings reserve account. They authorize him to distribute the permanent fund dividends.

He explained the processes so members can better understand why this is being done. Specifically, the bills would pay out dividends over a three-year period. In 2016, a full dividend was authorized and vetoed by a previous governor. In 2017 and 2018, the state paid out permanent fund dividends that were less than the amount authorized by the statutory calculation passed by the legislature. The bills would repay the amount over a three-year period. He explained that excess funds would be drawn out of the

earnings reserve account. Addressing one year at a time will allow the funds to remain in the ERA and earn a return. Mr. Milks will speak to the process. He summarized the payback:

A resident who qualified for a permanent fund dividend (PFD) in 2019 and received a PFD in 2016 would receive \$1,061.

A resident who qualified for a PFD in 2020 and received a PFD in 2017 would receive an additional \$1,289.

A resident who qualified for a PFD in 2021 and received a PFD in 2018 would receive an additional \$1,388.

CHAIR HUGHES asked for further clarification on the amounts.

COMMISSIONER TANGEMAN recapped the additional PFD amounts. The total amount projected to be paid to qualifying residents over the three-year period would be approximately [\$3700].

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SENATOR MICCICHE joined the meeting.

[1:38:32 PM](#)

SENATOR KIEHL said that with a known payout date these funds would not be invested in the same manner. He asked for the anticipated rate of return.

MR. TANGEMAN responded that funds remaining in the earnings reserve account for two years could be invested in a much more aggressive rate than ones needed to payout the permanent fund dividend. The Permanent Fund Corporation would need to know how much cash it needs to have on hand. If an additional \$600 million would need to be available in October 2019 to pay the PFD, the corporation could invest the remaining \$1.3 billion. He was unsure of the change in rate of return.

[1:40:03 PM](#)

CHAIR HUGHES asked whether he could estimate the anticipated rate of return for two years.

MR. TANGEMAN answered that the Permanent Fund Corporation's rate of return assumption is 6.55 percent annually. This would be a subset. He suggested the corporation could better answer the specifics.

CHAIR HUGHES asked for the total draw amount over the three-year period.

MR. TANGEMAN deferred to the Office of Management and Budget.

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SENATOR MICCICHE said he previously heard the bill and had no further questions.

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ED KING, Chief Economist, Office of Management and Budget, Office of the Governor, Juneau, stated that the question was the anticipated total draw. He said OMB anticipates that 535,000 Alaskans would qualify for repayment each year. He guessed that it would be about \$565 million for 2016, \$670 million for 2018, and \$725 million for 2019. In further response, he said it would be about \$1.9 billion in total.

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CHAIR HUGHES remarked that this hearing will focus on the constitutional issues, but it was important for the committee to have some idea of the figures.

[1:42:47 PM](#)

SENATOR KIEHL asked Mr. King whether he had an idea on the investment return for the two-year period.

MR. KING said the Permanent Fund Corporation manages its portfolio on the expectation of the draws. The liquidity would come from the expected payment timeframe. He said that setting out the payments with a structured draw date would help the corporation to better manage the portfolio. The expectation would be that the permanent fund would make more money than if they had none of this money in the [earnings reserve account]. He estimated that the rate of return would fall somewhere between 4 and 6.5 percent.

CHAIR HUGHES asked for the math range at 4 to 6.5 percent.

MR. KING offered to calculate it and report back.

[1:44:04 PM](#)

CHAIR HUGHES referred to questions that were raised in the State Affairs Committee regarding the constitutional issues and how it may stand up in court. She recalled that Mr. Milks had drafted a memo on cases that lay the groundwork for the administration's position.

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WILLIAM MILKS, Senior Assistant Attorney General, Civil Division, Labor & State Affairs, Department of Law, Juneau, said in that the Senate State Affairs Standing Committee considered the bill and posed general questions on whether SB 23 would face constitutional issues. The Department of Law submitted a letter dated March 12, 2019 outlining its position that rational basis review would apply. The department also concluded that there is a reasonable basis to conclude that the legislation would survive constitutional scrutiny.

He stated that two bills cover the same subject area. One bill, an appropriation bill, would provide for the additional payments that the commissioner just described. The second bill is uncodified law to permit the Department of Revenue (DOR) to follow the process, he said.

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MR. MILKS said that SB 23 seeks to address a certain set of circumstances, including that Alaska has had a long time PFD program.

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SENATOR SHOWER joined the meeting.

[1:46:02 PM](#)

MR. MILKS highlighted that for three discrete years, the statutory formula that set forth the calculation to determine the permanent fund dividend (PFD) was not followed. Historically, from the 1980s forward, the statutory formula for payments of PFDs was used. This bill seeks to provide a three-part process to remedy those Alaskans affected. In 2016, the permanent fund dividend was less than the statutory formula. Under SB 23, an additional payment would be provided to those Alaska residents who were affected. He said that constitutional issues were raised on whether it would create a distinction between Alaska residents based on duration. The department believes that this bill is narrowly tailored to address that issue.

MR. MILKS reviewed the history, such as the enabling legislation that established the permanent fund dividend program that went to the U.S. Supreme Court in *Zobel v. Williams*. The U.S. Supreme Court found the original program was unconstitutional. At the time, some Alaska residents would receive a PFD of up to 20 times greater than others, which the court found too great a difference, so the law was struck down. Since then, Alaska adopted a residency qualification and the PFD is paid in an

equal amount to every Alaska resident. He said that the Department of Law reviewed the Zobel case and found the court applied a rational basis test. The department also reviewed subsequent Alaska Supreme Court decisions, as well as other decisions, to assess whether this bill would face a serious constitutional challenge. He pointed out that most legislation passed by the legislature is not second guessed by courts. Instead, the courts apply a rational basis standard of review, which is very deferential in terms of economic interests, he said.

