

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

April 8, 2019

1:35 p.m.

**MEMBERS PRESENT**

Senator Shelley Hughes, Chair  
Senator Lora Reinbold, Vice Chair  
Senator Mike Shower  
Senator Peter Micciche  
Senator Jesse Kiehl

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 35

"An Act eliminating marriage as a defense to certain crimes of sexual assault; relating to enticement of a minor; relating to harassment in the first degree; relating to harassment in the second degree; relating to indecent viewing or production of a picture; relating to the definition of 'sexual contact'; relating to assault in the second degree; relating to sentencing; relating to prior convictions; relating to the definition of 'most serious felony'; relating to the definition of 'sexual felony'; relating to the duty of a sex offender or child kidnapper to register; relating to eligibility for discretionary parole; and providing for an effective date."

- MOVED CSSB 35(JUD) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 5

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund and the permanent fund dividend.

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 35

SHORT TITLE: CRIMES;SEX CRIMES;SENTENCING; PAROLE

SPONSOR(s) : RULES BY REQUEST OF THE GOVERNOR

01/23/19 (S) READ THE FIRST TIME - REFERRALS  
01/23/19 (S) JUD, FIN  
02/13/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/13/19 (S) Heard & Held  
02/13/19 (S) MINUTE(JUD)  
02/15/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/15/19 (S) Heard & Held  
02/15/19 (S) MINUTE(JUD)  
02/18/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/18/19 (S) Heard & Held  
02/18/19 (S) MINUTE(JUD)  
02/22/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/22/19 (S) -- MEETING CANCELED --  
02/25/19 (S) JUD WAIVED PUBLIC HEARING NOTICE, RULE  
23  
02/28/19 (S) JUD AT 5:00 PM BELTZ 105 (TSBldg)  
02/28/19 (S) -- MEETING CANCELED --  
03/04/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/04/19 (S) Scheduled but Not Heard  
03/08/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/08/19 (S) Scheduled but Not Heard  
03/13/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/13/19 (S) Heard & Held  
03/13/19 (S) MINUTE(JUD)  
03/18/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/18/19 (S) Heard & Held  
03/18/19 (S) MINUTE(JUD)  
04/01/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
04/01/19 (S) <Bill Hearing Canceled>  
04/05/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
04/05/19 (S) Heard & Held  
04/05/19 (S) MINUTE(JUD)  
04/08/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SJR 5

SHORT TITLE: CONST. AM.:PERMANENT FUND & DIVIDEND

SPONSOR(s) : RULES BY REQUEST OF THE GOVERNOR

01/30/19 (S) READ THE FIRST TIME - REFERRALS  
01/30/19 (S) STA, JUD, FIN  
03/28/19 (S) STA AT 3:30 PM BUTROVICH 205  
03/28/19 (S) Heard & Held  
03/28/19 (S) MINUTE(STA)  
04/02/19 (S) STA AT 3:30 PM BUTROVICH 205  
04/02/19 (S) Scheduled but Not Heard

04/03/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 04/03/19 (S) <Bill Hearing Canceled>  
 04/03/19 (S) JUD AT 6:00 PM BELTZ 105 (TSBldg)  
 04/03/19 (S) <Bill Hearing Canceled>  
 04/04/19 (S) STA AT 1:30 PM BUTROVICH 205  
 04/04/19 (S) Moved CSSJR 5(STA) Out of Committee  
 04/04/19 (S) MINUTE(STA)  
 04/05/19 (S) STA RPT CS 1DNP 3AM SAME TITLE  
 04/05/19 (S) AM: SHOWER, MICCICHE, KAWASAKI  
 04/05/19 (S) DNP: COGHILL  
 04/08/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

MICHAEL DUXBURY, Deputy Commissioner  
 Office of the Commissioner  
 Department of Public Safety (DPS)  
 Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of SB 35.

KELLY HOWELL, Special Assistant  
 Legislative Liaison  
 Department of Public Safety (DPS)  
 Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on SB 35.

JOHN SKIDMORE, Director  
 Criminal Division  
 Central Office  
 Department of Law  
 Anchorage, Alaska

**POSITION STATEMENT:** Testified and answered questions during the discussion of SB 35.

QUINLAN STEINER, Director  
 Public Defender Agency  
 Central Office  
 Department of Administration  
 Anchorage, Alaska

**POSITION STATEMENT:** Testified during the hearing on SB 35.

KACI SCHROEDER, Assistant Attorney General  
 Criminal Division  
 Legal Services Section  
 Department of Law

Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of SB 35.

BUDDY WHITT, Staff  
Senator Shelley Hughes  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Explained amendments to SB 35, Version K, on behalf of the committee.

BETH FREAD, representing herself  
Palmer, Alaska

**POSITION STATEMENT:** Recommended passing SB 35, as amended, from committee.

KEELEY OLSON, Executive Director  
Standing Together Against Rape (STAR)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 35.

MICHAEL DUXBURY, Deputy Commissioner  
Office of the Commissioner  
Department of Public Safety (DPS)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on SB 35.

RODGER BRANSON, representing himself  
Eagle River, Alaska

**POSITION STATEMENT:** Testified during the hearing on SB 35 as an advocate of mental health services.

BRUCE TANGEMAN, Commissioner Designee  
Department of Revenue  
Anchorage, Alaska

**POSITION STATEMENT:** Presented SJR 5 and answered questions on behalf of the administration.

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

**POSITION STATEMENT:** Presented a sectional analysis during the hearing of SJR 5 and answered questions on the resolution.

## ACTION NARRATIVE

[1:35:14 PM](#)

**CHAIR SHELLEY HUGHES** called the Senate Judiciary Standing Committee meeting to order at 1:35 p.m. Present at the call to order were Senators Kiehl, Micciche, Reinbold and Chair Hughes. Senator Shower arrived as the meeting was in progress.

### SB 35-CRIMES;SEX CRIMES;SENTENCING; PAROLE

[1:35:34 PM](#)

CHAIR HUGHES announced that the only order of business would be SENATE BILL NO. 35, "An Act eliminating marriage as a defense to certain crimes of sexual assault; relating to enticement of a minor; relating to harassment in the first degree; relating to harassment in the second degree; relating to indecent viewing or production of a picture; relating to the definition of 'sexual contact'; relating to assault in the second degree; relating to sentencing; relating to prior convictions; relating to the definition of 'most serious felony'; relating to the definition of 'sexual felony'; relating to the duty of a sex offender or child kidnapper to register; relating to eligibility for discretionary parole; and providing for an effective date."

