

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

April 15, 2019

1:34 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 JOINT RESOLUTION NO. 3

Proposing an amendment to the Constitution of the State of Alaska relating to the membership of the judicial council.

- HEARD & HELD

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.

- MOVED CSSJR 5(JUD) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 4

Proposing amendments to the Constitution of the State of Alaska prohibiting the establishment of, or increase to, a state tax without the approval of the voters of the state; and relating to the initiative process.

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SJR 3

SHORT TITLE: CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL

SPONSOR(S): SENATOR(S) SHOWER

01/16/19 (S) PREFILE RELEASED 1/7/19
01/16/19 (S) READ THE FIRST TIME - REFERRALS
01/16/19 (S) JUD, FIN
04/12/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/12/19 (S) Heard & Held
04/12/19 (S) MINUTE(JUD)
04/15/19 (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)
04/08/19 (S) Heard & Held
04/08/19 (S) MINUTE(JUD)
04/08/19 (S) JUD AT 6:00 PM BELTZ 105 (TSBldg)
04/08/19 (S) Heard & Held
04/08/19 (S) MINUTE(JUD)
04/15/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

SCOTT OGAN, Staff
Senator Mike Shower
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the sponsor of SJR 3,
Senator Mike Shower.

ELEANOR ANDREWS, President & CEO
Andrews Group
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SJR 3.

DAVID LANDRY, representing himself
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SJR 3.

ERIC MCCAULUM, representing himself
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SJR 3.

JOE MILLER, representing himself
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SJR 3.

CAROL CARMAN, representing herself
Palmer, Alaska

POSITION STATEMENT: Testified in support of SJR 3.

WES KELLER, representing himself
Wasilla, Alaska

POSITION STATEMENT: Testified in support of SJR 3.

JOHN BIOFF, General Counsel
Kawerak, Inc.
Nome, Alaska

POSITION STATEMENT: Testified in opposition to SJR 3.

LYNETTE CLARK, representing herself
Fox, Alaska

POSITION STATEMENT: Testified in support of SJR 3.

LARRY BARSUKOFF, Director of Operations
Alaska Policy Forum
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on SJR 3 in support of confirmation hearings for appointees to the Alaska Judicial Council.

WALTER (BUD) CARPENETI, Board Vice President
Justice, Not Politics Alaska
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to SJR 3.

MIKE BARNHILL, Policy Director
Office of Management and Budget
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Answered questions on SJR 5 on behalf of the administration.

ACTION NARRATIVE

[1:34:10 PM](#)

CHAIR SHELLEY HUGHES called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Kiehl, Shower, Micciche, Reinbold, and Chair Hughes.

SJR 3-CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL

[1:34:29 PM](#)

CHAIR HUGHES announced that the first order of business would be SENATE JOINT RESOLUTION NO. 3, Proposing an amendment to the Constitution of the State of Alaska relating to the membership of the judicial council.

CHAIR HUGHES made general remarks.

[1:35:04 PM](#)

At-ease.

[1:40:35 PM](#)

CHAIR HUGHES reconvened the meeting. The committee was given an introduction to SJR 3 on Friday, April 12.

[1:42:00 PM](#)

SENATOR SHOWER said some remarks and comments were made at the last hearing that pivoted from the goal of SJR 3, which relates to the foundational principles from a constitutional perspective. He offered his belief that the hearing was "all about politics." He said he would like to redirect the narrative to the reason for the resolution.

[1:42:49 PM](#)

SCOTT OGAN, Staff, Senator Mike Shower, Alaska State Legislature, Juneau, on behalf of the sponsor, stated that 13 of 55 delegates at the constitutional convention were attorneys. He reviewed a list of consultants who assisted the Alaska Constitutional Convention. Earnest Bartley, Professor of Political Science, University of Florida authored a 1958 book,

"Principles and Problems of State and Local Government." Dayton McKean, Ph.D., professor, University of Colorado, Boulder, worked with the committee on a legislative article. Vincent Olstrom, Ph.D., professor, University of Oregon, worked with the committee on the natural resources article. Weldon Cooper, Ph.D. professor, Department of Political Science, University of Virginia, worked with the committee on local government. Sheldon Elliott, Ph.D., Director, Institute of Judicial Administration, [New York University School of Law, New York, worked with the committee on the judicial article. Mr. Elliott authored the 1959 publication "Collected Studies on Judicial Administrations."

He elaborated on Mr. Elliott's background in New York. In May 1958, the League of Women Voters in New York asked the institute to prepare a new judiciary article for the New York State Constitution. That plan was for a statewide integrated court system that was centrally administrated and financed.

MR. OGAN continued to list the consultants. Dr. Kimbrough Own, professor, Louisiana State University, worked on the committee on style and drafting. John Bebout, National Municipal League, New York, worked on the committee on local government article. Emil J. Sady, Brookings Institution, worked with the secretary of the Alaska Constitutional Convention on administration and organization of the records. He characterized the consultants as a very qualified group.

[1:45:20 PM](#)

SENATOR SHOWER referred to some of the counter arguments made by [Nancy Meade, General Counsel], Alaska Court System, during the [April 12] hearing on SJR 3. He agreed that the delegates voted in favor of the constitutional amendment on the Alaska Judicial Council by a vote of 49-4. Some of the consultants disagreed, as he stated during the previous hearing, so he will not reiterate their comments. He said he suspected that the court system would try to make this about politics. However, [SJR 3] is not about politics. It would remedy a small foundational flaw in the structure [of the Alaska Judicial Council], he said. He added that some states require confirmation of judges and other states elect judges.

