

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

February 26, 2019

3:35 p.m.

**MEMBERS PRESENT**

Senator Mike Shower, Chair  
Senator John Coghill, Vice Chair  
Senator Lora Reinbold  
Senator Peter Micciche

**MEMBERS ABSENT**

Senator Scott Kawasaki

**COMMITTEE CALENDAR**

SENATE BILL NO. 34

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

- HEARD & HELD

SENATE BILL NO. 23

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

- HEARD & HELD

SENATE BILL NO. 24

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

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 34

SHORT TITLE: PROBATION; PAROLE; SENTENCES; CREDITS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/23/19	(S)	READ THE FIRST TIME - REFERRALS
01/23/19	(S)	STA, FIN
02/07/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/07/19	(S)	Heard & Held
02/07/19	(S)	MINUTE(STA)
02/11/19	(S)	JUD REFERRAL ADDED AFTER STA
02/12/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/12/19	(S)	Heard & Held
02/12/19	(S)	MINUTE(STA)
02/14/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/14/19	(S)	Heard & Held
02/14/19	(S)	MINUTE(STA)
02/19/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/19/19	(S)	Heard & Held
02/19/19	(S)	MINUTE(STA)
02/21/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/21/19	(S)	Heard & Held
02/21/19	(S)	MINUTE(STA)
02/26/19	(S)	STA AT 3:30 PM BUTROVICH 205

BILL: SB 23

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

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

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

BILL: SB 24

SHORT TITLE: PFD SUPPLEMENTAL PAYMENTS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

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

**WITNESS REGISTER**

JOHN SKIDMORE, Director  
Criminal Division  
Department of Law (DOL), Anchorage, Alaska  
**POSITION STATEMENT:** Answered questions about SB 34.

JENNIFER WINKELMAN, Director  
Division of Probation and Parole  
Department of Corrections (DOC)  
Juneau, Alaska  
**POSITION STATEMENT:** Answered questions about SB 34.

JEFF EDWARDS, Director  
Parole Board  
Department of Corrections (DOC)  
Anchorage, Alaska  
**POSITION STATEMENT:** Answered questions about SB 34.

KELLY GOODE, Deputy Commissioner  
Department of Corrections (DOC)  
Anchorage, Alaska  
**POSITION STATEMENT:** Testified on availability of crime statistics.

BRUCE TANGEMAN, Commissioner  
Department of Revenue (DOR)  
Anchorage, Alaska  
**POSITION STATEMENT:** Answered questions about SB 23 and SB 24.

ED KING, Chief Economist  
Office of Management and Budget (OMB)  
Juneau, Alaska  
**POSITION STATEMENT:** Answered questions about SB 23 and SB 24.

**ACTION NARRATIVE**

[3:35:58 PM](#)

**CHAIR MIKE SHOWER** called the Senate State Affairs Standing Committee meeting to order at 3:35 p.m. Present at the call to order were Senators Reinbold, Coghill, Micciche, and Chair Shower.

**SB 34-PROBATION; PAROLE; SENTENCES; CREDITS**

[3:36:29 PM](#)

**CHAIR SHOWER** announced the consideration of SENATE BILL NO. 34

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

He noted that SB 34 was sponsored by the Senate Rules Committee by request of the governor and that representatives from the Department of Law and Department of Corrections would be available to answer questions.

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JOHN SKIDMORE, Director, Criminal Division, Department of Law (DOL), Anchorage, introduced himself and offered to answer questions.

JENNIFER WINKELMAN, Director, Division of Probation and Parole, Department of Corrections (DOC), Juneau, introduced herself and offered to answer questions.

JEFF EDWARDS, Director, Parole Board, Department of Corrections (DOC), Anchorage, Alaska, introduced himself and offered to answer questions.

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CHAIR SHOWER said his goal was to bring up any amendments from committee members on Thursday and move the bill out, if possible. He noted he was going to handle his questioning of Mr. Skidmore like a sectional by going through and asking questions about the sections of concern.

CHAIR SHOWER said that in Section 4, page 3, line 19, the commissioner is given power to make the regulations about probationers. He asked Mr. Skidmore if he had any issues with changing that to allow the Department of Law (DOL), Department of Corrections (DOC), and the Department of Public Safety (DPS) to collaborate on establishing the program described in subsection (h).

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MR. SKIDMORE answered that Section 4 deals with earned compliance credits. It's about how to manage time accounting for individuals who are committed to the Department of Corrections. The regulations for managing the earned compliance program are

therefore established by the commissioner of DOC because those individuals are within that department's control. The Department of Law does not have a role in the supervision of individuals committed to DOC. The role of the Department of Law for the development of any regulations is first to consult with an agency about any policy objectives they want. There are lawyers assigned to the Department of Corrections for that purpose. Second, any regulations proposed by any entity within the state of Alaska go through a review by DOL attorneys to ensure that the drafting is consistent with other regulatory or statutory drafting. The legal review is not about specific management of those individuals. He is not aware of any role that the Department of Public Safety plays in the supervision of individuals committed to DOC or in time accounting. The only role he is aware of that DPS plays in relation to Corrections is the transportation of inmates for court hearings.