CHAIR HUGHES remarked that she hoped to move SB 35 from committee today.

[1:37:48 PM](#)

SENATOR REINBOLD asked whether Mr. Duxbury was familiar with SB 35, Version K.

MICHAEL DUXBURY, Deputy Commissioner, Office of the Commissioner, Department of Public Safety (DPS), Anchorage, said he did not have Version K before him. He said that he is in consultation with the special assistant for the Department of Public Safety and based on her information he is in agreement.

[1:39:09 PM](#)

KELLY HOWELL, Special Assistant; Legislative Liaison, Department of Public Safety (DPS), Anchorage, stated that the department does not see any red flags.

[1:39:35 PM](#)

SENATOR REINBOLD offered her belief that the bill was an improvement. She asked whether the department had taken a position on SB 35.

MS. HOWELL answered that she can not speak for the governor's office, but the department is generally supportive of the bill.

[1:40:15 PM](#)

JOHN SKIDMORE, Director, Criminal Division, Central Office, Department of Law, Anchorage, stated that the administration was in support of Version K of SB 35.

CHAIR HUGHES congratulated Mr. Skidmore on his promotion to Deputy Commissioner.

MR. SKIDMORE thanked her. He said that he will not assume the position as the Deputy Attorney General, Criminal Division, Department of Law until May 16.

[1:41:40 PM](#)

SENATOR KIEHL asked about the change from knowingly to reckless. He asked whether the change in mental state causes strong concerns about justice and the likelihood of inappropriate convictions.

[1:42:25 PM](#)

SENATOR SHOWER joined the meeting.

[1:42:34 PM](#)

SENATOR KIEHL asked whether the public defender agency sees the change as something that will lead to higher costs. He wondered if it would lead to more jury trials. Finally, he wondered how this would interact with threshold cases, such as when a victim is in the early stages of dementia or has developmental disabilities.

[1:43:13 PM](#)

QUINLAN STEINER, Director, Public Defender Agency, Central Office, Department of Administration, Anchorage, said he has concerns about the changes in the bill related to mens rea for sex offenses, especially when combined with the changes made to the elimination of the marriage defense. Simply put, these change the mens rea from knowingly to recklessly. This means that someone can have an honestly held belief that someone is not mentally incapable, incapacitated, or unaware and still be subject to prosecution. This is particularly problematic with the removal of the marriage defense without replacing it with a consent defense. This version of the bill would criminalize typical conduct between married couples or people in

relationships. He predicted it would lead to the prosecution of people that one would not want charged or prosecuted.

He predicted it would drive up costs of litigation. He said it makes it more difficult to understand the line between criminal and non-criminal behavior. It is especially difficult when individuals have dementia or are consuming alcohol. He said it is important to recognize that the belief that prosecutors will use their discretion and not charge cases should not be the basis for not being more specific about what is criminalized. There are many state prosecutors with a range of points of view on who should be prosecuted based on the definition in statute. He said the language has been broadened to the extent that convictions and prosecutions can be expected. Further, a person may actually consent to certain conduct, which will still be considered criminal conduct, even though the person fully consented.

[1:45:58 PM](#)

CHAIR HUGHES asked Mr. Skidmore for further clarification.

MR. SKIDMORE identified the two issues presented. The first issue is related to resources, and the second one is related to changing the mens rea for sexual assault as it relates to mentally incapable, incapacitated, or individuals unaware that a sex act is occurring and the interaction with the elimination of the marriage defense.

MR. SKIDMORE agreed that some additional sexual assault cases involving victims who are mentally incapable, incapacitated, or unaware would be prosecuted, but it would be difficult to quantify the number at this time. He said he did not believe that a substantial increase in resources would be required or that the changes would result in unwanted prosecutions. He said the definition of reckless found in AS 11.41.900(a)(3) says that a person has to be aware of and consciously disregard a substantial and unjustifiable risk that the results will occur, or the circumstances exist. The scenario the public defender described was of a married couple with one suffering from a mental issue that resulted in impaired functioning. This language would require the partner without dementia to be aware of and consciously disregard a substantial and unjustifiable risk that the other person was suffering from a mental debilitation. The definition goes on to say that the risk must be of such a nature and degree that the disregard constitutes a gross deviation from the standard of conduct that a reasonable person would observe in that situation. Although the state might

prosecute additional cases, he did not agree with the public defender that they would be unwarranted arrests.

[1:50:06 PM](#)

SENATOR REINBOLD remarked that changing the standard from knowingly to reckless was really important.

[1:50:37 PM](#)

KACI SCHROEDER, Assistant Attorney General, Central Office, Criminal Division, Department of Law, Juneau, said that she concurred with Mr. Skidmore's analysis.

[1:51:57 PM](#)

CHAIR HUGHES moved to adopt Amendment 1, work order 31-GS1873\K.1, Radford, 4/4/19, which read as follows:

**AMENDMENT 1**

OFFERED IN THE SENATE BY SENATOR HUGHES  
TO: CSSB 35(JUD), Draft Version "K"

Page 15, lines 20 - 21:

Delete "**if the victim is at least six years younger than the offender**"

Insert "**under AS 11.41.438(c)**"

SENATOR SHOWER objected for discussion purposes.

BUDDY WHITT, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, explained that Amendment 1 was a conforming amendment. He referred to Section 24 and read the amendment. This would reference the criminal statute AS 11.41.438(c) to clear up any ambiguity, he said.

[1:52:21 PM](#)

SENATOR SHOWER removed his objection. There being no further objection, Amendment 1 was adopted.

[1:53:22 PM](#)

CHAIR HUGHES moved to adopt Amendment 2, work order 31-GS1873\K.3, Radford, 4/4/19, which read as follows:

**AMENDMENT 2**

OFFERED IN THE SENATE BY SENATOR HUGHES  
TO: CSSB 35(JUD), Draft Version "K"

Page 23, line 22:  
Delete "in-service"

SENATOR SHOWER objected for discussion purposes.

[1:53:34 PM](#)

MR. WHITT referred to Section 36 on page 23, line 22 of SB 35, Version K. He explained that Amendment 2 relates to the additional annual training for mandatory reporters of possible sexual offenses against children implemented in Sections 33-35. He said the committee was informed that the department had the means to provide computer-based training, but the term in-service implies face-to-face training.