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MR. MILKS said that the prior committee suggested the court might apply a strict scrutiny test. That test is one that is usually be applied in cases where the legislature passed a law that was found to burden people on the basis of sex, race, or religion.

Another concern raised was that some Alaskans would receive the additional payments and others would not, he said. In the Department of Law's view, the court would apply a rational basis review if SB 23 were to pass. The legislature would consider the unique PFD program along with a unique set of facts, which is that for the first time in 40 years the statutory formula was not applied.

MR. MILKS highlighted a question that was raised on a durational residency requirement and whether it would trigger a higher level of scrutiny. In the department's view, it would not. The Alaska Supreme Court has considered that a durational period is a waiting period in order to obtain a benefit. Under the bill, two discrete questions arise, whether the person is currently an Alaska resident, which is linked to residents who experienced underpayment, the actual issue that the legislature seeks to resolve. If a person did not experience an underpayment in 2016, the person would fall outside the group that this legislation would remedy. The legislature can accomplish the objective to provide an additional payment to those individuals who received an underpayment, he said.

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MR. MILKS said that the Department of Law does not think that the court would interpret the U.S. Constitution or the Constitution of the State of Alaska in a way that would prohibit the legislature from accomplishing what the Department of Law believes is a valid governmental objective in SB 23.

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CHAIR HUGHES asked for the argument for using the strict scrutiny test. Obviously, the Department of Law does not agree with that, she said.

MR. MILKS related his understanding that the argument is linked to the notion that durational residency requirements are often held to a strict scrutiny test. For example, if the legislature passed a law that requires individuals to be residents for two years in order to obtain public assistance benefits. The courts have applied strict scrutiny reviews of that type of benefit. However, for eligibility rules for residency or fixed-point residency rules, [courts have used] a rational basis review. The Department of Law would consider this to be a fixed-point residency issue and not a durational one. He highlighted that if the bill required individuals to reside in Alaska for four straight years to qualify to receive the benefit, that it would be a stronger argument that it was a durational residency requirement.

MR. MILKS explained the two fixed points in SB 23. First, the Alaska residents [who qualified for the permanent fund dividend] in 2016 did not receive a full dividend. Instead, they received a PFD less than the full statutory formula. He said the letter of March 12, 2019 cited a recent U.S. Court of Appeals case Harris v. Hahn related to a program in Texas that is very similar in its legal analysis. The State of Texas provides veteran residents with free tuition so long as they were Texas residents at the time they enlisted in the service. The two points in time connection, that they were Texas residents at the time they enlisted, or they enlisted in Texas. The U.S. Court of Appeals for the Fifth Circuit, in Harris v. Hahn, found a rational basis standard would apply in that case because it is a fixed-point residency and not a durational residency. Therefore, it upheld the Texas legislature's ability to restrict the free tuition to individuals who were currently veteran residents and had enlisted in Texas.

He highlighted the key point is whether it is a durational residency, one with a waiting period. The permanent fund dividend (PFD) issue was one that people either received a PFD less than the statutory amount or they did not receive it.

[1:58:04 PM](#)

SENATOR MICCICHE asked whether it matters [for repayment purposes] that people indicate when they fill out their PFD applications for the years 2016-2019 that they intend to live in

the state, but then they subsequently leave the state. He offered his belief that the rational basis would not change since the PFD program is for Alaska residents who spend 180 days per year in Alaska. When people are no longer present in Alaska, they no longer qualify, he said. He argued that in his scenario, those receiving the payments would no longer qualify. He asked whether there was any value in considering that select group of people.

MR. MILKS responded that he believed it would be of value because it speaks to an authentic connection to the state and a stated intention to be an Alaska resident. When the Alaska Supreme Court considered Alaska residency requirements related to the permanent fund dividend, it recognized the difference types of residency requirements. With respect to residency for the permanent fund dividend, the court has been very mindful. For example, in *Heller v. State, Department of Revenue* case, the court said that the permanent fund dividend program was particularly susceptible to passersby who establish minimal ties to Alaska, while tending to reside elsewhere. He offered his belief that it is one key reason the Alaska Supreme Court has upheld eligibility rules against a legal challenge on equal protection or right to travel basis clauses.

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CHAIR HUGHES asked whether he has the specific language that poses the residency question on the application. She asked whether the application requires a yes or no answer or if it was in the fine print before the signature.

MR. MILKS offered to provide it. He recalled that the question pops up on the screen and the person would certify by answering yes or no.

CHAIR HUGHES suggested that it would be important to know.

[2:01:16 PM](#)

SENATOR KIEHL related a scenario in which a person receives his/her PFD check and deposits in October, but the person has left the state by November. He asked whether the state seeks repayment.

MR. MILKS answered no. He said that the eligibility requirement for the program are in statute.

SENATOR KIEHL asked for further clarification on the constitutional legal intent for "intent to remain."

MR. MILKS answered that eligibility is part of a complete package of individuals who are asked a variety of questions, including how much time is spent in and out of state. He said that question would be one of many elements of an eligibility requirement that the Alaska Supreme Court has considered and found to pass constitutional muster.