He provided some background for pre-Alaska Constitutional Convention, that in the early 1900s the burgeoning Alaska territory saw voting turnout by Alaska Natives on the rise. By 1922, the numbers of Alaska Native population voting were higher than the non-Native population in the territory. In 1924, the U.S. Congress conferred citizenship to all non-citizen Indians

born within the territorial limits of the U.S. The Alaska Territorial Legislature responded by enacting a literacy law requiring that voters be able to read and write the English language. It also passed laws limiting the ability of Alaska Natives to be citizens, participate in the political process, or enter certain public establishments.

SENATOR SHOWER said that the Constitution of the State of Alaska also required an English literacy requirement as a qualification for voting, which was repealed in 1970. Thus, at the time the Constitution of the State of Alaska was being crafted, Alaska's indigenous representation was provided solely by one person, Frank Peratrovich, Klawock. At the time, the Alaska Native population constituted a significantly higher percentage of the territory's population, he said.

SENATOR SHOWER said his point is that some groups were underrepresented with a very small group of experts participating, but the [indigenous] residents of Alaska were underrepresented.

CHAIR HUGHES asked whether he would relate that to [SJR 3], which would require confirmation [of the attorney members] by the legislature.

SENATOR SHOWER recalled a previous discussion that indicated the Alaska Constitutional Convention was well represented. However, the majority of the population was represented by one person. He offered his belief that this is germane to the discussion. He wondered what would have happened if the majority of the delegates had been Alaska Natives. He said it was something to consider.

CHAIR HUGHES acknowledged one of the sponsor's foundational points, that power is inherent with the people.

1:49:00 PM

SENATOR MICCICHE remarked that it is easy to get far off topic during discussions. He asked the sponsor to clarify the reason the resolution is important and what it solves rather than to disagree with one of the testifiers.

CHAIR HUGHES acknowledged that some questions arose, so providing the history is important. She said Ms. Meade, Alaska Court System, made it clear that [the structure of the selection process for members of the Alaska Judicial Council] was

intentional and the current question is whether the Alaska Constitutional Convention [delegates] made a mistake.

[1:50:32 PM](#)

SENATOR REINBOLD asked for further clarification on the resolution. She asked whether the resolution would require members of the Alaska Judicial Council be confirmed by the legislature.

SENATOR SHOWER reviewed the composition of the Alaska Judicial Council and the judicial selection process and responded that the [short] answer is yes.

[1:51:44 PM](#)

SENATOR SHOWER reiterated his intent for SJR 3 is to provide a "tweak" to the constitutional provisions. He expressed concern that the testimony given [during a previous hearing on SJR 3] misstated his goal [with SJR 3] was to select conservative judges, which he thought "politicized" the discussion. He wanted the record to reflect that the [Alaska Court System's] contention is [SJR 3] is about politics. However, he contended that [his goal] is to correct a small flaw in the constitutional premise. The Alaska Constitutional Convention set up a system in which three attorneys and the chief justice of the Alaska Supreme Court can pick every single judge in Alaska because those names are sent to the governor to be nominated. He characterized it as an oligarchy. The court system is one-third of Alaska government, he said. He offered his belief that the people have been removed from that process and the system does not provide a mechanism for votes to be overridden. "If the seventh tie breaker was not a lawyer or the chief justice, perhaps there would not be any bias," he said. Only lawyers can choose from their own pool, comprised of 0.6 of the population, who will sit on the bench.

He clarified that judges are appointed and not elected. He acknowledged that after an election cycle, judges are retained. He said that he has pages of notes that refute the arguments and points made at the last hearing, but he would not spend any more time on it. He concluded that SJR 3 would change the system of selecting judges in Alaska. One argument that was somewhat made at the last hearing is that legislators cannot divorce themselves from politics and be objectives [during the confirmation process], but somehow judges are objective. He said that everyone is human and influenced by their biases or else none of us are. It does not only apply to one branch of government, that it is a two-way street.

[1:56:12 PM](#)

CHAIR HUGHES said that it is a two-way street. She would say [SJR 3] is not about politics but it is about accountability. At this point accountability is not a factor until judges are up for retention and [SJR 3] would change it so it applies on "day one." She thought one interesting point made at the last meeting is that attorneys are also constituents. She pointed out that her dad was an attorney and two of her siblings are attorneys. Although she loves attorneys, they are not a class above other people. The legislature does not allow other boards and commissions to appoint their own members and she did not think the [Alaska Judicial Council] should do so either.

[1:57:25 PM](#)

SENATOR REINBOLD pointed out that SJR 3 only changes 15 words. She said that she would prefer to have judges elected because they need to be vetted. She offered her belief that there is substantial political activism from the judicial branch. She said she supports SJR 3.

SENATOR SHOWER pointed out that lawyers would still select from lawyers and that would not change. He said that this would add one last cross check from the voice of the people over the members of the [Alaska Judicial Council]. It does not pertain to who is selected to be a judge. He characterized it as a miniscule step in the process.

[1:59:02 PM](#)

SENATOR MICCICHE related his understanding of the mechanics. He said that three [attorney] names would be forwarded to the governor, to be confirmed by the legislature [to serve on the Alaska Judicial Council]. If the legislature failed to confirm the appointees, the process would start again. He asked for further clarification on any contingency in place for the Alaska Judicial Council to operate if it does not have an adequate number of members.

MR. OGAN said that could be done by statute, although the resolution is silent. He said it could imply that someone else could be appointed and wait for the next confirmation hearing.

SENATOR SHOWER said that he has been trying to stay at the highest level by looking at the foundational change and refrain from looking at statutes, regulations, and policies at this point.

[2:00:57 PM](#)

CHAIR HUGHES opened public testimony on SJR 3.