SENATOR SHOWER removed his objection. There being no further objection, Amendment 2 was adopted.

[1:54:46 PM](#)

CHAIR HUGHES moved to adopt Amendment 3, work order 31-GS1873\K.4, Radford, 4/6/19, which read as follows:

**AMENDMENT 3**

OFFERED IN THE SENATE BY SENATOR HUGHES  
TO: CSSB 35(JUD), Draft Version "K"

Page 11, line 19, following "mechanism":  
Insert "10 - 25 years;"

Page 11, lines 20 - 22:  
Delete all material.

SENATOR SHOWER objected for discussion purposes.

[1:54:54 PM](#)

MR. WHITT said that Amendment 3 is a technical amendment that removes redundant language that Senator Kiehl identified. He explained that if a second offense occurs, it would be addressed by language on lines 25-26 of version K.

SENATOR SHOWER removed his objection. There being no further objection, Amendment 3 was adopted.

[1:56:07 PM](#)

CHAIR HUGHES moved to adopt Amendment 4, work order 31-GS1873\K.5, Radford, 4/6/19, which read as follows:

**AMENDMENT 4**

OFFERED IN THE SENATE BY SENATOR HUGHES  
TO: CSSB 35(JUD), Draft Version "K"

Page 25, following line 11:

Insert a new bill section to read:

"\* **Sec. 44.** Section 33 of this Act takes effect September 1, 2020."

Renumber the following bill section accordingly.

Page 25, line 12:

Delete "secs. 42 and 43"

Insert "secs. 42 - 44"

SENATOR SHOWER objected for discussion purposes.

MR. WHITT referred to page 25 of Version K. He stated this would add a new effective date of September 1, 2020, specifically related to the training requirements in Section 3 of SB 35, Version K. This would allow the department sufficient time to prepare training prior to the start of the school year.

SENATOR SHOWER removed his objection. There being no further objection, Amendment 4 was adopted.

[1:56:50 PM](#)

CHAIR HUGHES moved to adopt Amendment 5, work order 31-GS1873\K.6, Radford, 4/6/19, which read as follows:

**AMENDMENT 5**

OFFERED IN THE SENATE BY SENATOR HUGHES  
TO: CSSB 35(JUD), Draft Version "K"

Page 23, line 14:

Delete "the report to the department or a law enforcement agency as"

Insert "a [THE] report [TO THE DEPARTMENT AS]"

SENATOR SHOWER objected for discussion purposes.

MR. WHITT said that Senator Micciche brought this technical amendment to the committee's attention. He explained that Amendment 5 would clean up the language on page 23, line 14 of SB 35, Version K. It would read, " ... obligation to make a report as required under (a) of this section."

SENATOR SHOWER removed his objection. There being no further objection, Amendment 5 was adopted.

[1:57:59 PM](#)

CHAIR HUGHES opened public testimony on SB 35.

[1:58:38 PM](#)

BETH FREAD, representing herself, Palmer, spoke in support of SB 35, as amended. She said she appreciated the work the committee did on SB 35.

[1:59:44 PM](#)

KEELEY OLSON, Executive Director, Standing Together Against Rape (STAR), Anchorage, spoke in support of SB 35. Although she has not had an opportunity to review the new bill draft, STAR would support removing the defense of marriage and the changes to sexual assault in the second degree. For example, she worked with a woman who was raped by her spouse when she was on prescription medication after gynecological surgery. The victim had to have subsequent emergency surgery. Her spouse was aware that she was not to engage in any sexual activity. This is one example of several that have occurred in Anchorage, she said.

She commended the language in the bill that would increase and enhance statutes concerning the use of technology for sexual solicitation of minors. She stated support for returning sentencing levels to pre-Senate Bill 91 levels, which should enhance victim safety. She stated further support for having sex offenders from other states register as sex offenders.

MS. OLSON expressed concern with language changes on page 22 of Version K, [to AS 47.17.020(a)] that requires that mandated reporting be made to local law enforcement agencies, as well as to the department. She asked for further clarification on that language since a process already exists for mandated reporting. She emphasized that reporting is considered a sworn duty and the organization trusts that the information is being relayed to the law enforcement agency or to the jurisdiction where the crime occurred, which is often not the same location.

[2:03:06 PM](#)

CHAIR HUGHES characterized the changes in mandatory reporting as casting a wider net as a result of situations that have occurred in the schools with teachers and minors. This alerts the parties that besides reporting suspected sexual crimes to the department, the suspected sex offenses must also be reported to the nearest law enforcement agency. She expressed concern that some crimes may be reported to the principal and this language ensures that law enforcement is also informed.

She thanked Ms. Olson for her input and suggestions. She said that one issue that was not changed is the consent language. She explained that Mr. Skidmore will work with the committee on this issue during the interim. She acknowledged that the language is archaic and needs to be fixed. However, the project is significant since it will have a domino effect. Mr. Skidmore is committed to researching this since other states have worked on it and Alaska can avoid some of their mistakes. She said she hoped to address this in January.

CHAIR HUGHES related that the organization Community United for Safety and Protection requested legislators amend the House version of SB 35 to address police officers engaging in sexual conduct during investigations. She said this seemed quite alarming, but in conversations with law enforcement she learned that laws currently exist to prosecute officers who commit such crimes, and that this type of behavior is not condoned by either local law enforcement or the Alaska State Troopers.

MS. OLSON responded that STAR is not aligned or engaged with that citizens' group. She surmised that this group has an agenda to decriminalize sex work and disregards any harm that may be caused by human trafficking. She said that STAR has been involved in several cases where local law enforcement personnel engaged in sexual misconduct, including former Anchorage Police Officer Anthony Rollins [who was convicted in 2011].

She offered her belief that the response from local law enforcement was stellar in regard to protecting and working with the victims to hold former officer Rollins accountable. She said she has heard anecdotally that the organization told people not to seek assistance from STAR. She emphasized that STAR would always be available for anyone in the community who was harmed. She said that STAR would make victims aware of available resources and their rights. No one should be subjected to sexual violence, she said. She further emphasized that STAR is not aware of any of the cases that group alleges occurred or any

activity or pattern it attests is typical. That has not been STAR's experience, she said.

CHAIR HUGHES remarked that if any such pattern exists, Alaska has laws to charge any officer engaged in illegal activity. She asked Deputy Commissioner Duxbury to speak to the Community United for Safety and Protection group. She asked whether an amendment was needed.