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SENATOR MICCICHE said that his question was based on eligibility. If the program is based on the time of payment, which is what this does, it bases residency on the time of payment rather than on past residency. For example, someone must qualify in 2016, but the time of payment would be the distribution of the check. Once the payment is made, the person has the right to leave the state.

He related his understanding that the rational basis would apply since the payments are staggered over three consecutive years. The eligibility question asked whether the person at time of payment of this year's dividend that the person qualifies for this year's dividend and for the previous one. He said it made sense to him. This speaks to the constitutionality and whether it is defensible. He said that the rational basis seemed to fit the logic in *Harris v. Hahn*.

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SENATOR SHOWER related a scenario when a person qualified for a dividend payment and the permanent fund dividend was capped. If the person left the state, could the person legally challenge the amount not paid since it was over the cap. He asked whether the state has any responsibility. He expressed concern that this would open a can of worms of possible legal challenges.

MR. MILKS responded that the potential exists for litigation since people can always file legal challenges. The Department of Law would argue on a rational basis that the state can restrict the treasury to individuals who continue to reside in Alaska. The distinction is that only Alaska residents will receive the money, he said.

He suggested that the state would absorb administrative costs if it decided it needed to track people down who no longer live here. That would be separate from the state deciding to share its wealth with residents. He suggested that it is a policy call for the legislature. The legislature is not without the ability to address this unique set of facts, which is why the department

finds it is constitutional. Others believe there are constitutional issues, but the department does not look at it as durational residency.

[2:07:32 PM](#)

SENATOR SHOWER related his understanding that risk is involved, but the administration believes it will prevail and survive the legal challenge.

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SENATOR KIEHL said that the word "owed" has come up several times. He related a scenario in which John Q. Public sent the department a bill stating he received the 2016 PFD. Here is the bill for the \$1,061 that he is owed. He assumed that the Department of Law would advise the Division of Permanent Fund not to pay the bill.

MR. MILKS explained the public policy behind the bill. A statute provided for a certain dollar sum, which was followed for forty years and then an underpayment occurred. The legislature has the means, if it so chooses, to address it. He said that would be a legitimate government objective. That is different from being legally owed, such that someone could obtain a judgement against the State of Alaska. As Senator Kiehl knows, there has been litigation on the permanent fund dividend issue. The Alaska Supreme Court has established that the payment of dividends is subject to appropriation by the legislature.

SENATOR KIEHL recalled that Mr. Milks has used unique several times. He asked how this situation is legally unique from other cases in which the statute says the state shall pay. For example, he pointed out that the longevity bonus program is still in statute, and some residents are still eligible. As by law, the state is required to reimburse municipalities for the foregone property tax from the senior citizens, disabled veterans, or renters. He asked how the permanent fund dividend statute is unique, from a legal sense from the other programs in which the state has not appropriated money to pay, even though the statutes read "shall" pay.

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MR. MILKS answered that "unique" deals with a specific set of facts regarding the permanent fund dividend. The Alaska Supreme Court has been pretty clear that the legislature's appropriation power must govern. He said it is up to the legislature whether to appropriate funds. The legislature has the power and right to appropriate or not appropriate, he said. The legislature, in its

collective wisdom, could decide that an additional payment should be provided to address the statute not being followed. He said that a subsequent legislature could make a decision to pay for the programs, if it so chooses.

[2:12:37 PM](#)

SENATOR MICCICHE offered his belief that was the same ruling in *Wielechowski v. State*. He said that Legislative Legal Services said, "The Constitution of the State of Alaska permits the legislature and the governor to legally deviate from the statutory calculation under the authority of the Constitution of the State of Alaska." He said that the constitution would trump the statute.

He wondered if a bigger problem would be that no one has challenged the entire program on the fundamental right to travel since the regulation limits absences to 180 days, by regulation. He asked why the fundamental right to travel has not been challenged.

MR. MILKS recalled the Alaska Supreme Court issued a decision a few years ago, *Heller v. State, Department of Revenue*. The court addressed Alaska's eligibility requirements considering the right to travel and equal protection legal challenges. The court rejected a legal challenge on the right to travel. The court pointed out that in the circumstance of PFD the rational basis test would apply. The court noted that when dealing with readily portable benefits, the Alaska Supreme Court rejected the right to travel analysis. Instead, the court found that while the right to travel would fit into some kinds of state benefit programs, but when dealing with a highly portable benefit [in the permanent fund dividend program], the right to travel was given a much more limited rational basis scrutiny.

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SENATOR MICCICHE offered his belief that the right to travel is based on the PFD program. It would require an applicant to be a resident and be eligible for the permanent fund dividend. One of the criteria would allow an applicant to be absent from the state up to 180 days in a calendar year. However, a person could be absent for 181 days or longer and still be considered a resident. The person simply would not be eligible for the program. He related his understanding that [the right to travel] remains within the spirit of the permanent fund dividend program.

MR. MILKS agreed. He noted the importance that the Alaska Supreme Court addressed the right to travel issue in the context of the permanent fund dividend program. He acknowledged the serious issues with the permanent fund dividend and the risk of passersby with minimal ties being able to obtain a benefit.

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CHAIR HUGHES referred to the provision in the Constitution of the State of Alaska that the appropriation power in the legislature trumps anything in statute. She asked whether the bill would bind future legislatures since the proposed payback would span three years and extend beyond the [31st legislature].