[2:01:54 PM](#)

ELEANOR ANDREWS, President & CEO, Andrews Group, Anchorage, stated her opposition to SJR 3. She said that she previously served on the Alaska Judicial Council as the lay person. She also previously served as the commissioner of the Department of Administration and on the boards for the Chamber of Commerce, Commonwealth North, and every Anchorage civic organization. She said that as the lay person on the Alaska Judicial Council, she had the opportunity to argue with and negotiate with lawyers. She did not believe the attorney members overpower the non-attorney members. She said that Governors Murkowski and Knowles did not pick candidates from the three members selected by the council. She said groups of legislators threatened members because someone did not get appointed. She said she has been threatened during the confirmation process that she would not be confirmed. She said that the current system provides for justice, which is what she really cares about. In closing, she said the system works and is a model system.

[2:04:04 PM](#)

DAVID LANDRY, representing himself, Anchorage, stated that he is a construction contractor in Anchorage and opposes SJR 3. He recalled that Senator Micciche hit on two things, and the use of lawyers in the selection process is a wise use of expertise. He said that limiting that in any way would be a rookie business move and is not how businesses work. He said that lawyers provide invaluable expertise. He offered his belief that the confirmation hearing process would be a political litmus test.

[2:05:21 PM](#)

ERIC MCCAULUM, representing himself, Anchorage, stated that he works for a North Slope supplier and he has worked in construction and fishing for the last 35 years. He said he is also the main investor in a company, Triverus [Cleaning & Environmental Solutions], who was just awarded a multi-million-dollar contract to supply the aircraft cleaning deck equipment to the U.S. Navy. He said that the Alaska Judicial Council process has worked for over 40 years. The chief justice of the Alaska Supreme Court has been the tiebreaker in less than one percent of the cases. Alaska had the advantage of reviewing other states' constitutions and learning from their mistakes.

CHAIR HUGHES stated that the public can submit testimony to Senate.Judiciary@akleg.gov.

2:07:05 PM

JOE MILLER, representing himself, Fairbanks, spoke in support of SJR 3. He said he has served as a federal and state magistrate, an acting district court judge, and a lawyer. He has applied to be a judge. He said that his wife sat on the Alaska Judicial Council. He said that lawyers are viewed fairly negatively, and it is a biased demographic. He said that lawyers constitute a very small percentage of the population that controls the outcome of judicial selections. He said beyond the 4-3 vote, it also extends to the Alaska Judicial Council's staff selection, and reports generated by the council that constitute an influential part of the process. He said the judiciary branch is the branch that the founders feared most. He said that the legislature needs to take the time to make this change.

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CAROL CARMAN, representing herself, Palmer, testified in support of SJR 3. She agreed with the sponsor that more oversight is needed. She also echoed Mr. Miller's testimony regarding bias and politics. She preferred that judges be elected, she said.

2:08:49 PM

WES KELLER, representing himself, Wasilla, testified in support of SJR 3. He said that this could be the most critical issue on the docket in the legislature. It is about asserting legislative powers. He said that SJR 3 will address a potentially fatal flaw in the Constitution of the State of Alaska. There is an imbalance of power, he said. He said that SJR 3 will tweak the constitutional flaw and give the legislature the right to say no.

2:11:07 PM

JOHN BIOFF, General Counsel, Kawerak, Inc., Nome, said that Kawerak, Inc. is a regional Native non-profit consortium in the Bering Strait region and is comprised of 20 federally recognized tribal governments. The consortium submitted a letter in opposition to SJR 3 signed by Frank Katchatag, Chair, who served as the Board of Directors for Kawerak, Inc. The board, comprised of people, not lawyers, opposes this to ensure that politics does not enter into the process [of selecting members to serve on the Alaska Judicial Council]. The committee held discussions that indicated this is not about politics, but it truly is, he said. The current process allows subject matter experts, who are attorneys, to have a say, side-by-side with citizens. The process is not broken and does not need to be fixed.

[2:12:21 PM](#)

LYNETTE CLARK, representing herself, Fox, spoke in support of SJR 3. She offered her belief that judicial activism present in the Lower 48 has filtered its way into Alaska's courts. She said she is one of the people covered by Article I, Section I and II of the Constitution of the State of Alaska and she would like her voice honored. She sees this as a way to be better represented by the legislature.

[2:13:42 PM](#)

LARRY BARSUKOFF, Director of Operations, Alaska Policy Forum, Anchorage, said that he supports legislative confirmation of all members of the [Alaska] Judicial Council. He considers himself an informed voter but fully researching the ten or so judges during a retention vote is not a high priority, so he relies on the Alaska Judicial Council to do so. He surmised that the average voter also trusts the judgment of the Alaska Judicial Council.

He offered his belief that industry insiders have a natural advantage over members of the public since they are the experts, and the public tends to rely on industry members. He mentioned this to show the power of the individual members [of the Alaska Judicial Council], especially those selected by the Alaska Bar Association. He said that the founders of the U.S. worked hard to dilute authority in the same way the authors of the Constitution of the State of Alaska sought to ensure sovereign authority remained with the citizens of Alaska.

[2:15:27 PM](#)

WALTER (BUD) CARPENETI, Board Vice President, Justice, Not Politics Alaska, Juneau, spoke in opposition to SJR 3. He said the sponsor stated that three attorneys and the chief justice can determine on their own all of the judges, which he took to mean was the basic statement of the problem. This system has worked very well for 60 years, so what problem needs to be fixed, he asked. Former Representative Wes Keller stated that that there is a potential fatal flaw in the system, he said. However, every chief justice has been confirmed by a majority of the statewide voters. He provided factual history to refute that three attorneys and the chief justice have taken over the power [on the Alaska Judicial Council]. Since 1984, the [Alaska Judicial] Council has voted on 1,389 judicial candidates. More than 80 percent of those votes have been 5-1 or 6-0 because the council members work well together, he said.