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SENATOR COGHILL recalled discussion about the regulations for earned compliance credits in Section 4. He referred to the language that states, "Nothing in this subsection prohibits the department from recommending to the court the early discharge of the probationer as provided in AS 12.55 and this chapter." He asked Mr. Skidmore to remind him of what is in AS 12.55.

MR. SKIDMORE said he'd first point out that Title 33 specifically focuses on the Department of Corrections. AS 12.55 addresses sentencing provisions for criminal conduct and some statutes in that chapter may address authorized conditions of probation, but it is mainly about sentencing procedures in criminal cases.

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SENATOR MICCICHE asked how DOL arrived at 30 percent credit vs one-for-one in Section 4.

MR. SKIDMORE replied that the federal government has used that ratio in recent legislation. That ratio is also found in some of the studies on earned compliance credit. He doesn't have a particular rationale other than it is a common ratio that others have used. When they examined the ratio of one-for-one, the 50 percent reduction seemed greater than what was necessary. A 30 percent reduction seemed appropriate. Many aspects of the law look at things in thirds, such as discretionary or mandatory parole. The natural course is to follow what is consistently laid out in statutory schemes about how to look at concepts of

how much time should be reviewed when there is some benefit associated with it.

SENATOR MICCICHE said that with this change, Mr. Skidmore is saying he supports the concept that compliance should be rewarded, but one-for-one is too rich.

MR. SKIDMORE answered that is accurate. The administration concluded that providing incentives or rewards for good behavior makes sense. To change or encourage behavior can be done in two ways. One is to provide a reward and the other is to punish noncompliance. This section of SB 34 attempts to provide a reward.

SENATOR COGHILL said that for a committee discussion, he would look at that as an amendment because they are changing several structures of reward and sanctions. His thinking is that what is set out is sufficient, given that sanctions have changed, and who can get access to these benefits has changed. That was a broad statement, but he wanted the committee to know he would be looking at that.

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CHAIR SHOWER referenced Section 4, AS 33.05.020(h)(2)(A), (B) and (C) and asked what happens to credits if a probationer violates conditions.

MR. SKIDMORE replied that the penalties are twofold. First, they would not be rewarded the three-to-one credit against probation time. That is addressed in Section 5, subsection (j). Second, if a court assessed a petition to revoke probation and found there was a violation of probation, then any accrued credits to that date would be lost.

CHAIR SHOWER asked Mr. Skidmore to speak to the difference between a violation and a technical violation. For example, if someone forgot an appointment, something not nefarious, how is that delineated because the idea is to try to modify bad behavior but not penalize innocent mistakes.

MR. SKIDMORE responded that the statute itself speaks of a violation. In this context for violating probation, that means when a petition is filed with the court and a person is found in violation of that. There is also a concept of administrative sanctions. When a probation officer thinks someone has not followed the conditions set out, the probation officer can take administrative action, but that is not imposing additional jail

time. That is the intent here. The violation for which someone would lose accrued credit is a violation found by the court. If the committee is concerned about that delineation, he suggested adding language to make it clear that this is only a violation found by the court and not something addressed administratively.

CHAIR SHOWER replied the committee may do that.

SENATOR MICCICHE said, later in the bill, under parole, Section 16, the words "other than a technical violation under AS 33.16.215" were removed. He asked why it was not clarified for probation as well.

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MR. SKIDMORE answered that technical violation is delineated in that section of the bill, but not earlier. The reason for removing the term "technical violation" is that the bill also eliminates the concept of placing caps for violation of what is known as technical violations, both in probation and parole. When those are eliminated, only violation is left, not a technical or nontechnical violation. Referring to a technical violation at that point makes it inconsistent or awkward to have two different terms being used. Throughout the bill, it should simply say a "violation," something found by the courts or parole board, not something addressed administratively by probation officers.

SENATOR MICCICHE asked if the removal in Section 16 is the intent of the discussion in probation as well.

MR. SKIDMORE responded that is the intent. In Section 16, "technical violation" is removed. When talking about what happens for a probation violation, he would refer to Section 1. The term technical violation is removed throughout the bill. The overall intent in the bill, both in probation and parole, is that violations are found by the court or parole board, such that there is associated due process and an offender is placed on notice of the particular condition. If there is a contested hearing, the individual is entitled to counsel, and there is a finding of fact by an independent body that the burden of proof was met, and the violation was found. That entity then determines the appropriate sanction to impose. That is what is referred to for the violations throughout the bill, either for parole or probation.