MR. MILKS said that a future legislature could always revisit this issue, so it would not bind a future legislature.

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CHAIR HUGHES recalled the [Harris v. Hahn] case in Texas was related to two points in time. She said that all previous permanent fund dividend applications, payouts, and checks relied on one point, based on the prior calendar year. She said that SB 33 would set it up for two points. She asked whether any legal challenges could be brought because the repayment was being handled differently than the historically payments.

MR. MILKS said that brings the discussion back to the issues being raised here. He pointed out that this law seeks to change the uncodified law, that it would be a temporary law to address specific circumstances. It would not attempt to change the existing PFD program. It would relate to individuals who received a PFD in 2016 and met the current residency requirements. He reiterated that the bill does not seek a permanent change in statute.

CHAIR HUGHES asked for further clarification that there would not be a legal issue. A person cannot question the two points in time even though the program historically had only one point in time.

MR. MILKS answered that this bill would set up a temporary law to address a particular event. It would not permanently change the permanent fund dividend program.

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SENATOR KIEHL asked how long a person could be absent from the state.

MR. MILKS said that this bill would apply the existing residency requirements for [those residents who are applying for the permanent fund dividend program] which have been upheld as constitutional. The department would need to assess any proposed changes related to residency requirements.

SENATOR KIEHL clarified that his question was focused on the mechanics proposed under the bill. For example, in order for an applicant who received the 2016 to be eligible to receive the extra payment the person would need to be eligible for the 2019 PFD. He asked how long the person could be out-of-state.

MR. MILKS said it would be based on the current eligibility requirements for the 2019 PFD. He recalled that the application asks if the applicant resided in Alaska for the calendar year 2018.

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SENATOR KIEHL referred to the Zobel case. He recalled Mr. Milks said the Alaska Supreme Court used the rational basis test. He said he had a slightly different understanding. He recalled that the court said it did not have to reach the question of strict scrutiny because the state could not even reach rational basis. He asked whether he misunderstood the Zobel ruling.

MR. MILKS said that court decided to apply the rational basis test. He thought that the court also applied a higher basis test.

SENATOR KIEHL remarked that failing to finish a qualifying race and not finishing the race is not quite the same thing.

[2:24:31 PM](#)

SENATOR KIEHL referred to Legislative Legal Services memorandum [dated February 8, 2019]. He identified the 3rd Judicial District case, Lindly v. Malone, in July 1990 listed in the footnote [on page 6], holding unconstitutional a two-year residency requirement for permanent fund and longevity bonus programs.

MR. MILKS answered that he recalled a Superior Court decision stated that, but it was not an Alaska Supreme Court decision. The department does not perceive it as a durational residency requirement but rather that it is based on two points.

[2:25:20 PM](#)

SENATOR KIEHL argued that there would be a durational residency pieces since the bill uses two separate eligibility years for eligibility, which would mean surpassing the two-year residency requirement.

MR. MILKS said he thought it would bring us back to the broader picture. The department views that the legislature has the power to legislate. The judicial branch does not take it upon itself to second guess the policy decisions of the legislature. This is the reason why legislation is given broad deferential review [by the courts]. Using that framework means that it does not pertain to a strict scrutiny case with one group based on sex, race, or ethnicity gets a benefit and another one does not. The department understands the notion. It's the type of case that should be considered like a fundamental right or apply a strict scrutiny. In the department's view, it essentially disarms the legislative branch from addressing a specific and unique set of facts. It would mean the legislature could not do anything except make payments to individuals based on what was considered a reason to make up for non-payment of the statutory formula. It would say that now we must pay it to everyone regardless of whether they were in that discrete group. The Department of Law does not view the legislature so restrained in its abilities.

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SENATOR KIEHL recalled that the only option would be to pay to everyone, whether or not they were in the original qualifying year under the bill. He asked whether there would be another option. The legislature could choose to say those in the original qualifying year, file the paperwork and not impose the second residency year.

MR. MILKS recalled that was the question that Senator Shower raised. It would mean paying the repayment amount for the PFD regardless of whether they are Alaska residents. He recapped the two scenarios he has heard, which is to pay the repayment dividend to everyone, even if the applicants are no longer Alaska residents or pay it to everyone who is a resident even if they did not experience the shortfall PFD. He said that the Department of Law believes it is a rational basis for the legislature to distinguish between current residents of Alaska, and those who do not reside in Alaska any longer. Further, the department believes that it is a legitimate governmental objective to limit the state's fiscal resources to Alaska residents including as well as the various legislative burdens that would be encumbered. He acknowledged there could be other approaches taken.

[2:29:50 PM](#)

SENATOR KIEHL offered his belief that the difficulty is the durational waiting period. He referred to the administrative burden, noting the fiscal note indicates the Department of Revenue would need to reprogram its computer system. He asked him to identify the greater administrative burden that would be avoided.

MR. MILKS deferred to the Department of Revenue to respond. He related that the legislature would appropriate funds to people who no longer reside in Alaska and have no obligation to make any connection to the state. If the state were to do so, it would need to absorb the administrative burden of trying to locate people.

[2:31:14 PM](#)

CHAIR HUGHES related her understanding the committee heard three scenarios. One, the state would pay everyone who was eligible for the two points in time; two, pay the people who were eligible then, or three, pay those who are currently eligible. She asked whether someone could provide the population numbers and the dollar amount for all three scenarios.