Second, 75, or five percent, of the votes resulted in 3-3 tie votes. However, 19 of the 75 tie votes had all of the attorneys on one side and all the non-attorneys on the other side, he said. In those instances, 75 percent of the time the chief justice voted to forward the names to the governor. The system does not seem to be a system that has problems, he said.

MR. CARPENETI agreed that all power resides in the people. He said that this means that the Constitution of the State of Alaska can be changed, which is what the committee is currently debating. He disagreed with follow-up statements that the branch that is supposed to balance the other branches has no check itself. "That's just not right," he said. The legislature can and often does overturn statutory decisions. It has the power of the purse. The governor has the veto power. The Alaska Bar Association itself is created by the legislature. The Board of Governors of the Alaska Bar is comprised of three public members. The legislature and the governor have a lot of power over the [Alaska] court system, he said. It is not accurate to say there is no balance. The question is whether the current balance should be upset, and he responded that his recommendation is that it should not.

[2:18:44 PM](#)

CHAIR HUGHES, after first determining no one wished to testify, closed public testimony on SJR 3.

[SJR 3 was held in committee.]

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

[2:19:15 PM](#)

CHAIR HUGHES 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.]

[2:19:48 PM](#)

SENATOR KIEHL moved to adopt Amendment 1, work order 31-GS1072\A.1, Nauman, 4/2/19.

AMENDMENT 1

OFFERED IN THE SENATE
TO: CSSJR 5 (STA)

BY SENATOR KIEHL

Page 1, line 2, following "dividend":

Insert "**establishing the earnings reserve account, and relating to appropriations from the earnings reserve account**"

Page 1, lines 9 - 11:

Delete "Except as provided under (b) of this section, all [ALL] income from the permanent fund shall be deposited in the general fund unless otherwise provided by law."

Insert "The earnings reserve account is established as a separate account in the fund. Income from the fund shall be deposited into the earnings reserve account as soon as it is received and may be invested as authorized for investments of the principal. Money in the earnings reserve account may be appropriated only as provided in (b) of this section [ALL INCOME FROM THE PERMANENT FUND SHALL BE DEPOSITED IN THE GENERAL FUND UNLESS OTHERWISE PROVIDED BY LAW]."

Page 1, line 14, through page 2, line 13:

Delete all material and insert:

"(b) Each fiscal year, an amount

(1) equal to one and one-fourth percent of the average market value of the fund, as calculated in (c) of this section, shall be transferred from the earnings reserve account for use in a program of dividend payments to State residents as provided by law; and

(2) not to exceed three and three-fourths percent of the average market value of the fund, as calculated in (c) of this section, may be appropriated by the legislature from the earnings reserve account to the general fund.

(c) For purposes of (b) of this section, the average market value of the fund is the average market value of the fund, including the earnings reserve account, for the first five of the preceding six fiscal years, including the fiscal year just ended, computed annually at the end of each fiscal year in accordance with generally accepted accounting principles, excluding any unrealized gains or losses."

Page 2, lines 16 - 22:

Delete all material and insert:

"Section 30. Permanent Fund Amendments: Transition. The earnings reserve account established in the 2020 amendments to the Alaska permanent fund (art. IX, sec. 15) replaces the existing earnings reserve account established by law. Money in the existing earnings reserve account on the effective date of the 2020 amendments to the Alaska permanent fund (art. IX, sec. 15) shall be deposited into the earnings reserve account established by those amendments."

CHAIR HUGHES objected for discussion purposes.

SENATOR KIEHL explained that Amendment 1 would do two things. First, it would bring us to a constitutional Percent of Market Value (POMV). The market value would be calculated based on both the corpus and the earnings reserve. It uses previously tested language that sets a five percent maximum market draw, based on an average of the preceding five years. At the same time, it would maintain the earnings reserve structure and place it in the Constitution of the State of Alaska. If Alaska had a series of bad financial years, it would not allow accessing the corpus of the permanent fund. While the POMV would be calculated on the total value, it protects the principal of the permanent fund.

He said that Amendment 1 provides assurances that the permanent fund is safe from inflation and from overdraw by a future legislature. It would also place a minimum split between the funding the permanent fund dividend (PFD) and government services. Amendment 1 proposes no less than one part for the PFD and no more than three parts for public services. If the state did not need the three parts for public services, in years when oil prices or production was high, more funding could be used for the PFD and still maintain the current statutory formula. In this way, the state ensures that the Alaskan voters always have a PFD they can count on, yet still meet the needs of the public throughout the services the state provides.

[2:22:31 PM](#)

CHAIR HUGHES asked whether it would essentially establish a 25 to 75 split of the POMV draw.

SENATOR KIEHL answered that the PFD would never be less than 25 percent. In further response, he clarified that the historical

statutory formula would be followed under Amendment 1 because 50 percent for dividends is not less than 25 percent.

CHAIR HUGHES related her understanding that 25 percent shall be transferred. She asked for further clarification on how the state could still pay the historical formula.

SENATOR KIEHL referred to lines 18-21 of Amendment 1, which states that "... one and one-fourth percent of the average market value of the fund ...". Thus, of the five percent draw, one and one-fourth percent would be constitutionally mandated for the program of dividend payments. The remaining three and three-fourths percent of the average market value of the fund may be appropriated by the legislature, he said. In fact, the legislature could place 100 percent into PFDs without violating the Constitution of the State of Alaska. However, the state could never put less than one and one-fourth percent of the five percent draw into PFDs.