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CHAIR SHOWER asked if it would cause problems to insert "technical violation" in Section 4.

MR. SKIDMORE answered that if the intent is to delineate between a type of conduct that violates a condition but is not a violation found by the court or parole board, he would recommend using a term other than "technical violation." He would instead be referring to a violation found by the court or parole board. That makes it clear that that due process is associated with it and who it is who needs to find the violation. Otherwise, you are moving away from the description of the type of violation that would be associated with it. Current law delineates technical from nontechnical by saying a nontechnical is a new criminal offense. The problem with that has been that the array of technical violations is vast, ranging from simply being an hour late reporting to a probation officer to consuming alcohol or being in the presence of other felons.

Anything that is not a new crime is deemed a technical violation, he said. That, too, is a vast array of conduct and it has to be taken into consideration with the underlying offense. Simply identifying conduct as a technical violation completely ignores how that particular violation is associated to or related to the underlying criminal charge for which the person was convicted. That is one of the primary issues with the way that this was set up and designed, Mr. Skidmore said.

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SENATOR REINBOLD directed attention to Section 1 and advised that her questions are about the rights of the accused and the right to a speedy trial in the Constitution. She said she wanted to motivate defendants to get to trial and was considering a possible amendment on the credit a defendant earns for jail time pending their trial. She asked for his input.

MR. SKIDMORE asked for clarification that she was talking about Section 1 of SB 34.

SENATOR REINBOLD answered yes, page 2, line 2, which is current statute.

MR. SKIDMORE said this provision in AS 12.55.025(c) refers to when an individual is in custody pending trial or sentencing. This is not about providing credit, for example, for electronic monitoring, treatment, or any other type of release. This is when a person is in custody. This provision would not provide an

incentive to delay trial because it is credit for the time spent in a hard bed, in a facility.

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SENATOR REINBOLD asked if anything in SB 34 would help motivate defendants to get to trial and stop pretrial delays. This would solve a problem that existed before Senate Bill 91. That is the ultimate goal, she said.

MR. SKIDMORE advised that SB 33 contains provisions regarding electronic monitoring, treatment, and limiting credit that can be earned pretrial. SB 34 is focused on the conduct that occurs postconviction, after the sentence is imposed, and how they are managing probation or parole. Neither has an impact on pretrial delay. The administration and the Department of Law agree with her goal, but the appropriate place to look for those opportunities are in SB 33.

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CHAIR SHOWER directed attention to subsection (i) in Section 5 and asked for an explanation of why this wasn't expanded to include individuals convicted of things like violent crime against another or multiple crimes of the same offense or a serial offender. It seems narrow to limit this to a probationer convicted of a sex offense, as defined in AS 12.63.100.

4:02:47 PM

MR. SKIDMORE answered that the concept in Section 5, AS 33.05.020(i), is about not reducing the time a sex offender is on probation. The provision is focused in that area because Alaska manages and supervises sex offenders on probation with the containment model. That model has been demonstrated to be very effective in reducing the risk of sex offenders reoffending, but it is not designed for someone who commits murder, arson, drug distribution, or another felony assault. It is focused on sex offenders.

He said you are asking whether there are certain crimes for which the legislature or society at large does not believe an individual should have their period of probation reduced. SB 34 does not address that, but the bill could be amended if that's something the committee wanted to address. He reiterated that subsection (i) focuses solely on the containment model of treatment to ensure it was not reduced in its timeframe because that could reduce its effectiveness.

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SENATOR COGHILL stated support for Section 5, which provides that probationers forfeit credit if they violate conditions. That is one reason why he would like to go back to the day-for-day model because the disincentive becomes as significant as the incentive. That is something he would be watching.

CHAIR SHOWER referenced the deleted language in Section 6, paragraph (4) and asked Mr. Skidmore to explain what "give receipts for money collected and make at least monthly returns of it" refers to.

MR. SKIDMORE replied the paragraph is talking about administrative sanctions and records of probation work. He suggested that Ms. Winkelman may know if probationers are asked to do some kind of work in the community and under what circumstances money would be collected.

CHAIR SHOWER, noting that Ms. Winkelman was shaking her head no, said he'd like an answer on what that means and why the entire paragraph was deleted.

