

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

March 26, 2019

1:32 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 6

Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit; relating to the budget reserve fund and establishing the savings reserve fund; and relating to the permanent fund.

- MOVED SJR 6 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.

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SJR 6

SHORT TITLE: CONST AM:APPROP. LIMIT; RESERVE FUND

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/30/19	(S)	READ THE FIRST TIME - REFERRALS
01/30/19	(S)	STA, JUD, FIN
03/21/19	(S)	STA AT 1:30 PM BUTROVICH 205
03/21/19	(S)	Heard & Held

03/21/19 (S) MINUTE (STA)
03/25/19 (S) STA AT 5:00 PM BUTROVICH 205
03/25/19 (S) Heard & Held
03/25/19 (S) MINUTE (STA)
03/26/19 (S) STA AT 1:30 PM BUTROVICH 205

BILL: SJR 4

SHORT TITLE: CONST. AM: STATE TAX; INITIATIVE
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/30/19 (S) READ THE FIRST TIME - REFERRALS
01/30/19 (S) STA, JUD, FIN
03/26/19 (S) STA AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

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

POSITION STATEMENT: Provided information about SJR 6.

CORI MILLS, Assistant Attorney General
Civil Division
Legislation and Regulation Section
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions about SJR 6.

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

POSITION STATEMENT: Introduced SJR 4 on behalf of the administration.

BILL MILKS, Assistant Attorney General
Civil Division
Labor and State Affairs Section
Department of Law
Juneau, Alaska

POSITION STATEMENT: Delivered the sectional analysis for SJR 4.

ACTION NARRATIVE

[1:32:54 PM](#)

CHAIR MIKE SHOWER called the Senate State Affairs Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Kawasaki, Coghill, Micciche, and Chair Shower. Senator Reinbold arrived as the meeting was in progress.

SJR 6-CONST AM:APPROP. LIMIT; RESERVE FUND

1:33:50 PM

CHAIR SHOWER announced the consideration of SENATE JOINT RESOLUTION NO. 6, Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit; relating to the budget reserve fund and establishing the savings reserve fund; and relating to the permanent fund.

He reviewed the committee's work on the bill including that it was last heard on March 25 when public testimony was taken and then closed. He noted that written testimony could be submitted to senate.state.affairs@akleg.gov and will be accepted until the bill moves from committee. He asked Mr. King to discuss the additional slides that he prepared in response to earlier questions and requests for updated information.

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ED KING, Chief Economist, Office of Management and Budget, Office of the Governor, Juneau, directed attention to the document he prepared that responds to questions the committee had on the slide presentation. Senator Micciche requested an alternate graph to those on slides 9 and 10 that adjust the spending values for inflation. The first graphic shows the inflation adjusted unrestricted general fund spending for FY75-FY19 reported by legislative finance. He moved to the next page of the handout that shows slide 10 updated to include inflation adjustments. It shows that government spending increased significantly in the early 1980s when oil first started to flow, followed by about 20 years when government spending was relatively flat, which is decreasing when the values are adjusted for inflation. Then in FY05-FY13 there was another significant increase in spending.

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At ease

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CHAIR SHOWER reconvened the meeting. He asked for clarification about applying inflation to the period of flat spending. He noted that the slope is downward when numbers are inflation adjusted.

MR. KING explained that spending was decreasing in real terms but that isn't considered deflation.

CHAIR SHOWER noted that the percentages changed when the values were adjusted for inflation.

MR. KING confirmed that the tags were updated to reflect the inflation adjusted numbers.

SENATOR COGHILL commented that he'd be watching the inflation aspect.

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MR. KING said the next request was from Senator Coghill. He asked for slides [11 and 12] to be updated to reflect the proposed spending cap excluding capital expenditures. The graphic on page 2 of the memo does this, which brings the total that could not have been spent down to \$19 billion from \$29 billion.

The first graphic on page 3 of the memo is a hypothetical that shows what the current fund balances would be if the proposed cap had been in place. The permanent fund balance would be about \$110 billion rather than the earlier \$130 billion when capital expenditures were included.

MR. KING said Senator Micciche also asked what the Permanent Fund Principal account balance would be today, if the legislature had not made special appropriations to the principal account. [The memo provides the following background]:

As background, all earnings from the Permanent Fund are placed in a holding account known as the "earnings reserve account" or ERA. Each year, the legislature decides what to do with those earnings. They typically use about half of them to pay dividends and transfer a portion to the ERA to offset inflation. The remaining amount has historically been either held in the ERA or has been transferred to the principal account. When those additional transfers are made, they are considered "special appropriations."