CHAIR HUGHES related her understanding that under SJR 5, the earnings would be transferred to the dividends according to the historical formula. However, Amendment 1 would only guarantee a quarter of the draw, which would give the legislature the option to bring it up to the historical formula. She asked for further clarification that [SJR 5] would guarantee the historical formula, but Amendment 1 would not.

SENATOR KIEHL agreed. He said that SJR 5 would lock the legislature into the way the PFD is calculated whereas Amendment 1 is cleaner and requires 25 percent of the draw to be used for the PFDs. The governor's version would "tie the legislature's hands" at 50 percent and the old formula. It creates difficulties when a need to adjust eligibility occurs, he said.

[2:26:29 PM](#)

CHAIR HUGHES referred to page 2, line 2, to subsection (c) of Amendment 1. She asked whether this would essentially constitutionalize the POMV and if it is structured similarly to current statute or if it is different.

SENATOR KIEHL explained that it would create a constitutional POMV, which is similar in structure since it would consider the average value of the first five of the preceding six fiscal years. The value of corpus of the fund and the earnings reserve would be evaluated. He said the corpus and earnings reserve split would be maintained in the event of a long string of down

years in the investment markets. He said he thought it was valuable to not erase the distinctions of the earnings reserve and corpus of the fund, but to otherwise go to a full POMV.

CHAIR HUGHES related her understanding that the five percent is arrived at by adding the one and one-fourth and three and three-fourths percent. She said that this year the draw is set at 5.25 percent, which will drop to five percent. She asked when the five percent drop is scheduled to occur.

SENATOR KIEHL offered his belief that it would be effective in 2021, since [SJR 5] would go before the voters in 2020.

CHAIR HUGHES said it would align with the statutes.

[2:28:30 PM](#)

SENATOR SHOWER expressed concern that the legislature would likely stick with 25 percent. He suggested that the legislature is still holding discussions on the POMV so this language might have unintended consequences. He said he was not necessarily opposed to the concept being part of the conversation separate from SJR 5.

CHAIR HUGHES expressed concern that the language is "may" appropriate, especially since this would not have a spending cap or appropriation limit.

SENATOR KIEHL pointed out that the Constitution of the State of Alaska currently does not identify any minimum PFD amount. Further, the legislature can draw 100 percent of the balance in the earnings reserve account in a single year. He said he appreciated that everyone is trying to find the best way to protect the PFD and where the floor belongs. However, the history is that there is not currently a requirement to pay a PFD.

CHAIR HUGHES said that she appreciated that it is an improvement since the Constitution of the State of Alaska currently does not mandate a PFD be paid. She said that the committee should look at achieving the historical formula. She said significant discussion has been held to protect and constitutionalize the earnings reserve account because it could erode. She offered her belief that that discussion is more appropriate for the Senate Finance Standing Committee.

[2:31:52 PM](#)

SENATOR REINBOLD asked whether the sponsor of Amendment 1 would consider an amendment on line 18 for 50 percent.

SENATOR KIEHL said that he thought it was too high, but it is up to the committee.

[2:32:22 PM](#)

SENATOR REINBOLD offered a Conceptual Amendment to Amendment 1, on lines 18 and 22 to read "2.5 percent."

CHAIR HUGHES restated Conceptual Amendment 1 to Amendment 1.

SENATOR REINBOLD withdrew Conceptual Amendment 1 Amendment 1.

[2:33:18 PM](#)

SENATOR SHOWER acknowledged that a number of plans are floating around. He said he likes the direction it is going but putting a minimum of a 50 percent split in the Constitution of the State of Alaska might create unintended consequences. He said he was not prepared to support Amendment 1. He said that the right protection for the Alaska Permanent Fund and the PFD will be a well-thought out battle.

[2:35:24 PM](#)

CHAIR HUGHES appreciated the sponsor's willingness to make a change to the Constitution of the State of Alaska related to the language in Amendment 1.

[2:35:45 PM](#)

MIKE BARNHILL, Policy Director, Office of Management and Budget, Office of the Governor, Juneau, stated that SJR 5 would amend the Constitution of the State of Alaska to do two primary things. First, it would guarantee payment of the permanent fund dividend (PFD) as set out in statute. Currently, the state has a statute to address the PFD, but the payment is not guaranteed because it is subject to appropriation. Amendment 1 would wipe that purpose out of this resolution, so a statutory formula would not be guaranteed. Instead, it would be subject to the legislature making ad hoc decisions every year. The second purpose of SJR 5 is to give the people the ability to consider any changes to the statutory formula going forward. This process allows the legislature to change the formula, but the people must approve it by a vote. However, that purpose would be eliminated in Amendment 1. He reiterated that the governor's purposes are removed so the administration prefers the committee not adopt it.

[2:37:41 PM](#)

CHAIR HUGHES maintained her objection.

[2:37:44 PM](#)

A roll call vote was taken. Senator Kiehl voted in favor of Amendment 1 and Senators Micciche, Reinbold, Shower, and Hughes voted against it. Therefore, Amendment 1 failed by a 1:4 vote.

[2:38:24 PM](#)

SENATOR MICCICHE moved to adopt Amendment 2, work order 31-GS1072\U.3, Nauman, 4/15/19.

AMENDMENT 2

OFFERED IN THE SENATE
TO: CSJJR 5(STA)

BY SENATOR MICCICHE

Page 1, line 15:
Delete "a program of"

Page 2, lines 2 - 3:
Delete "An appropriation under Section 13 of this article is not necessary for a transfer under this subsection."

Insert "The transfer of income for the payment of dividends to State residents under this subsection does not require an appropriation under Section 13 of this article."