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MR. SKIDMORE responded that paragraph (4) and paragraph (6) in Section 6 talk about the program of administrative sanctions in a way that is more formulistic than was used previously. He continued:

The idea was to allow the Department of Correction probation officers to use some sort of incentive as they deemed appropriate, but this eliminating a formal concept of administrative sanctions was saying, 'You're not required to use administrative sanctions earlier.' Let me give you an example. And I'll defer to Ms. Winkelman on this as well if I get any of this information incorrect. But for example, we know that under Senate Bill 91, there were approximately between five and 700 petitions to revoke probation that were filed each month since January of 2017. And if you take that and multiply it out over the whole timeframe, you get approximately 14,000 petitions that are filed. When you look at the administrative sanctions, we know that there were over 21,000 administrative sanctions during roughly the same time span. The idea is that, yes, administrative sanctions may have a place, but the way in which it is listed here in statute, and in fact now, the administrative

sanctions happen far more frequently than you are having to petition to revoke probation. And it makes it difficult to compare the pre-SB 91 to what happens in SB 91 because if you simply, for instance, were to say that the number of petitions filed are reduced, you've completely ignored those 21,000 administrative sanctions that were imposed. So, the concept here was that the way it is written in statute is more robust than what is necessary, which is why those references in the statutes are eliminated. And it is left to the discretion of the Department of Corrections as to where it's appropriate to utilize those.

CHAIR SHOWER asked if DOC had any follow-up.

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MS. WINKELMAN agreed with Mr. Skidmore. She said the idea is that SB 34 is returning the discretion to probation officers to be able to react to a violation based on the person's risk needs and not by being bound by something in statute.

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CHAIR SHOWER asked if she saw any unintended consequences that would limit the PO's ability to take appropriate action.

MS. WINKELMAN answered no.

SENATOR COGHILL said that is a policy call. The bill is trying to set up a series of administrative actions to allow individuals to work and be productive because they are going to be required to start paying restitution. This is lifted from AS 33.05.020(g) and he intended to look and see if that is the operative part. He recalled that that was the intention of the sanctions.

[4:12:24 PM](#)

CHAIR SHOWER, noting that "temporary" is not defined in Section 7, page 5, line 28, asked if a limit should be set. He also asked if victims should be notified if a probation officer's caseload is greater than 75. He subsequently ascertained that Mr. Skidmore was not looking at the CS, version M, and asked if DOC could offer an explanation.

MS. WINKELMAN said that giving an example of a temporary situation might be helpful. In some of their rural areas, one probation officer is assigned to a unit. For example, there is one probation officer in Kotzebue. From time to time, not only

is the officer supervising a caseload of felons, but the officer will also be writing presentencing reports on folks that are in the system for a short period of time. The officer writes a presentencing report for the court. They are sentenced based on that and then go into custody, so they are on the officer's caseload for a temporary amount of time. She could see some staffing issues with regard to that. Whether or not to define "temporary" would be a policy call. The second question about notifying victims and courts would be a policy call.

SENATOR COGHILL asked what the average probation caseload is currently.

MS. WINKELMAN said it depends on the area and staffing levels, but she guessed between 50 and 60.

SENATOR COGHILL noted that another bill will give new duties. He asked if this limitation is going to create temporary and extraordinary circumstances under pretrial. The bill puts a cap on it here but adding new duties in another bill is something to think about, he said.

MS. WINKELMAN said DOC has been thinking about that with SB 33, the pretrial functions, and their caseloads.

SENATOR COGHILL said that would create a roadblock for him.

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CHAIR SHOWER mentioned the concern about victims not being notified and asked if in Section 10, it would be advisable to add the term "victim" to AS 33.16.090(b)(3)(B)(ii), because there have been cases of victims not being notified.

MS. WINKELMAN answered that she believes that adding the term "victim" there would be sufficient. Because this is a parole matter, she wondered if Mr. Edwards had anything to add.

[4:19:28 PM](#)

CHAIR SHOWER asked if DOC is making sure mechanisms are in place so that victims know when parole and probation is happening.

MR. EDWARDS said the department does have a new, strict policy about victim notification requirements specifically related to parole notifications. Adding that language to that section of the statute is a policy decision.

CHAIR SHOWER asked DOC to make the committee aware of any loopholes they bill is missing.

MS. WINKELMAN echoed Mr. Edwards. DOC does have a relatively new and robust victim notification policy, driven by Senate Bill 91. She opined that it does a good job of ensuring that victims are notified.

CHAIR SHOWER replied fair enough, but he wanted to make sure because of the stories that have come up.

[4:21:24 PM](#)

SENATOR MICCICHE reminded the committee that SB 34 removes serious crimes from discretionary parole, which was allowed under Senate Bill 91. This is a return to pre-Senate Bill 91 law. Crimes that would not be eligible for discretionary parole include: non-sex class A felonies, Robbery I, Assault I, Arson I; B felonies if the person had one or more prior felony convictions; C felonies if the person had two or more prior felony convictions; B and C felonies, Sexual Assault II, Sexual Abuse of a Minor II, distribution of child pornography. The foregoing victim-rich crimes are ineligible for discretionary parole.