[2:08:54 PM](#)

MICHAEL DUXBURY, Deputy Commissioner, Office of the Commissioner, Department of Public Safety (DPS), Anchorage, said that he has been associated with the Alaska State Troopers for approximately 30 years. He has spent considerable time working undercover, and he has also served as the supervisor of many undercover operations. He echoed Ms. Olson's succinct testimony. He said that he participated in the investigation of former officer Rollins. He confirmed that current statutes provide a means to prosecute these types of crimes.

He emphasized that Alaska State Troopers never engage in one-on-one operations related to illegal sex crimes. He said that the department's focus is always on the underlying criminality and the people involved in the crime. He said that everyone working in those covert operations is monitored by surveillance, in conjunction with the district attorney, or with the U.S. Attorney's office. Further, a high-level supervisor, the next level supervisor, and the line supervisor would all be involved. He said that these are dangerous situations with the criminal milieu behind the scenes and in that type of lifestyle. He said he has heard the supposition that these operations are one-on-one situations. In order for these allegations to be true, it would mean that the department had extensive corruption. He reiterated that laws are in place to prosecute any rogue officer who engaged in that criminal activity. He stressed that an officer engaging in that type of criminal behavior is abhorrent to professional law enforcement. He said that the department and the troopers hold up integrity and trust to the public.

CHAIR HUGHES asked the record to reflect his testimony to inform the public that laws exist to address this and the importance of integrity among law enforcement personnel.

[2:13:08 PM](#)

RODGER BRANSON, representing himself, Eagle River, spoke as an advocate of mental health services. He said he wanted to know about any subversive activity in Palmer.

CHAIR HUGHES asked him to submit specific questions to Mr. Duxbury via her office, but to limit his testimony to SB 35.

MR. BRANSON said he wanted to ensure that the bill would protect everyone. He said he would be concerned about relying on STAR to determine illegal activity since they could perhaps turn away a victim. He said the committee is doing "some awesome work that needs to be done," but he wants to ensure that [the bill] protects the people who need to be protected.

[2:15:05 PM](#)

CHAIR HUGHES, after first determining no one wished to testify, closed public testimony on SB 35.

[2:15:18 PM](#)

SENATOR REINBOLD expressed her thanks for the work on this bill. She said she was pleased that SB 35 has become a more victim-centered bill. She emphasized that she supports strengthening criminal law related to sexual assault.

[2:15:52 PM](#)

SENATOR KIEHL expressed his thanks for the work on this bill. On the whole it is really good legislation and provides additional tools and resources for victims, he said. He expressed appreciation that the bill would eliminate the marriage defense. However, while the bill contains many good changes, it also increases the severity of the offenses that will use public safety resources. He offered his belief that increased penalties were unlikely to make a difference. Changes that will apprehend offenders not previously being caught are excellent ones, he said. He argued that penalties for some crimes were not on par with penalties for other crimes. He predicted those increased penalties would cost money to implement, but it would not improve public safety. He supported the intent language for more proactive work on Internet crimes against children because these provisions will catch criminals and help reduce the number of victims. He emphasized that Internet crimes against children are important ones to focus on and to use criminal justice system resources. Those are the most important changes this bill makes, he said.

He predicted that some provisions in the bill will be litigated. He concurred that sex offenders who have committed sex offenses that are crimes in Alaska should be on a sex offender registry. However, the language in the bill also captures people who committed offenses in another jurisdiction that are not

considered criminal offenses in Alaska. The Alaska Supreme Court has reviewed the Constitution of the State of Alaska and has acknowledged the punitive element for those on the sex registry. He offered his belief that it is unconstitutional to punish people whose behavior is not a crime in Alaska. He said he hopes that as the bill moves forward this issue would be addressed so that strong public protections are met, and the state does not waste time in court.

SENATOR KIEHL stated support for eliminating the marriage defense, which is a good provision. However, he said that combining it with the change in mental state for the crimes of sexual assault in the second degree and sexual assault in the third degree worries him. He recalled that Mr. Skidmore read the definition of reckless. He offered his belief that this would create an ambiguous line. For example, it may be difficult to determine criminal behavior for marital relations when a couple has been married for a long time, but one partner develops dementia or has an early onset Alzheimer that gradually worsens. He agreed that the knowing standard is very clear, but this language also includes sexual contact. He emphasized the need to catch the "bad actors," but he had concern that combining the two changes would create some real problems. He said he is anxious to move SB 35 forward, but he believes that it could use additional work.

[2:20:39 PM](#)

SENATOR MICCICHE thanked the committee for its work on this bill. He questioned how long the state needed to be listed as number one in the nation for the most sexually abused children before it remedies the issue. Since these crimes are increasing, he expressed his support for increasing the severity of the penalties for sexual assault crimes.

He said that there is only one way to break the cycle. In many communities Alaska's perpetrators have been known for decades. For example, he said that Peter [Wilson] allegedly raped children for years before he killed 10-year-old Ashley [Johnson-Barr]. In terms of the registry, he said some of these acts should have been made crimes in Alaska years ago. For example, the acts Justin Schneider committed should have been a crime. Alaska is just now recognizing that some state criminal justice systems are more advanced than in Alaska. Many of these states have a far lower incidence of sexual abuse and sexual assault, he said. Children can be destroyed emotionally and physiologically. These children may later act out, so the cycle continues, he said. Not only do the children and their families

pay with a diminished quality of life, but the state pays in almost every category in the budget. If these victims ever normalize, it would come after years of counseling. This bill attempts to address all of the issues the state is battling, including opioid abuse, alcoholism, suicide, domestic violence, and sexual assault. He said he wholeheartedly supports moving the bill forward.

[2:23:13 PM](#)

CHAIR HUGHES said when gauging whether public safety is improved by increasing the severity of penalties, it is important to remember the statistics for sexual offenses. However, one reason the recidivism rates are low is due to the strict structure and the containment model used. The number of years sex offenders are incarcerated helps keep the reoccurrence low, she said. She said that she spoke with Alaskans about suicide prevention in her office recently. Part of getting to the root of the problem is "calling things what they are." The state has many children, teens, and adults who have been harmed. In some ways the victims suffer lifelong pain that could be considered worse than death.

She said that in terms of Senator Kiehl's concerns about the marriage defense and the change in the standard of defense, prosecutors will target the bad guys. She said she did not share his concern that problems would surface.