Page 2, line 5:
Delete "program of dividend payments"
Insert "amount transferred for the payment of dividends"

Page 2, lines 6 - 7:
Delete ", including the amount of the dividend and eligibility requirements,"

CHAIR HUGHES objected for discussion purposes.

SENATOR MICCICHE said that Amendment 2 was co-authored by Senator Shower and himself primarily as clean-up language. He reviewed the language, relating that the first change on page 1, line 15, read, "Each fiscal year, a portion of the income from the permanent fund shall be transferred solely for a program of dividend payments

He referred to Page 2, lines 2-3, which would delete "An appropriation under Section 13 of this article is not necessary for a transfer under this subsection." It would replace it with the language, "The transfer of income for the payment of dividends to state residents under this subsection does not require an appropriation under Section 13 of this article."

SENATOR MICCICHE said that under SJR 5, an appropriation would no longer be necessary. It would simply be a transfer and Amendment 2 would rearrange the language to reflect the sponsor's intent.

He referred to page 2 line 5 of SJR 5, which would delete the language, "program of dividend payments" and change it to "amount transferred for the payment of dividends." Finally, on page 2, lines 6-7, Amendment 2 would delete the language ", including the amount of the dividend and eligibility requirements." He said that since this language refers to dividend payments, that it eliminates this section, and goes right to the language, "shall not take effect unless approved by the voters" He said it would substantively remove eligibility requirements from [SJR 5], which should be under the purview of the legislature.

[2:40:42 PM](#)

SENATOR SHOWER said that one of the things he was concerned with was that if people said they had met eligibility for certain programs within the state, it might be perceived as setting precedent. The legislature needs to retain the ability to change eligibility requirements if it decides to "tighten up" the program. For example, he is eligible for any number of things, he said.

SENATOR KIEHL asked for clarification on page 2, lines 4-6, which states that the transfer does not require an appropriation. He was unsure what law changes the amount that gets transferred.

SENATOR MICCICHE responded that if [Amendment 2 and the resolution] were to pass, it would require that a ballot measure go to the voters to change the constitutional language and the amount that would be transferred. He said that Amendment 2 supports the original statutory payment in existence as of December 31, 2018. If that amount is changed, it would go before the voters. He said that the statutory payment as of December

31, 2018 is in SJR 5 and if the legislature decides to change it, that amount must go before the voters for approval.

SENATOR KIEHL recalled the legislature had a list of allowable investments, which is what the state anticipates it can earn on the fund. He asked whether that would have an effect on the amount to be transferred and if that would need to go before the voters.

SENATOR MICCICHE answered that in his interpretation, it does not. He suggested the administration may wish to weigh in, but this amendment would support the five-year trailing earnings and the traditional statutory calculation for the permanent fund dividend (PFD). It would not change how earnings can be invested.

SENATOR KIEHL appreciated the intent but he expressed concern whether Amendment 2 would accomplish it.

[2:44:13 PM](#)

MR. BARNHILL responded that the investment list statutes were set out in Title 37, which governed how the Permanent Fund Corporation invests the assets of the permanent fund. The program for the permanent fund dividend (PFD) is set out in Title 43, so it is completely separate. He said that nothing in SJR 5 relates to issues governed by statute in Title 37.

[2:44:58 PM](#)

SENATOR KIEHL said Amendment 2 deletes the word "program."

MR. BARNHILL answered that the program of dividends is in Title 43 and a program of investments is in Title 37. They are completely separate. He said that to make it patently clear, the governor does not intend this to touch anything related to the management of permanent fund assets. In response to Chair Hughes, he said the administration supports Amendment 2. It would provide a little cleanup and substantively it eliminates "dividend and eligibility [requirements]."

[2:45:59 PM](#)

CHAIR HUGHES said that the committee held discussions on eligibility. She offered her belief that the voters are more concerned about PFD itself and the voters are already eligible so she did not think Alaskans would mind.

[2:46:31 PM](#)

CHAIR HUGHES removed her objection.

[2:46:36 PM](#)

SENATOR KIEHL remarked that he still has concerns and would like to work on this question going forward but he will not object to Amendment 2.

There being no further objection, Amendment 2 was adopted.

[2:47:02 PM](#)

SENATOR MICCICHE moved to adopt Amendment 3, work order 31-GS1072\U.4, Nauman, 4/15/19.

AMENDMENT 3

OFFERED IN THE SENATE
TO: CSJJR 5(STA)

BY SENATOR MICCICHE

Page 2, line 3, following "subsection.":

Insert "Dividend payments under this subsection shall be distributed in four equal quarterly payments over the calendar year."

CHAIR HUGHES objected for discussion purposes.

SENATOR MICCICHE explained that Amendment 3 was brought to him by Mr. Clem Tillion, who is one of the defenders of the Permanent Fund. He said that this would distribute dividend payments in four equal payments. He said that currently about 10 percent of dividends stay in the state. He said that four smaller payments are more likely to end up in the economy at a much higher proportion. He offered his belief that it would be at a lower cost to the state because the remaining dollars will continue to earn over the course of the year. Finally, he believes it will reduce some of the more negative behavior that occurs by a small segment of residents who receive a big check and often do not use it for what is best for them, their families, or their communities. He recapped that it would pay the same amount of the dividend over four quarters.

[2:49:14 PM](#)

SENATOR SHOWER said he supports Amendment 3. He echoed the sponsor's rationale in support of the amendment. He said the University of Alaska, Institute of Social and Economic Research conducted a study and a big bump in economic impact occurs, but then it has no effect in the economy. He said a number of

positive aspects could occur if people receive quarterly checks. He characterized this as a really good thing for the state.

[2:51:31 PM](#)

SENATOR KIEHL asked how the executive branch would handle child support or garnishments.