CHAIR SHOWER said he just wanted to make sure nothing is missed and it's on the record. He read the provision in Section 10, AS 33.16.090(b)(5), on page 8, lines 15-18, regarding when somebody can be considered for release on discretionary parole. He asked if release after one-fourth of the active term of imprisonment was too light, and why one-third or one-half was not considered.

MS. WINKELMAN said one-fourth was pre Senate Bill 91 law. She deferred further comment to Mr. Edwards or Mr. Skidmore.

MR. EDWARDS said he did not have that information. It's the way it has been since he's been around, almost 20 years.

CHAIR SHOWER asked Mr. Skidmore if he had anything to add.

MR. SKIDMORE said one-fourth has been in statute for quite some time, but he doesn't know how that number was originally chosen. Referring to victim notification, he said AS 33.013(a) requires notification of victims when an individual is discharged from parole. That was added in 2017. He encouraged Chair Showers to verify whether the stories he has heard occurred pre or post the 2017 law.

CHAIR SHOWER said fair point. This is just making sure the committee isn't missing any holes.

SENATOR REINBOLD said she too questioned consideration of discretionary parole after one-quarter of the active term of imprisonment. She asked what other states do on average because one-quarter seemed.

MR. SKIDMORE said he did not know about other states' use in that regard. It's been in statute in Alaska for more than 20 years.

SENATOR REINBOLD asked him to follow up with information about whether discretionary parole is common and if consideration for discretionary parole is common after just one-fourth of the prison term.

CHAIR SHOWER said there was a similar law passed at the federal level, and he didn't want to run into a problem with anything regarding federal supremacy.

[4:26:05 PM](#)

SENATOR MICCICHE asked, referring to what he said earlier about eliminating certain crimes for discretionary parole, what types of crime remain eligible for discretionary parole. That might help the committee with the one-quarter consideration.

MR. SKIDMORE agreed with Senator Micciche's earlier description of the crimes that would not be eligible for discretionary parole. The larger concepts of what would be eligible would include robbery and assault which are in Title 11, Chapter 41, and considered person crimes. Arson is classified as a property crime but is included here because of its serious nature and the harm to others. Theft and criminal mischief are the sort of things that immediately come to mind, he said. Escape I and misconduct involving weapons in the first degree are not eligible for discretionary parole, but lower levels of escape and lower levels of misconduct involving weapons are. This would leave most of the drug trafficking offenses eligible for discretionary parole. The limitation for repeat offenders means this is focused on the first-time felony offenders, not repeat felony offenders. He said a first-time property offender would be the generic description he would provide.

SENATOR MICCICHE clarified that even a relatively serious drug trafficking, first-time offender would still be eligible for parole.

MR. SKIDMORE answered yes; as currently drafted those individuals would be eligible for discretionary parole. As currently drafted, property and drug offenses are not included in the statute.

[4:28:50 PM](#)

SENATOR MICCICHE requested some detail on what those drug trafficking crimes might look like so the committee could consider whether or not to include them in crimes not eligible for discretionary parole.

MR. SKIDMORE said he would provide that information to the chair.

SENATOR REINBOLD said she did not get an affirmative or not about whether he would investigate whether other states have discretionary parole and what the standard is for time served.

CHAIR SHOWER asked Mr. Skidmore if his staff could report that information.

MR. SKIDMORE said he'd try.

SENATOR COGHILL mentioned the roll-back in the number of offenders who would be eligible for discretionary parole. He said he would need to know how many had been eligible under the old law who will not be under the new law and how many were failures at whatever level. "The 'Why do we do this?' as we went into it, we were incentivizing a lot of behavior. We've changed that behavior modification," he said. He said he wanted to know what the effect of that behavior modification had been. He asked how many failures there were for those on discretionary parole and what were the failures.

MR. SKIDMORE said the administration will work on that with all the departments.

[4:31:34 PM](#)

SENATOR MICCICHE asked if this is a total repeal of Senate Bill 91 on discretionary parole.

MR. SKIDMORE answered that he would need to review all of that bill to see if there are sections that are not changed by discretionary parole. The primary parole components of Senate Bill 91 are repealed by SB 34, but he couldn't say if it was 100 percent. Geriatric parole is not changed. Administrative parole has been revoked. SB 34 repeals who is eligible for

discretionary parole. The factors are repealed. The eligibility for it is repealed. The early termination of parole for recommendation is repealed. The earned compliance credit is not a 100 percent repeal. It changes it from 30 days violation free for 30 days credit to one day violation free to three days credit. The sanctions that can be imposed for parole violations, the good time calculations, all of those things, are repealed. He said his quick review suggests that about 95 percent of it is repealed.

[4:33:25 PM](#)

CHAIR SHOWER read the language in Section 21, AS 44.19.645(g)(3) and asked if anyone had the definition of "risk level."

MR. SKIDMORE deferred to the Department of Corrections to define risk level in the context of admitting and placing individuals in DOC.