[2:31:49 PM](#)

SENATOR MICCICHE said that none of those choices make sense to him. He did not understand the reason to pay a permanent fund dividend to people who decided to leave the state. The program is designed specifically for Alaska residents, but it does not require a three-year residency. He related a scenario in which people who left the state on March 31, 2016 and returned by January 1, 2018 would be eligible for the 2016 and 2019 dividends. The qualifying periods are not stacked because people qualify for individual years, he said. The applicants would have indicated on their 2016 and 2019 permanent fund dividend applications an intention to stay in Alaska and they would be eligible for the payments. He argued that the program does not have a residency requirement, but an eligibility requirement.

He pointed out that some military members may not have lived in Alaska for many years yet still qualify for both 2016 and 2019 PFDs and the repayment in 2019. He emphasized his point was that people could be absent from Alaska, miss two dividend years and still qualify for the 2019 repayment. He said he thought it was an important consideration of the rational basis.

[2:33:26 PM](#)

MR. MILKS agreed on both points. He agreed that the bill would set up two periods of eligibility. Speaking to the broader point, he said the bill was drafted considering the durational requirements, constitutional issues, eligibility requirements and the distinctions between residents. In fact, the Alaska Supreme Court recently found that a duration requirement is a waiting period, he said. The Department of Law does not see this bill as establishing a waiting period.

[2:34:21 PM](#)

CHAIR HUGHES recalled that Senator Kiehl referred to a case [Lindly v. Malone, July 1990] that knocked down the two-year requirement. She asked Mr. Milks to explain why the two-year requirement was not allowed.

MR. MILKS answered that the case in reference had a two-year waiting period and that it was determined to be a durational basis. He said that SB 33 would establish a temporary law with eligibility requirements at two points in time. He pointed out that the [Lindly v. Malone, July 1990] decision was a lower court decision and not an Alaska Supreme Court decision.

[2:35:41 PM](#)

SENATOR SHOWER agreed with Senator Micciche that it doesn't make sense to pay someone who is no longer eligible. He clarified his earlier concern stemmed from whether the state would have a legal obligation to locate people who were eligible in 2016 but are no longer residents.

CHAIR HUGHES said that is one reason she asked Mr. King for data on people who are in that category.

[2:37:06 PM](#)

SENATOR KIEHL said people in Senator Micciche's scenario could essentially move out of state for about 18-20 months and still be eligible. He questioned whether it would be two points in time. He appreciated the distinction for service members because that was important. He did not think most people would move out of state for 18-20 months.

He said the commissioner talked about investment earnings. He asked why not require everyone to be present in 2021 to receive the repayments since it would maximize the permanent fund investment earnings.

MR. MILKS responded that this bill was drafted with a specific objective, which was to address only individuals who were

eligible for and received a permanent fund dividend for three distinct periods where the statutory formula was not followed. The administration's policy focused on the three-year solution. Senator Kiehl points out a different policy objective, he said.

SENATOR KIEHL said he was focused on finding consistency.

[2:39:27 PM](#)

SENATOR SHOWER asked whether any legal precedent exists that would identify the length of time the state would need to search for 2016-2019 permanent fund dividend recipients who currently live out-of-state if it was determined the state had an obligation to locate them. He wondered if the state would need to public notice it for a certain length of time.

MR. MILKS responded that he did not have a ready answer. He envisioned the state would seek a reasonable but limited period and those eligible could respond or not respond or the burden could be placed on them.

SENATOR SHOWER said he wanted to be sure the state would not be "on the hook" for 10 years but it would have a limited timeframe to contact those eligible for repayments.

MR. MILKS recalled that consumers often receive notifications on products that indicate they can join the class action lawsuit within a certain timeframe. He agreed a reasonable limited period would be set.

[2:41:45 PM](#)

SENATOR MICCICHE asked if the commissioner or the governor would have any authority to issue checks if these bills, SB 23 and SB 24, do not pass the legislature. He said he is asking this question because some people might simply expect the governor to send them a check.

MR. MILKS answered no. He said that the legislature is the appropriating body. He said the legislature would need to pass an appropriation bill to authorize the payment. The Alaska Supreme Court has been very clear, including in its decision in the Wielechowski case, that the expenditures from the permanent fund income requires an appropriation by the legislature.

[2:43:11 PM](#)

CHAIR HUGHES said that the legislature has the power to set the amount for the dividends. He said the legislature could add an amount to the historical formula without the bill.

MR. MILKS offered his belief that the legislature would have the ability. The payment requires a legislative appropriation, he said.

[2:43:58 PM](#)

CHAIR HUGHES indicated an interest in having Mr. Milks present the sectional analysis and to have Mr. King answer questions on the economic impact.

[2:44:24 PM](#)

SENATOR SHOWER asked the record to reflect what occurs if one bill passes but the other one does not pass.

MR. MILKS said the department views both bills traveling together since the appropriation bill authorizes spending, but it is based on the unique eligibility in the two points in time.

[2:45:11 PM](#)

SENATOR MICCICHE asked whether the single subject rule did not allow the two bills to be combined.

MR. MILKS answered that the department considered the legal issues. The existing statute outlines the permanent fund dividend payments. However, this is an additional payment that is not pursuant to the existing statutory program. These payments would be based on the requirements of the two points in time. The department decided to take a cautious approach to avoid legal challenges, such as confinement clause issues. The bills were crafted so a temporary law would direct the Department of Revenue commissioner to make payments to eligible permanent fund dividend recipients based on the two points in time and an appropriation bill to appropriate the funds.