SENATOR MICCICHE answered that it would be relatively unchanged. Most recipients receive their checks by electronic means. He suggested that some minor administrative costs might be incurred, but the same garnishments would apply.

[2:53:20 PM](#)

MR. BARNHILL said the administration has looked at this in terms of monthly payments. He related his understanding that the Permanent Fund Division would have an increased burden, but he was unsure that it was sufficient enough to warrant setting this aside since it would result in many benefits. He offered a friendly amendment to read, shall be distributed in "no less than" to allow the state the option to go to monthly payments. He said that the administration was considering a statutory fix rather than a constitutional one, but it is within the purview of the committee to decide.

[2:54:41 PM](#)

CHAIR HUGHES asked if she could assume that the administration has no objection to Amendment 3.

MR. BARNHILL answered that the administration was neutral on Amendment 3.

CHAIR HUGHES asked whether the administration preferred adding the language "no less than."

MR. BARNHILL said if the administration chose to distribute monthly dividends, adding Amendment 3 to the constitution could prohibit it.

[2:55:22 PM](#)

SENATOR MICCICHE said that quarterly payments are significantly different than the minimum basic income concept of monthly payments. He thought it would get into a "Zuckerberg model, which is an extremely leftist model" and is one he has a difficult time supporting. He said that Amendment 3 would break the PFD into quarterly payments. He said the monthly aspect is different than his vision.

[2:56:05 PM](#)

SENATOR SHOWER reported that the Permanent Fund Division garnishments always take priority and the process would not change.

SENATOR KIEHL asked whether this would trigger income tax withholding. He asked how that would work.

MR. BARNHILL responded that he pleads ignorance.

SENATOR MICCICHE said that withholding is based on the amount and not on the frequency of distribution. It would remain the same.

[2:57:33 PM](#)

CHAIR HUGHES removed her objection.

There being no further objection, Amendment 3 was adopted.

[2:57:54 PM](#)

CHAIR HUGHES moved to adopt Amendment 4, work order 31-GS1072\U.1, Nauman, 4/9/19.

AMENDMENT 4

OFFERED IN THE SENATE
TO: CSJJR 5(STA)

BY SENATOR HUGHES

Page 2, line 18:

Delete "**Transition.**"

Insert "**Transition; Conditional Effect.** (a)"

Page 2, following line 24:

Insert a new subsection to read:

"(b) The 2020 amendments to the Alaska permanent fund (art. IX, sec. 15) take effect only if, in 2020, the voters approve an amendment relating to an appropriation limit (art. IX, sec. 16)."

SENATOR SHOWER objected for discussion purposes.

CHAIR HUGHES said Amendment 4 stems from her concern. She related a scenario in which oil prices dropped substantially, and the legislature did not have a spending limit in place but had set a PFD amount. She said this contingency language would

not add SJR 5 to the Constitution of the State of Alaska unless SJR 6, which sets the spending limit, was approved by the voters.

[2:59:04 PM](#)

MR. WHITT said that Amendment 4 would tie SJR 5 to the constitutional spending cap in SJR 6. He referred to the language on page 2 line 24. He said that if the language in [Section 1 and 2 of Article IX, Section 15 were to pass without passage of [the resolution] relating to an appropriation limit, it would raise a number of constitutional issues. One issue was to tie an Alaskan's vote on one ballot initiative to another. He said Chair Hughes wanted to start the conversation and work on a second approach to address this issue.

[3:00:24 PM](#)

CHAIR HUGHES withdrew Amendment 4. She said that she did not want to set up the legislature on legal issues. She said that she did not want to put the legislature in the position of needing to raise taxes to meet the state's obligation. This is why the spending limit is so crucial.

[3:01:03 PM](#)

CHAIR HUGHES moved to adopt Amendment 5, work order 31-GS1072\U.2, Nauman, 4/15/19.

AMENDMENT 5

OFFERED IN THE SENATE
TO: CSJJR 5(STA)

BY SENATOR HUGHES

Page 1, line 2, following "**dividend**":

Insert "**, relating to an appropriation limit, and relating to the budget reserve fund**"

Page 2, following line 15:

Insert new resolution sections to read:

"* **Sec. 3.** Article IX, sec. 16, Constitution of the State of Alaska, is repealed and readopted to read:

Section 16. Appropriation Limit. (a) Except as provided in (b) of this section, appropriations made for a fiscal year shall not exceed the average of the appropriations made in the previous three fiscal years by more than the average change in inflation in the previous five fiscal years. In this subsection, the

change in inflation shall be based on the Consumer Price Index for Anchorage, Alaska, as prescribed by law. This subsection does not apply to an appropriation

(1) to the principal of the Alaska permanent fund and from the Alaska permanent fund income for the administration of the fund or payment of permanent fund dividends;

(2) to meet a state of disaster declared by the governor as prescribed by law;

(3) to pay obligations or spend the proceeds or revenue of State general obligation bonds and revenue bonds;

(4) that is a reappropriation of a previous unobligated appropriation;

(5) that is duplicating the authorization to expend funds from another appropriation;

(6) from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issues revenue bonds; and

(7) of money to a State savings account or fund that requires a subsequent appropriation from that account or fund as prescribed by law.

(b) The legislature may appropriate an additional amount in excess of the appropriation limit under (a) of this section for capital improvements, except that the amount for capital improvements made in excess of the appropriation limit in a fiscal year shall not exceed ten percent of the total appropriation limit for that fiscal year. Appropriations for capital improvements that exceed the appropriation limit shall not be used in calculating the appropriation limit in subsequent fiscal years.