MS. WINKELMAN explained that DOC does a risk-needs assessment on all offenders that come into the system. There is a classification risk level to determine where an inmate will be housed in the facility. There is also a risk-needs done for supervision, which drives how often the probation officer (PO) sees the person in the field. A risk-level assessment is attached to every offender in the system.

[4:34:52 PM](#)

SENATOR COGHILL said:

This is a reporting mechanism. What we're trying to do is figure how many people have come and gone, what were the issues. So this takes the one-day snapshot. We've actually given them risk-level requirements which are now being repealed. We're changing the pretrial and some of the probation issues. So it will be interesting to me to see how that all fits into it. This is all probation/parole, but it is the Department of Corrections that is supposed to report these things on these different outcomes on pretrial, on probation/parole. For example, they are deleting the requirement to take the precase and postcase resolution on the probationers/parolees submitted solely for technical violations. So we're saying we don't want to know that. Well, I don't know. Because of technical violation changes in here, I don't know what that all is going to mean. This is a report so that we will have information based on what they've

been doing. So as I've looked at this section, I'm not 100 percent sure that we're helping ourselves.

CHAIR SHOWER asked DOC what the change in the law would cause them to do as far as reporting.

MS. WINKELMAN replied that the risk level will still be in place for any inmate in their facility, as well as an offender on supervision, probation or parole. They did risk levels pre-Senate Bill 91 and will continue to do so. The pretrial risk assessment is different. That was a risk assessment given to the courts to determine whether they were going to be released. SB 33 repeals the pretrial assessment.

[4:37:29 PM](#)

SENATOR REINBOLD referenced Section 21 and asked if the working group the Department of Corrections is directed to report quarterly to is the Criminal Justice Working Group.

MS. WINKELMAN said yes; she understands that the working group is the Alaska Criminal Justice Commission and DOC is providing the commission this information.

SENATOR REINBOLD asked if this information is available to legislators. She noted that Senator Costello continues to ask and not receive certain data on arrests. She identified someone in the audience who knew what she was referring to.

CHAIR SHOWER asked Ms. Goode to put herself on the record.

[4:38:46 PM](#)

KELLY GOODE, Deputy Commissioner, Department of Corrections (DOC), Anchorage, advised that she had been to Senator Reinbold's office and explained that the data she has requested is protected because of the information it contains. It went to the university under an agreement, but it cannot be distributed. DOC wants to work with legislators and when there is data they can share, they will.

SENATOR REINBOLD expressed frustration that legislators aren't getting the data they need to show that crime is still a very serious issue.

MS. GOODE said she understands the committee wants numbers and data, and she'll see what can be found that will help.

SENATOR REINBOLD said that if the working group gets it, then they as legislators should get it, even if they have to eliminate names or whatever they have to do. If it is public information, there are some rules there too.

MS. GOODE restated that she would do some research that and get back to the committee.

CHAIR SHOWER echoed Senator Reinbold's sentiment. The committee needs information if it is going to make decisions about which direction to go. "Crime up, crime down. Recidivism up, recidivism down. How do we know?" he said.

[4:41:24 PM](#)

CHAIR SHOWER held SB 34 in committee.

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

[4:42:30 PM](#)

CHAIR SHOWER announced the consideration of SB 23 and SB 24, both sponsored by the Senate Rules Committee at the request of the governor. He noted that the committee members should have a report [February 16, 2019, letter to the committee from Commissioner Tangeman] that has some information relating to the permanent fund and the dividend. He said the committee was looking for a refresher on these bills before looking at the new information. He wanted the committee members familiar with the bills again because he wanted amendments to be submitted over the next week so they could get public testimony and move the bills out of committee.

[4:44:01 PM](#)

BRUCE TANGEMAN, Commissioner, Department of Revenue (DOR), Anchorage, Alaska, introduced himself.

BILL MILKS, Assistant Attorney General, Department of Law (DOL), Juneau, Alaska, introduced himself and said he was available to answer questions

ED KING, Chief Economist, Office of Management and Budget (OMB), Juneau, Alaska, introduced himself and offered to answer questions.

[4:44:26 PM](#)

COMMISSIONER TANGEMAN said SB 23 and SB 24 are being referred to as the Backpay PFD bills. The purpose is to make whole the dividend amounts from Fiscal Year (FY) 16, 17, and 18. The governor's bill proposes to pay out those amounts over the next three years. The governor views it as a three-year issue with a three-year solution. Instead of drawing the full amount down from the earnings reserve to pay back the amount, which DOR estimates to be \$1.9 to \$2 billion total, the proposal is to pay the full amount out over the next three years.