[2:46:41 PM](#)

SENATOR KIEHL said his understanding of the history of confinement clause is different from Mr. Milks. He suggested that the legislature on a recurrent basis appropriates one-time funding for distribution through an existing statute based on conditions at a future point in time. For example, the legislature appropriates one-time funding to be distributed according to an adjusted [Average Daily Membership (ADM)] in the education formula.

MR. MILKS explained that these bills pertain to a statutory formula pertaining to eligibility for the PFD. The department considered that an appropriation bill to pay a dividend that is

based on different eligibility criteria than existing statute should have a bill accompany it to create the temporary law, he said.

[2:48:13 PM](#)

MR. MILKS presented a sectional analysis for SB 33. He reviewed Section 1, subsections (a)-(c).

Section 1(a). This section makes an appropriation from the permanent fund earnings reserve account (AS 37.13.145) to the dividend fund (AS 43.23.045(a)) of the amount of money necessary for a payment of \$1061 to eligible individuals who received a 2016 dividend and who are eligible to receive a 2019 dividend for fiscal year 2020

Section 1(b). This section makes an appropriation from the permanent fund earnings reserve account to the dividend fund of the amount of money necessary for a payment of \$1289 to eligible individuals who received a 2017 dividend and who are eligible to receive a 2020 dividend for fiscal year 2021.

Section 1(c). This section makes an appropriation from the permanent fund earnings reserve account to the dividend fund of the amount of money necessary for a payment of \$1388 to eligible individuals who received a 2018 dividend and who are eligible to receive a 2021 dividend for fiscal year 2022.

MR. MILKS explained that SB 23 was an appropriation bill, that subsections (a)-(c) would address the appropriations for the additional payments linked to the prior years for the permanent fund dividend that were not paid per the historical statutory formula.

[2:48:43 PM](#)

MR. MILKS reviewed Sections 1(d)-(g).

Section 1(d). This section makes an appropriation from the permanent fund earnings reserve account to the dividend fund of the amount authorized for transfer by the Alaska Permanent Fund Corporation pursuant to AS 37.13.145(b) for the payment of permanent fund dividends for fiscal year 2020.

Section 1(e). This section makes an appropriation from the permanent fund earnings reserve account to the dividend fund of the amount authorized for transfer by the Alaska Permanent Fund Corporation pursuant to AS 37.13.145(b) for the payment of permanent fund dividends for fiscal year 2021.

Section 1(f). This section makes an appropriation from the permanent fund earnings reserve account to the dividend fund of the amount authorized for transfer by the Alaska Permanent Fund Corporation pursuant to AS 37.13.145(b) for the payment of permanent fund dividends for fiscal year 2022.

Section 1(g). This section makes an appropriation from the permanent fund earnings reserve account to the dividend fund of the amount authorized for transfer by the Alaska Permanent Fund Corporation pursuant to AS 37.13.145(b) for the payment of permanent fund dividends for fiscal year 2023.

He said that subsection (d) would provide the standard appropriation for this year's permanent fund dividend and the following subsections related to repayment for PFDs for subsequent years.

[2:49:10 PM](#)

MR. MILKS reviewed Section 2.

Section 2. This section is a contingency provision that makes the appropriations in section 1(a)-(c) contingent on the legislature's passage and enactment into law of a bill directing the commissioner of revenue to include certain payments for the 2016, 2017, and 2018 dividends to eligible individuals with the dividend payments for 2019, 2020, and 2021.

He said that Section 2 would provide a contingency provision. The appropriation bill would be contingent upon the legislature passing SB 24, which would direct the commissioner to make the additional payments.

[2:49:31 PM](#)

MR. MILKS reviewed Sections 3-6.

Section 3. This section makes the appropriations in section 1(b) and (e) which relate to dividend payments in 2020 effective July 1, 2020.

Section 4. This section makes the appropriations in section 1(c) and (f) which relate to dividend payments in 2021 effective July 1, 2021.

Section 5. This section makes the appropriation in section 1(g) which relates to dividend payments in 2022 effective July 1, 2022.

Section 6. This section provides that except for sections 3-5, the Act takes effect immediately under AS 01.10.070(c).

He explained that these sections relate to the effective dates based on the three year roll out of the appropriations.

[2:49:48 PM](#)

MR. MILKS provided the sectional analysis for SB 24. This bill would amend the uncodified law to allow the Department of Revenue to make the additional PFD repayments.

Section 1(a). This section would amend the uncodified law to provide that notwithstanding AS 43.23.005, the commissioner of revenue shall include with permanent fund dividends in 2019, 2020, and 2021 payments to eligible individuals of \$1,061 in 2019, \$1,289 in 2020, and \$1,388 in 2021.

[2:50:18 PM](#)

MR. MILKS read Section 1(b)-(d).

Section 1(b). This section would provide that an individual eligible in 2019 for a payment of \$1,061 in addition to the permanent fund dividend is an individual who received a 2016 permanent fund dividend and is eligible to receive a 2019 permanent fund dividend.

Section 1(c). This section would provide that an individual eligible in 2020 for a payment of \$1,289 in addition to the permanent fund dividend is an individual who received a 2017 permanent fund dividend

and is eligible to receive a 2020 permanent fund dividend.