(c) Any unexpended, unobligated, and unappropriated balance in the general fund at the end of a fiscal year shall be deposited into the following funds in the priority order listed:

(1) the permanent fund under Section 15 of this article in an amount not to exceed fifty-percent of the income produced from the permanent fund during the fiscal year just ended;

(2) the budget reserve fund under Section 17 of this article in an amount necessary to bring the budget reserve fund balance equal to the appropriation limit for the next fiscal year;

(3) the permanent fund under Section 15 of this article.

(d) Section 7 of this article does not apply to deposits made under (c) of this section.

* **Sec. 4.** Article IX, sec. 17(a), Constitution of the State of Alaska, is amended to read:

(a) There is established as a separate fund in the State treasury the budget reserve fund. Except for money deposited into the permanent fund under Section 15 of this article, all money received by the State [AFTER JULY 1, 1990], as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a State or federal court directly involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund. Money in the budget reserve fund shall be invested so as to yield competitive market rates to the fund. Income of the fund shall be retained in the fund. Section 7 of this article does not apply to deposits made to the fund under this subsection. Money may be appropriated from the fund only as authorized under (b) [OR (c)] of this section.

* **Sec. 5.** Article IX, sec. 17(b), Constitution of the State of Alaska, is amended to read:

(b) If the amount in the general fund available for appropriation for a fiscal year is less than the appropriation limit under Section 16 of this article [AMOUNT APPROPRIATED FOR THE PREVIOUS FISCAL YEAR], an appropriation may be made from the budget reserve fund. However, the amount appropriated from the fund under this subsection may not exceed the amount necessary, when added to other funds in the general fund available for appropriation, to provide for total appropriations equal to the appropriation limit under section 16 of this article [AMOUNT OF APPROPRIATIONS MADE IN THE PREVIOUS CALENDAR YEAR FOR THE PREVIOUS FISCAL YEAR]."

Re-number the following resolution sections accordingly.

Page 2, lines 16 - 17:

Delete "a new section"

Insert "new sections"

Page 2, following line 24:

Insert new material to read:

"Section 31. Application of Appropriation Limit.

The 2020 amendment limiting appropriation increases and requiring a portion of the unexpended, unobligated, and unappropriated balance in the general fund to go to the permanent fund (art. IX, sec. 15) applies to appropriations made for the fiscal year ending June 30, 2022, and thereafter.

Section 32. Budget Reserve Fund Transition. The repeal of Section 17(d) of Article IX in the 2020 amendments eliminates any repayment required under that subsection through the fiscal year ending June 30, 2021.

* **Sec. 7.** Article IX, secs. 17(c) and 17(d), Constitution of the State of Alaska, are repealed."

Renumber the following resolution section accordingly.

SENATOR SHOWER objected for discussion purposes.

CHAIR HUGHES explained Amendment 5. Since the contingency language was problematic the Division of Legal Services suggested this would provide a better solution. It would essentially take language from SJR 6 and roll it into SJR 5. One question was how the courts have ruled on the single subject rule. She said that the courts have not yet had a case related to a constitutional amendment, but the courts have ruled on legislative bills. She said that the courts have allowed it for bills, so long as an overarching general topic exists, such as state finances. Even though it has not yet been tested, it is likely to stand up better than the approach taken in Amendment 4.

[3:02:08 PM](#)

MR. WHITT agreed that Amendment 5 would take the language in SJR 6, the appropriation limit, in the form that passed out of the Senate Judiciary Standing Committee and insert the language into SJR 5, related to the permanent fund and permanent fund dividend. This would tie both resolutions together.

CHAIR HUGHES related her understanding that the administration prefers to keep the vehicles separate, since it might be confusing. However, she believes voters can understand this and would be concerned about potentially incurring high tax rates in

the future. She offered her belief that voters would appreciate the resolution and possibly support it.

[3:03:13 PM](#)

SENATOR KIEHL recalled that the Legislative Legal Services had some concerns about SJR 6, in terms of whether it constituted a constitutional amendment or a revision.

MR. WHITT answered that is correct. He said the committee held discussions on whether it was a constitutional amendment or a revision. Ultimately, the governor's position is that the administration could effectively argue their position on SJR 6. The administration is prepared to do so. It was the will of the committee to trust the governor and his position on the resolution. The committee moved SJR 6 out of committee.

SENATOR KIEHL said it may not have been unanimous. He said that that the concern does not diminish but would increase by coupling more constitutional sections and changes to the legislature's power to appropriate. He said that appropriation is the fundamental authority of the legislative branch. He said it begins to look like a significant rewrite. He said that his concern about a constitutional revision grows rather than shrinks.

[3:05:07 PM](#)

SENATOR SHOWER removed his objection.

[3:05:18 PM](#)

SENATOR KIEHL objected.

[3:05:28 PM](#)

At-ease.

[3:05:41 PM](#)

CHAIR HUGHES reconvened the meeting. A roll call vote was taken. Senators Shower, Micciche, and Hughes voted in favor of Amendment 5 and Senator Kiehl voted against it. Therefore, Amendment 5 passed by a 3:1 vote.

[3:06:20 PM](#)

CHAIR HUGHES restated that on a vote of three yeas, one nay, and one absent, Amendment 5 was adopted.

[3:06:39 PM](#)

SENATOR MICCICHE moved to report SJR 5, work order 31-GS1072/U as amended, from committee with individual recommendations and attached fiscal note(s).

There being no objection, CSSJR 5(JUD) was reported from the Senate Judiciary Standing Committee.

[3:07:19 PM](#)

At-ease.

[3:07:23 PM](#)

CHAIR HUGHES reconvened the meeting and reviewed upcoming committee announcements.

[3:09:22 PM](#)

There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 3:09 p.m.