COMMISSIONER TANGEMAN said the simple mechanics are that if someone received a dividend in FY16 and qualifies in FY19, \$1,061 would be added to that person's dividend. If someone received a dividend in FY17 and qualifies in FY21, \$1,289 would be added to that person's dividend. If someone received a dividend in FY18 and qualifies in FY22, \$1,328 would be added to that person's dividend. The justification is that while dividends were not paid out in full over the past three years, the balance of those dividend amounts sat in the earnings reserve. That account saw a ten percent return one year and 12 percent another, so some healthy revenue was earned from the money that did sit there. Governor Dunleavy believes that money is owed to the citizens of Alaska who qualified for a dividend. Allowing it to also sit in the earnings reserve for the next three years is an opportunity to earn more revenue to defer the total cost of about \$2 billion.

COMMISSIONER TANGEMAN said there were several questions at the last presentation that he could walk through. He asked how the committee wanted to proceed.

CHAIR SHOWER asked for the 30,000 feet view of the new information. The purpose was to get the members up to speed and review the latest numbers and any changes.

COMMISSIONER TANGEMAN deferred to Mr. King.

[4:47:19 PM](#)

ED KING, Chief Economist, Office of Management and Budget (OMB), said one of the first questions was how the mechanics in the changes of the fund would play out. He put together a transactional report [on page 1] showing the transfers out of the earnings reserve and the transfers into the earnings reserve as earnings are realized. The left-hand column is the status quo without SB 23 passing. The right-hand column shows the financial impacts of SB 23. He was trying to illustrate that although \$2 billion will be drawn out of the account, in addition to the

Percent of Market Value (POMV), income also goes into the fund. He was addressing the issue of whether there is enough money in the account to fund both general fund obligations and this proposed payback.

CHAIR SHOWER said he wanted to make this crystal clear because the committee went around and around with this the last time it was brought up. This would be akin to having \$20,000 in an account. Adding \$4,100 brings it up to \$24,100. Taking the money out for the dividend brings the account back to a little under \$20,000. There was a lot of confusion because they are not just taking several billion out [of the fund]. They would not be at \$16 billion or, in his example, with \$16,000 in the account. The account is close to where it started because income is added and subtracted. It is close to a wash. He asked if that was an accurate description.

MR. KING answered yes.

CHAIR SHOWER said he wanted to keep from going as far down the spin as last time.

MR. KING said the question continues on page 2 with regard to how the account balances would change over time. He's shown in a stacked bar chart the three different parts of the fund, the principal account, the earnings reserve account (which is a holding account for the earnings), and the unrealized account. That is appreciation on assets that are held by the fund, but not sold yet. The money can't be spent; it's like equity in a house. That equity doesn't sit in a checking account until someone sells the house. It shows that in either case, with or without this bill, the fund is projected to grow and remain healthy. It should not be confused with the fact, as shown on the next page, that the ERA balance is projected to decline. It should not be confused with the idea that the entire fund is in jeopardy.

[4:50:31 PM](#)

SENATOR REINBOLD said it is hard for her to imagine that there is going to be growth. A lot of these are risky investments. She doesn't want a Pollyanna view, but this chart is "you are going to have your cake and eat it too" thinking.

COMMISSIONER TANGEMAN said that is a good, healthy concern to have. Both the dividend calculation and POMV calculation is a five-year average. DOR used a five-year average to absorb corrections in the market. While they are not projecting a

correction in the market, the assumptions by the Permanent Fund account for things like that. It is part of the Alaska Permanent Fund Corporation's estimated 6.555 percent return. There will be market corrections. That is why they are using a five-year average for both the POMV and permanent fund dividend.

[4:51:46 PM](#)

CHAIR SHOWER said that on page 3, the red bar, which represents SB 23 passing, shows the ERA balance declining over time. He asked why they showed the blue bar, which represents SB 23 not passing, also going down. He thought they should be seeing an increase if SB 23 does not pass.

[4:52:08 PM](#)

MR. KING said he put the other charts on page 2 to show there is a difference between the entire fund balance vs. just the ERA balance. The way that the mechanisms currently work, with POMV and inflation proofing and the Permanent Fund projections, there isn't enough earnings to satisfy all the requirements. The ERA balance is declining, even with the status quo because the principal account is growing. The money is not evaporating. It is migrating to the other account. The reason why the red bar declines more quickly is because when there is a smaller asset base, there are smaller earnings; the inflation proofing balance does not change because the principal account is the principal account, regardless, and the inflation proofing requirement doesn't change, but the POMV number does. The entire balance of the account changes with those dynamics.

CHAIR SHOWER asked, when talking about the difference between the ERA to the principal balance, how that is reinvested or how that ends up back in. He asked him to describe for the folks back home why he sees that blue bar increasing. He said you did a good job explaining the Earnings Reserve Account itself and he'd like the same thing for the process with the permanent fund principal, the corpus itself.