CHAIR HUGHES said that considering the horrific crimes that children suffer has made her cognizant of the prosecutors who work in the field. She asked members to give prosecutors "a shout out" because they deal with these victims daily. She said she hopes the tools [in SB 35] will be helpful. She acknowledged that it is not possible to eradicate evil with good policy, but she hopes that the legislature can help deter it. She acknowledged that additional work needs to be done regarding the consent language and on other issues that may surface. She looked forward to working with the department on these issues.

[2:26:47 PM](#)

SENATOR REINBOLD moved to report the committee substitute (CS) for SB 35, work order 35-GS1873\K as amended, from committee with individual recommendations and attached fiscal note(s).

There being no objection, CSSB 35(JUD) was reported from the Senate Judiciary Standing Committee.

CHAIR HUGHES asked the record to reflect that the Legislative Legal Services, Legislative Affairs Agency, was authorized to

make any technical and conforming changes in order to implement the adopted amendments.

[2:27:12 PM](#)

At-ease.

**SJR 5-CONST. AM.:PERMANENT FUND & DIVIDEND**

[2:27:22 PM](#)

CHAIR HUGHES reconvened the meeting. She announced that the final order of business would be SENATE JOINT RESOLUTION NO. 5, Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund and the permanent fund dividend.

[Before the committee was the CSSJR 5(STA), Version U.]

[2:30:23 PM](#)

BRUCE TANGEMAN, Commissioner Designee, Department of Revenue, Anchorage, stated that SJR 5 would change the Constitution of the State of Alaska to include the permanent fund dividend. He explained that for over three decades the permanent fund dividend calculation and the amount paid to Alaskans was never questioned. As recently as 2012 and 2013, the amount of the dividend was \$900. The Alaska Permanent Fund and the permanent fund dividend were not broken and did not need to be fixed. During the previous administration the legislature appropriated the full permanent fund dividend amount. However, the governor vetoed half of it. The following two years, the legislature and the governor agreed on a dividend that was less than the calculated amount.

He said that SJR 5 will guarantee the permanent fund dividend (PFD). It would not be subject to appropriation. The funds would automatically be transferred for payment to Alaskans. He said this process would protect the permanent fund dividend (PFDs), which would not be subject to the governor's veto. The PFD would follow the calculation amount. Any changes to the statutory permanent fund dividend formula would require a vote of the people. He said this resolution is part of the fiscal plan that the governor introduced this legislative session, which also includes a constitutional spending limit and a constitutional amendment for any changes to taxes or new taxes proposed in Alaska.

[2:32:58 PM](#)

WILLIAM MILKS, Assistant Attorney General, Civil Division, Labor & State Affairs, Department of Law, Juneau, presented a sectional analysis during the hearing of SJR 5. He reviewed Section 1.

Section 1: This would provide a conforming amendment to the existing language in order to authorize a portion of permanent fund income to be used for dividends as set forth in Section 2.

MR. MILKS said that except as provided under subsection (b), all income from the permanent fund shall be deposited to the general fund unless otherwise provided by law.

[2:33:51 PM](#)

MR. MILKS reviewed Section 2.

Section 2: This section would create two new subsections in the permanent fund amendment.

MR. MILKS explained that a portion of the income from the permanent fund shall be transferred solely for a program of dividend payments to state residents.

[2:34:04 PM](#)

MR. MILKS read subsections (b) and (c).

Subsection (b) would require that a portion of the permanent fund income be used, without an appropriation, solely for the purpose of paying permanent fund dividends to state residents. Those payments would occur according to the dividend program and formula currently set forth in statute.

Subsection (b) would also allow the legislature to change the dividend program, including amount and eligibility, subject to the approval of the voters in subsection (c).

Subsection (c) would require that any law passed by the legislature to amend the permanent fund dividend program, including the amount and the eligibility requirements, would not take effect unless the voters approved the proposed law at the next statewide election. If approved by the voters, it would take effect 90 days after certification of the election or on a special effective date concurred in by two-thirds

of the members of each house upon passage, whichever date is later.

MR. MILKS read Section 3.

Section 3: This transition provision specifies that the dividend program in place on January 1, 2019 would remain in place until the legislature and the voters approved a change to the program.

[2:35:10 PM](#)

MR. MILKS read Section 4.

Section 4: This section would require that the constitutional amendment be placed on the general election ballot in 2020.

[2:35:21 PM](#)

MR. MILKS said that as Commissioner Tangeman explained, SJR 5 would do several important things. It would provide that a portion of permanent fund income would be used for a dividend program. It also would provide for an automatic transfer of the income for the permanent fund dividend program without any appropriation. It would place into the Constitution of the State of Alaska a permanent fund dividend program that could be changed by the legislature and the voters working together. This resolution follows up on the Alaska Supreme Court decision in *Wielechowski v. State* that the permanent fund dividend program set forth in statute is subject to legislative appropriation and the governor's veto. He characterized that as the sum and substance of SJR 5.

[2:36:29 PM](#)

CHAIR HUGHES asked how many years the permanent fund dividend has gone through the budget appropriation process. She related her understanding that initially it was a direct transfer to the program and payment.

MR. TANGEMAN said he was unsure.

MR. MILKS remarked that certainly through the 80s it has been through the budget appropriation process. He added that the court ultimately said it is subject to the appropriation process.

CHAIR HUGHES said that one argument she has heard against putting the permanent fund dividend in the Constitution of the

State of Alaska is that it does not reach the level of a fundamental right. She highlighted areas that are important to Alaskans. For example, education and health care are very important to society. The U.S. has a K-12 system and the federal government provides Medicaid and Medicare. The U.S. Constitution does not set out public education or health care as a fundamental right. She asked whether other functions are not included in the Constitution of the State of Alaska or in other states' constitutions.

MR. MILKS directed attention to Article VIII of the Constitution of the State of Alaska to the Natural Resources Section. He identified this as an uncommon provision that embodies a policy statement in terms of the utilization of the state's natural resources for the collective benefit of the Alaskans in the constitution.

[2:39:04 PM](#)

CHAIR HUGHES said she would be interested to know if other states also have unusual constitutional provisions.

MR. MILKS said he would need to contemplate it and report back to the committee.

[2:39:16 PM](#)

CHAIR HUGHES turned to the mathematical provision in statute to the Percent of Market Value (POMV), which is set at 5.25 percent but will drop to 5 percent. She recalled that a Legislative Legal Services opinion indicated that the legislature could decide to draw out additional funds. She asked whether it would ever be necessary to draw out more than the POMV.