Section 1(d). This section would provide that an individual eligible in 2021 for a payment of \$1,388 in addition to the permanent fund dividend is an individual who received a 2018 permanent fund dividend and is eligible to receive a 2021 permanent fund dividend.

Section 1(e). This section would provide than the amount appropriated from the permanent fund earnings reserve account (AS 37.13.145) to the dividend fund (AS 43.23.045(a)) for the payments in section 1(a) to eligible individuals during 2019-2021 may not contribute to the calculation for the 2019- 2021 dividends under AS 43.23.025.

He added that Section 1(e) is a housekeeping measure.

[Section 2 would provide for an immediate effective date.]

[2:51:17 PM](#)

CHAIR HUGHES asked whether the "Pick, Click, Give" option found on the permanent fund dividend application could be used to donate to non-profit organizations for this application process.

MR. MILKS responded that he has not considered this, but it seemed to make sense that it would.

[2:52:07 PM](#)

SENATOR KIEHL asked the reason for an immediate effective date since there would be plenty of time to make the payments.

MR. MILKS said the department thought it would be helpful to clarify the issue. He agreed that that the normal effective date for payouts would also work.

[2:53:02 PM](#)

MR. KING offered to provide information that committee members requested earlier in the meeting.

MR. KING detailed the proposed permanent fund dividend amounts using an estimated 535,000 population in Alaska. He

also provided the estimated total appropriation, as follows:

In calendar year 2019 for FY 2020, the proposed permanent fund dividend amount per person would be \$1,061 for a total appropriation of \$565 million.

In calendar year 2020 for FY 2021, the proposed permanent fund dividend amount per person would be \$1,289 for a total appropriation of \$683 million.

In calendar year 2021 for FY 2022, the proposed permanent fund dividend amount per person would be \$1,388 for a total appropriation of \$735 million.

He said the total appropriation for all three years would be \$1.983 billion.

[2:54:09 PM](#)

MR. KING, in response to an earlier question by Senator Kiehl, gave a range of 4-6.5 percent. He said that using that range implied that by spreading the payments over three years rather than paying the amount in one year would generate an additional \$80-150 million of additional earnings.

MR. KING, in response to an earlier question by Chair Hughes, explained that even if the eligibility requirements changed, the figures would be relatively the same by paying everyone who was eligible in the first appropriation year, or by paying the amount to every Alaskan who is eligible today because the population would not significantly change. The difference in appropriations for FY 2020 would be \$110-110 million, for FY 2021 would be \$130-140 million, and for FY 2022 would be \$140-150 million. The total appropriation difference between \$379-400 million, he said.

CHAIR HUGHES asked how much the population would change.

MR. KING said when he conducted the analysis, he sought to determine the attrition and turnover rate. He said that he compared the PFD payment in one year and determined how many people received a payment three years later, which historically resulted in a 17 percent attrition rate. He interpreted that to mean that 83 percent of people who received a PFD in one year also received it three years

later. This historical data provided the basis in the bill for the estimated number of eligible residents at 530,000.

He explained that this has to do with migration. He said that Alaska is a transitory state, with approximately 40-50,000 people moving in and out of the state because of jobs or the military. This figure is usually is a wash, but in the last few years fewer people have been coming in than moving out. The one-year delay before eligibility creates attrition. Not only do people move away but they also die. Those people would not be present to claim their permanent fund dividends. This brings forth the matter of policy and law. The would need guidance on how dispensing with the current one-year eligibility requirement would affect estates and unclaimed property. These issues could be clarified via statutory language. Otherwise the Department of Revenue would seek to make administrative decisions to address applicants who were eligible but did not claim the dividend.

CHAIR HUGHES observed that the \$370-400 million difference tends to make the case quite well that the two points in time are important. She said it is a lot of money to send to people who no longer reside in Alaska.

[2:58:24 PM](#)

SENATOR MICCICHE pointed out that many Alaskans, including himself, work for businesses whose projects take them out of state for more than 180 days per calendar year. However, the PFD program is designed for Alaska residents who live in the state for 180 days or more. Some people serve in the military after being a resident, he said. Some people believe the allowable absences for the program should be less.

[2:59:24 PM](#)

SENATOR KIEHL referred to the 17 percent attrition rate. He asked whether it was attrition or a difference in the number of people eligible for the program. He asked how many were due to births and deaths.

MR. KING answered that none of the attrition would be due to births. He said he does not have the figures for the attrition rate. He offered to review the Department of Labor figures and the Department of Health and Social Services, Vital Statistics figures.

3:00:06 PM

SENATOR KIEHL asked whether any money is being held for potentially eligible people, other than for minor children.

MR. KING answered no. He explained that the Department of Revenue handles unclaimed property. The question would become whether unclaimed dividends would qualify as unclaimed property.

SENATOR KIEHL asked Mr. Milks if unpaid permanent fund dividends would be considered as unclaimed property.

3:01:02 PM

MR. MILKS related his understanding that the question is whether a 2016 dividend that was less than statutory calculation would be considered unclaimed property.

MR. KING explained his rationale of unclaimed property. The current bill would require an applicant to qualify for the permanent fund dividend. If the amended legislation also required an application process, it would clearly create criteria. One possibility or scenario would be that someone who qualified for a PFD in 2016 would automatically be eligible for the subsequent payments without taking further action. If so, it would raise the question whether the department would need to hold funds on their behalf, he said.