MR. KING responded that the principal account of the fund is protected by the constitution. It receives deposits of 25 percent or more of all royalties the state collects. All the earnings on that principal account flow into a holding account called the earnings reserve. When the legislature decides it wants to protect some of those earnings, they move the money into the principal account in order to protect that money from future appropriations. The statute requires a transfer of that kind to account for inflation proofing. The principal account increases because of royalties and inflation proofing.

Historically, when the Earnings Reserve Account has had additional funds in it, the legislatures of the past have done special appropriations to move that money.

[4:54:42 PM](#)

SENATOR MICCICHE said he heard what Mr. King is saying about assuming a 6.55 percent total return and a 6.4 percent statutory return. He asked if he injected a 2008 into his modeling, which would take some time to recover from, especially in the earnings reserve, where they had that down very close to zero, uncomfortably close to zero. He said he doesn't see that in here.

MR. KING replied that it is not in here because it is portraying the average return used by the Permanent Fund Corporation to demonstrate the fund. As DOR does their Monte Carlo simulations, they look at different iterations that include these corrections. A 2008-type correction happens once every ten years or so. Then there are years of 20 percent growth. When there is volatility of negative 18 percent in one year and plus 22 percent in another year, the fund is saying in its projection, that over time it results in a 6.5 percent return. He said he'd show those iterations in Finance to show how that volatility plays out. In some situations, the permanent fund only grows with inflation and in other situations, the fund grows to over \$100 billion. They don't know which world they will be living in, so they have to make a guess and play to those average.

SENATOR MICCICHE said he understands and looks forward to seeing those. He has an investment account and over 40 years has seen the worst of the worst and the best of the best. Every committee that deals with SB 23 and SB 24 becomes a finance committee. Normally the committee is policy related, but it's very difficult in this case. He asked Mr. King if he could provide these charts with more granularity.

CHAIR SHOWER asked him to break the charts down for the next meeting.

[4:57:33 PM](#)

SENATOR REINBOLD echoed Senator Micciche's comments about the need for more granular data. She said Mr. King said this is the average return the corporation is using and she wants to know if statistically, it is based on what happened in the past, including 2008. He said they will have to guess and play to averages and she wants to know what formula he is using to guess.

MR. KING replied that the corporation uses what it calls a geometric mean. It is the average of all future projected returns. The fund uses a consultant to generate those returns. The history of the fund, including the 2008 correction and the bad years in the early 2000s, is overwhelmed by the really good year. Last year's return was 10.74 percent. Some years have had a return of 22 percent. The average return of the 40-year fund history is over 9 percent. The fund is looking forward to a 6.5 percent return. The corporation is providing a number that is more conservative than the historic performance would suggest, but it probably has good reasons for doing that.

MR. KING said that because of the way that interest works, a 10 percent return and a 10 percent loss are not equivalent because of the way compounding works. The arithmetic mean is also important. The corporation's 6.5 percent geometric mean works out to about a 7.65 percent arithmetic mean. When they are running simulations, they are ending up with situations with better returns that more closely relate to historic performance, with some occasional corrections. The standard deviation the corporation is using is quite wide. They are trying to pin down whether that distribution makes the most sense for running the scenarios.

CHAIR SHOWER asked that since they were running out of time, was there anything else to highlight.

5:00:38 PM

MR. KING replied that they appreciate that there are risks associated with the fund balance, whether they take this additional draw or not. It is an important conversation. He would like to highlight that the governor's opinion is that the money that he is talking about repaying to the people should not be in the fund at all. That is an important conversation to have at a later date.

MR. KING pointed out that the bill needs a correction for the FY22 number. Where it reads 1,328, it should be 1,388. He thanked Legislative Finance for identifying that.

SENATOR MICCICHE said he is looking at the reality at how they are paying bills today and how he is expecting that they will pay the bills at the end of the session. He asked if it would be helpful if he plugged in some assumptions, so they don't have to model on a wide band. If they would like to meet, he thought they could model a few specific numbers and see how that looks

over time. They cannot assume what the legislature could do. He is worried about that because it would create stress on the earning reserve and potentially the corpus itself. If they got together, he might be able to help DOR streamline their work on modeling stress testing.

SENATOR REINBOLD said she wanted to reiterate the need for better granular data. These charts are not working for her. They need to be historically accurate and include the POMV, including the unstructured draw with SB 23 and how they are modeling those projections. This is a sensitive issue. The people are listening. The populist view is pay them all back, everyone wants their money. They cannot get it wrong. However, it must be a permanent fund for future generations. She asked DOR to provide the committee with good data because this, along with the crime legislation, is being watched closely.

[5:03:40 PM](#)

CHAIR SHOWER held SB 23 and SB 24 in committee.

[5:04:16 PM](#)

There being no further business to come before the committee, Chair Shower adjourned the Senate State Affairs Standing Committee at 5:04 p.m.