COMMISSIONER DESIGNEE TANGEMAN answered yes. He said that the calculation for the POMV is 5.25 percent, stepping down to 5 percent. He pointed out that the statute is silent on how those funds are spent. Obviously, this discussion is related to government and dividends. However, the historical rate of growth has been 4 percent. Under that scenario, the entire POMV would be consumed by government. He estimated that this could happen within the next 10-15 years. Since the rate of growth for spending is not connected to the POMV calculation, it still could be consumed by government spending.

[2:40:54 PM](#)

CHAIR HUGHES clarified her interest was whether [the POMV] could ever be consumed by the PFD by following the historical formula.

COMMISSIONER DESIGNEE TANGEMAN said he thought that was also possible. If the state enjoys continued healthy returns the dividend would continue to grow. He stated that the state saw returns of 15-20 percent in at least two of the last five years. He predicted that without market corrections factored in the permanent fund dividend would continue to grow. He estimated that this year's permanent fund dividend would be approximately \$3,000. However, the POMV could also be consumed by the full dividend, he said.

[2:41:41 PM](#)

CHAIR HUGHES pointed out that with continued healthy growth, especially if the constitutional amendment for a spending limit were to pass, the state could have very large permanent fund dividends in the future. She expressed concern that people outside Alaska might want to come to Alaska specifically to receive this permanent fund dividend benefit.

She said that SJR 5 also would require any changes to eligibility to be approved by a public vote. She asked whether the administration would be open to a change in the eligibility, perhaps requiring a two-year residency prior to eligibility. She asked whether eligibility could reduce the allowable absence from 180 days to 90 or 100 days, and if other restrictions could be made to the number of years for an allowable absence from the state for medical reasons or military personnel. She preferred that the eligibility changes would be made in statute rather than in the Constitution of the State of Alaska.

COMMISSIONER DESIGNEE TANGEMAN offered his belief that the governor would consider any proposals the legislature would recommend. He characterized the permanent fund dividend as a very important issue. The dividend has been on "cruise control" for several decades. However, in the last few years the public has been more engaged because the statutory calculation has not been followed.

CHAIR HUGHES asked him to follow up with information on the two-year eligibility, lessening the allowable absences, and some type of limitation for people who leave the state for qualifying reasons but who no longer reside in Alaska and have not lived in Alaska for a number of years.

[2:45:10 PM](#)

SENATOR KIEHL referred to Chair Hughes's questions about the Senate Bill 26 limit and the permanent fund dividend payment. He asked whether the statutory limit in the rapid growth scenario

is effective. He asked whether it is a part of the system provided by law.

COMMISSIONER DESIGNEE TANGEMAN responded that the Senate Bill 26 debate focused on the amount that could be taken from the earnings reserve account (ERA) without harming it. He pointed out that the Alaska Permanent Fund Corporation does not weigh in on how the earnings are spent. The entire legislative debate surrounds what would constitute a sustainable draw from the ERA. Step two after adopting Senate Bill 26 would have been to determine the split [between government services and the permanent fund dividend]. The legislature has not been able to come to a consensus on that issue, so the debate has shifted to how to spend it in a responsible manner.

He highlighted that this administration believes the constitutional amendment to the existing spending limit is a critical part of the equation since it would cap government spending. That would address the concern that government would absorb the bulk of Senate Bill 26 and the POMV draw. When the spending limit is put into place, the focus on government spending is critical because the POMV draw would be a limited amount, he said.

[2:47:25 PM](#)

SENATOR KIEHL recapped that the state has had a five-year period with 11-12 percent growth. He estimated that half of the earnings over that period would be more than the 5 percent cap. He said that SJR 5 would calculate the dividend payments as required by law. "So is [Senate Bill 26] a provision by law protected by this constitutional amendment? Do we reduce the dividend?" he asked.

MR. MILKS responded that under SJR 5, the permanent fund dividend is provided by law as the statutory dividend framework per the Alaska Supreme Court decision under Wielechowski v. State. The Alaska Supreme Court identified that the statutory calculation determines the amount available for distribution, and another calculation requires 50 percent of that income shall be transferred from the earnings reserve account for distribution of the permanent fund dividend. Finally, that case also addressed the eligibility requirements. SJR 5 would set out in law the existing three-piece statutory framework, he said.

He said that Commissioner Tangeman described the Senate Bill 26 law that set up the statutory Percent of Market Value (POMV) framework for a sustainable draw. Thus, these components are

related. However, SJR 5 would establish the existing statutory program for dividends.

[2:49:21 PM](#)

SENATOR KIEHL apologized for not stating his question clearly. He offered to submit his question in writing.

[2:49:34 PM](#)

CHAIR HUGHES referred to [page 1, line 31 to page 2, line 1] of SJR 5, which states, "provided by law read on January 1, 2019." She said the POMV is involved. However, Mr. Milks referred to the historical statutory formula. She offered her belief that ambiguity exists since the historical statutory formula and the statutory POMV are both laws.

[2:50:11 PM](#)

SENATOR SHOWER remarked that a lot of confusion surrounds the statutory provisions for the permanent fund dividend. He said that it is straightforward. He pointed out that last year the legislature passed Senate Bill 26, which establishes the formula for the draw. The historical statutory formula, which has been in place for 40 years, is still law, he said. If SJR 5 were to pass, the legislature would draw an amount using the POMV formula [established in Senate Bill 26], but it would be calculated and distributed using the historical statutory formula. He suggested that the confusion about the amount arose because the legislature did not make any change to the 50:50 split, which means a weird statute is in place.

CHAIR HUGHES pointed out a conflict exists. She said that Commissioner Tangeman explained the conflict since mathematically the historical statutory formula could exceed the POMV draw.

[2:51:49 PM](#)

SENATOR REINBOLD asked what the difference is between the way the [Alaska Permanent Fund Corporation] invests the earnings reserve as opposed to the permanent fund principal.

COMMISSIONER DESIGNEE TANGEMAN answered that there is not any difference, other than the liquidity aspect. For investment purposes, the Alaska Permanent Fund does not treat the ERA and the corpus of the fund differently.

SENATOR REINBOLD related a scenario in which the ERA balance is \$15 billion, with a \$3 billion draw, and another \$2 billion draw to pay for paybacks. That would reduce the balance to \$10

billion and thus affect investments. She expressed an interest in learning the rate of return on the ERA versus the principal.