SENATOR KIEHL said he had not heard anyone suggest automatic eligibility for the repayment.

3:02:50 PM

CHAIR HUGHES asked for the economic impact of the repayment of the PFD for the three repayment years.

MR. KING acknowledged that the permanent fund dividend is an important part of household income for all Alaskans. Most people have a tendency to spend money given to them and they have the right to spend the PFD in or out of Alaska. The permanent fund dividend improves Alaskans' quality of life and is considered an economic benefit. Other ways to measure economic activity include assessing wages and income or the productivity in a region by measuring the value of the products produced.

MR. KING did not think the permanent fund dividend would increase gross national product (GNP) by much. He

elaborated that job counts are measured by jobs held. He cautioned members to use care when using statistics that do not consider income or differentiate between part-time or fulltime workers since they do not have the same economic contribution. Typically, the PFD injection means that people spend more at stores and restaurants which generates some demand for labor. He recalled that Institute of Social and Economic Research estimated 900 jobs per 100 million [appropriated], or about 9,000 jobs this year. The data doesn't reflect much of an increase because it is based on full time equivalent jobs. In terms of increased jobs, some part-time employees may obtain more hours and some hours will be generated by overtime, which does not necessarily appear in the data. However, the figures do reflect the additional wages flowing into households. This household income is more relevant with respect to the PFD since it provides an immediate deposit into residents' checking accounts, which has an immediate impact on the economy, and on the quality of life. Although the impact from the PFD only lasts a few months, it is meaningful and can be life changing. The permanent fund dividend can mean the difference between people being evicted or having a place to live. It often provides some residents with fuel for the winter or a vacation for others.

[3:07:10 PM](#)

CHAIR HUGHES referred to the number of reductions the governor is proposing in the budget, which will result in job losses. She asked for the net offset to jobs by factoring in the full historical permanent fund dividend.

MR. KING estimated that the direct impacts of budget cuts would generate job losses in the range of 5,000 to 7,000 job range and whether these jobs are fulltime or part-time jobs is unknown. Whether these job losses actually occur also would depend on how residents respond to the job cuts. In terms of the increase in jobs related to the PFD, several economists have indicated these are temporary jobs concentrated in October through December timeframe. From the job perspective, it does not make sense to compare budget cut job losses to temporary PFD job increases.

Instead, the better comparison would be to assess the effects to household income for Alaskans and how it affects their quality of life. From that perspective the \$1 billion decrease in the concentrated impacts from budget cuts and the \$1.5 billion increase in household income from the PFD

distributions, he concluded would have a net positive impact on household income across the state. Although the 630,000 people would feel a small impact [from the \$1.5 billion PFD income], and 5,000-7,000 thousand people absorbing \$1 billion in lost income [from due to budget cuts. He concluded that it is a very different comparison.

MR. KING said it is very difficult to give a hard and fast rule on which is better. It comes down to individual interpretations of the value of government services being provided and whether someone in one community receiving a full PFD is better than someone else in another community receiving those services. He characterized it as a public policy question rather than an economic one.

[3:10:10 PM](#)

CHAIR HUGHES asked him to consider the temporary bump provided by the PFD over several years and to derive a job number comparison.

[3:10:31 PM](#)

SENATOR MICCICHE offered his belief that it was not possible for the committee to conduct an adequate economic analysis right now, which is not the goal. The reason to support SB 23 and SB 24 would be because Alaskans expect to receive the full statutory-based dividend. He did not view it as an economic consideration. The legislature should make a decision based on whether it is the right thing to do or not. He agreed that it was challenging for Alaskans who anticipated receiving [a certain level] of permanent fund dividends three years in a row. However, he thought it would be dangerous to consider one-sided economics impacts. The Finance Committee spent hours on this issue, but it is not an easy one, he said. However, the economic comparisons are like comparing apples to watermelons, so it would take considerable time to achieve a responsible answer.

[3:11:54 PM](#)

CHAIR HUGHES said it is important for the public to understand that even though it is difficult to define, and this committee cannot do it, that some counter balancing would occur if the budget has sizable reductions. She suggested that circulating money into the private sector would be helpful in softening that impact.

[3:12:22 PM](#)

SENATOR KIEHL asked whether Mr. King could give the delta of the amount that would be available to provide essential services to Alaskans if the \$1.8 or 1.9 billion was not distributed as PFDs but was managed under the statutory formula under SB 26.

MR. KING answered an estimated \$2 billion with a rate-of-return of about 6.5 percent would result in about \$130 million. The full reduction would not be seen immediately due to averaging, so it would take between five and seven years for the full \$130 million reduction to occur. He said for those whose perspective is that this money belongs to the people and not the state, it would not be viewed as a reduction by the state holding on to it.

SENATOR KIEHL appreciated the difference in philosophy, acknowledging that people have different expectations. He said that people once expected their longevity bonus check, and that seniors or disabled veterans expected to be compensated by property taxes paid. However, those programs were entirely eliminated. He said that people still expect adequate schools, troopers, airports, roads and bridges, and other essential services. He characterized the situation as a bind, that it is not a black or white issue. He said the conversation about the waiting period that this method of dispersing money puts in place is very problematic.

CHAIR HUGHES did not agree that it should be called a waiting period.

[SB 23 and SB 24 were held in committee.]

[3:14:44 PM](#)

CHAIR HUGHES reviewed upcoming committee announcements.

[3:15:34 PM](#)

There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 3:15 p.m.