COMMISSIONER DESIGNEE TANGEMAN explained that when some people calculate the funds drawn from the permanent fund, they do not consider the incoming revenues. He said their calculation is typically based on a 6.55 percent expected rate of return so for FY 2020, an estimated \$4 billion would be deposited to the fund, and \$3 billion would be drawn based on the POMV. Instead, the investment portfolio of \$65 billion should be the focus, not the ERA which is only a repository for realized gains. The issue is more about the return on \$65 billion, and that any realized gains are deposited to the ERA, which is the current \$18 billion balance. To illustrate this, he related a scenario in which the earnings were \$4 billion, \$3 billion was drawn based on the POMV, and another \$600 million was drawn for the backpay. This would result in a net \$400 million increase, he said.

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SENATOR REINBOLD offered her belief that the POMV draw, the full \$3,000 dividend, and \$2 billion in unallocated for back pay of the dividends is important because it could affect future dividends. She said that understanding the whole scope and trigger points was important. Although she supports the PFD statutory formula as a means to compensate Alaskans for their subsurface rights, she was unsure how the mineral rights of Native Regional Corporations might affect the fund. The Constitution of the State of Alaska provides rights, so if people are stripped of permanent fund dividend and mineral rights, it raises constitutional issues, she said. She wondered if the legislature was giving people false hope. She recalled the ramifications of the massive dip in the permanent fund during 2008. She feared there could be a negative dividend at some point. That is the reason she wants to better understand the impact that the POMV, the statutory formula and allocation draw have on future permanent fund dividends.

[2:57:13 PM](#)

SENATOR KIEHL asked why the administration chose 120 days in SJR 5, since it would leave the choice of using either the primary or the general election ballot.

MR. MILKS answered that the language of 120 days was derived from the initiative language in Article II, Section 4. He said that the administration sought consistency in time periods in the Constitution of the State of Alaska.

[2:58:11 PM](#)

SENATOR KIEHL asked for further clarification on which ballot would be used for proposed changes. He turned to the technical language in the bill and asked for the impact on the funds transferred under Article IX, Section 17(b).

MR. MILKS said that SJR 5 would provide an exception and the funds would be moved without an appropriation. He suggested that might be an issue for him to review since it relates to the constitutional budget reserve account (CBR) issue.

[2:59:24 PM](#)

SENATOR KIEHL asked for further clarification of the statutory POMV structure. He asked why the proposal does not provide any inflation-proofing protection or a POMV cap in the Constitution of the State of Alaska. He said that knowing the interaction between the two would be valuable.

COMMISSIONER DESIGNEE TANGEMAN answered that the administration has proposed a series of amendments to the Constitution of the State of Alaska. He offered his belief that inflation proofing would be handled under the resolution for a constitutional spending cap. He acknowledged that inflation-proofing is not covered in SJR 5.

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SENATOR KIEHL questioned whether the administration had any charts or for projections to show how that would work.

COMMISSIONER DESIGNEE TANGEMAN offered to work with his staff to provide the information.

SENATOR KIEHL observed that the state attempts to use a statutory POMV cap, but still maintains the constitutional distinction between the permanent fund principal and the earnings reserve account. He expressed concern that over time the value of the principal would diminish, and the value of the ERA would take over. He suggested that without some limitation "with teeth," unstructured draws could create more risk to the value of the permanent fund. If the legislature is going to consider a constitutional amendment on the permanent fund, it should consider protections to the permanent fund that would be effective for generations rather than for only a few years, he said.

[3:02:13 PM](#)

SENATOR SHOWER raised a counterpoint on the three-year payback. He pointed out that if \$2 billion had been taken out over the three years, the fund value would be less today. He offered his belief that the fund value would have changed over time. He related a scenario in which someone has \$20,000 in his/her bank account, then deposits \$4,000, but also withdraws \$4,000. It would net to \$20,000, he said.

He explained that the money not paid out for dividends over the three-year-period is still in the fund, such that the balance is essentially the same.

SENATOR SHOWERS expressed concern that enshrining the eligibility requirements in the Constitution of the State of Alaska may lead to some unintended consequences. He asked Mr. Milks to discuss any potential downfalls.

MR. MILKS answered that SJR 5 includes a requirement of voter approval on eligibility and computation of the permanent fund dividend. Alaska statutes contain eligibility statutes and exceptions that permit absences from Alaska for the permanent fund dividend program. He said he thought it would be covered under SJR 5 if adopted in this form. He recalled that Senator Reinbold raised some ancillary concerns in prior committee hearings, such as garnishment. However, he did not think that changes of that nature would be subject to voter approval. He characterized garnishments as being more of a consequence of receiving a dividend rather than an eligibility issue.

[3:06:45 PM](#)

SENATOR SHOWER said that one concern is whether the permanent fund dividend should be an individual right and if the legislature should retain eligibility requirements in statute. He said he would like to protect the permanent fund dividend program. He said the struggle is related to the legislature's ability to change the amount. He said that he favors less government spending. He wondered if the legislature would be stuck with a 50:50 split. He maintained that eligibility might be better left in the legislature's purview since it may need to change eligibility requirements for absences for college or the military.

CHAIR HUGHES said that she does not support adding eligibility in the Constitution of the State of Alaska either. She asked the rationale for constitutionalizing eligibility requirements.

COMMISSIONER DESIGNEE TANGEMAN said the administration would be willing to entertain discussions on eligibility. That has been a topic of internal discussion, he said.

3:08:47 PM

CHAIR HUGHES raised an issue that she acknowledged was more of an issue for the finance committee to consider. She asked for a rough estimate on the number of people who would be affected if eligibility requirements were changed to a two-year minimum residency, a 90-day maximum absence, and an eligibility cutoff after a three-year legitimate absence for those who do not physically reside in Alaska. Further, she would like more information on the "fundamental right" issue. She said her primary interest was to identify any other programs that do not fall under fundamental rights. She expressed concern that protections were not in place for the earnings reserve account. She said that the Legislative Legal Services provided a memo after Senate Bill 26 passed that indicated the legislature has a right to draw outside of the POMV. She asked whether this was something that the administration would also entertain.

COMMISSIONER DESIGNEE TANGEMAN answered yes. He offered his belief that the administration's view is that the ERA would be protected through the constitutional spending limit in SJR 4.

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CHAIR HUGHES said she understood that the permanent fund dividend would be issued based on a direct transfer to the program. She asked whether this transfer would come before the legislative finance committees.

COMMISSIONER DESIGNEE TANGEMAN answered that it would not. He said that the calculation would occur, and the funds would transfer directly into the permanent fund dividend program. It would not part of the appropriation process, he said.

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SENATOR MICCICHE said that he agreed with the discussion on the eligibility requirements. He offered his belief that the public would not be interested in voting on changes to eligibility, such as the length and cause of absences. He said the permanent fund dividend program is about protecting residents. Eligibility would be something else since it would pertain to someone that may not be regarded as being qualified yet. It is not about taking away any rights from established residents, he said.

He referred to subsection (c) on page 2, line 6. He said he found it interesting that it refers to the amount of the dividend instead of the dividend calculation. He said that SJR 5 supports what was in statute on January 1, 2019. He said that he thought the dividend calculation would be a more appropriate choice of language.

MR. MILKS said he understood the point and agreed the language could be clearer.

[3:13:51 PM](#)

SENATOR MICCICHE related his understanding that this would preserve the dividend calculation, but the amount of the dividend is not part of the resolution. It is not possible to know the earnings or what would be available in the future for distribution, he said. Instead, the statutory calculation would be enshrined in the Constitution of the State of Alaska.

MR. MILKS agreed that the statutory formula is what would be enshrined since the amount of the permanent fund dividend has historically varied.

[3:14:58 PM](#)

SENATOR MICCICHE asked whether a quarterly payment could occur under SJR 5 since it would be limited to a distribution method.

MR. MILKS offered his belief that would likely work since it would not be part of the dividend calculation nor was it an eligibility issue. He said he thought it would be permissible and not subject to voter ratification.

[3:16:42 PM](#)

CHAIR HUGHES returned to an earlier discussion related to the historical formula and the POMV laws in effect on January 1, 2019. She asked which statute would trump the other, the historical statutory formula or the POMV formula in statute. She wondered if the permanent fund would get to the point where paying the permanent fund dividend according to the historical formula would exceed the POMV draw. She asked whether it would stop with the POMV amount and be divided by the population or if the historical formula would trump the POMV statute.

MR. MILKS offered his belief that this would be an amendment to the Constitution of the State of Alaska. The language in the constitution would supersede a statute that described a statutory draw. SJR 5 would state that a portion of income from

the permanent fund would be used for a permanent fund dividend program.

CHAIR HUGHES asked for further clarification that the historical formula would trump the POMV law. She said that both statutes were in law as of January 1, 2019. She asked whether he was saying that the courts would interpret it in that way. "Even if mathematically the historical formula to pay it out to the residents would be more than the five, let's say we are at the five percent point, that the constitution would say you can exceed the law on the books that says five percent," she said.

MR. MILKS, referring to the hypothetical question, said that the provision in the Constitution of the State of Alaska would govern. The court would look at the constitutional provision that established a portion of income would be used for a dividend program. He said that the administration has tracked the Wielechowski case, which has been described as the permanent fund dividend program, which is based on the historical statutory formula being the amount of income to be transferred to pay the permanent fund dividends. He explained that the statute enacted by Senate Bill 26 addressed the sustainable Percent of Market Value (POMV) draw. Although these two statutes are related, one pertains directly to the dividends, which is the historical statutory framework. He offered his belief that the provisions in SJR 5 would govern.

[3:19:52 PM](#)

CHAIR HUGHES asked whether SJR 5 would require the draw be taken out of the POMV or if it could be taken outside of it and the POMV could be used to fund government services.

MR. MILKS answered that the POMV was established by Senate Bill 26 and is a statute. SJR 5 would address income out of the permanent fund, which is not identified in the Constitution of the State of Alaska as the POMV.

CHAIR HUGHES asked whether the POMV could be used for the state budget and the draw could be on top of that.

[3:21:15 PM](#)

SENATOR KIEHL argued that Senate Bill 26 would prevent it. He also argued against what Mr. Milks said earlier, that this transfer in the Constitution of the State of Alaska somehow trumps the POMV statute established by Senate Bill 26. He said that the statute established under Senate Bill 26 referred directly to the transfer for dividends and an appropriation that

could be used to fund state government services. Further, Senate Bill 26 is also a law that existed on January 1, 2019. Thus, SJR 5 would set the Senate Bill 26 limit in stone, he said. He said he did not share the concern that the dividends would regularly go over 5 percent, but the possibility of limiting the permanent fund dividend is a concern.

[3:22:27 PM](#)

CHAIR HUGHES asked whether the language in Senate Bill 26 mentioned permanent fund dividends or if it referred to an appropriation.

COMMISSIONER DESIGNEE TANGEMAN said he did not think it mentioned dividends because the legislature could not come to a resolution on the split. He said the legislature settled on the amount available for a sustainable draw.

CHAIR HUGHES related her understanding that SJR 5 would have the historical formula outside the appropriation process. She offered her belief that the 5.25 or 5.0 percent appropriation draw could be used for government spending and the historical formula transfer could be separate. She asked if that was the administration's intention.

COMMISSIONER DESIGNEE TANGEMAN said he acknowledges her concern is that there would be two separate paths. He recapped her concern, that the permanent fund dividend would be drawn using the historical formula under SJR 5 but the POMV would be drawn from the earnings reserve account. He offered to study the question and respond to the committee in writing.

[3:23:57 PM](#)

SENATOR MICCICHE argued that for the POMV to be consumed by a statutory permanent fund dividend would require 20 percent earnings net of fees. He said would be unprecedented but he thought it was a good point. He said if SJR 5 were to pass it would be important to revise the statutes affected by Senate Bill 26 to reflect that automatic transfer. The POMV would need to be net of that transfer in order to stay within the investment disbursement rules that were assumed when the step down to 5 percent was established. Otherwise, it would create a situation that would very quickly erode the earnings reserve account, which would be problematic.

[3:25:11 PM](#)

SENATOR SHOWER said that the constitutional spending limit is critical to curtail state government. If SJR 5 were to pass

without a spending limit in place, it would be a setup for failure, he said.

[3:25:46 PM](#)

CHAIR HUGHES said that she concurred. However, she said that it still makes her nervous to have the spending limit and permanent fund dividend constitutional changes in separate resolutions.

[SJR 5 was held in committee.]

[3:26:16 PM](#)

CHAIR HUGHES reviewed the upcoming meeting announcements.

[3:26:41 PM](#)

There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 3:26 p.m.