He directed attention to the bar graph at the bottom of page 3 of the memo. It illustrates the special appropriations over time as reported by the Alaska Permanent Fund Corporation. The fund was capitalized initially and then there was a large deposit

into the principal account in 1987. After that there were no real deposits until 1996 when the legislature swept the ERA into the principal account. Since then there have been just three significant deposits in addition to inflation proofing from the earnings reserve to the principal accounts. The last was in 2003. He noted that the graph on page 4 of the memo shows the historical balance of the ERA. He highlighted that the earnings reserve account balance typically was about \$1 billion through about year 2000. Then the legislature changed course and retained the additional earnings in the earnings reserve instead of moving it to the principal account. He said the result is that the earnings reserve balance has increased substantially over the last 5-6 years.

CHAIR SHOWER asked what happened in 2000-2004 and 2008-2010 to draw down the earnings reserve account.

MR. KING said there were market corrections then and in the 2009 timeframe. The entire fund lost value and the earnings reserve balance was depleted to almost zero. There were no earnings to deposit yet money was still flowing out based on the five-year averaging for the permanent fund dividend. He noted that the ERA has recovered since then and now has a balance in excess of \$18 billion.

CHAIR SHOWER asked him to discuss what happened then versus what could happen now if the legislature continues to take unstructured draws, and nothing else changes.

MR. KING explained that the earnings reserve balance will decrease if the legislature draws more out of the ERA than the fund earns. He said that includes inflation-proofing transfers from the ERA to the principal account as well as payments to the general fund or dividend fund. The current balance of the entire fund is about \$65 billion and the expected earnings are about \$4 billion per year. As long as the legislature does not draw more than the earnings, the total account balance will not decrease. However, if the earnings either don't meet the projection or the legislature draws more than the earnings, the ERA balance will decrease.

CHAIR SHOWER asked him to tie that to the percent of market value (POMV) calculation adopted in Senate Bill 26.

MR. KING said this committee looked at scenarios where the fund balance could be depleted through excess unstructured draws or underperformance or both. But as things sit today, he said, as

long as the draws are structured and the performance of the fund is average or better, the risk of fund depletion is relatively low.

MR. KING turned to Senator Kawasaki's request for a breakout of the \$5 billion increase in the budget from 2005 to 2013. He explained that about \$2 billion was capital increases, \$1 billion was statewide items both through retirement contributions and tax credit purchases, and about \$2 billion was from increases in agency operations. He directed attention to the table on the last page of the memo that breaks down the general fund expenditures in 2005 versus 2013. It shows that agency operations increased by \$1.4 billion more than the rate of inflation over that period. He noted that agency operations have reduced with the budget cuts over the last four years but they are still in excess of what agency operations were in 2005, even adjusted for inflation.

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SENATOR KAWASAKI clarified that he was looking for the FY19 management plan numbers because that would provide a better snapshot of where things are today. "Just for the record, if we could get that it would be great," he said.

CHAIR SHOWER suggested Mr. King add a second chart for 2005 to 2019 to show "the reality of where we stand today and why we do or do not need to make changes." He asked if the expenditures on the chart are inflation adjusted. He pointed to Health & Social Services expenditures in 2005 of \$490 million versus \$1 billion in 2013.

MR. KING answered no; those are actual expenses in nominal terms. For Health & Social Services, the increase of \$510 million is a 104 percent increase over what spending was in 2005. Over the same period inflation totaled 23.6 percent so the actual change was about 70 percent more than inflation. He apologized to Senator Kawasaki for misunderstanding the request and agreed to provide the information. He noted that from 2013 to the 2019 management plan, almost all the capital growth has abated and about half the statewide items have decreased but increases still exist in agency operations.

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SENATOR MICCICHE joined the committee.

CHAIR SHOWER asked what would explain the dramatic increases in the Education and Health & Social Services expenditures from 2005 to 2013.

MR. KING clarified that the chart represents just agency operations. He then deferred the question to administrative services directors and analysts.

CHAIR SHOWER said he may prepare a list of questions to ask another time because this "shows a cautionary tale of why we have to put appropriate constraints on ourselves."

SENATOR COGHILL pointed out that the chart shows just the agency operations part of the picture and the rest of the slides show the whole picture.

CHAIR SHOWER said he understands the point but the cautionary point is that, in retrospect, the dramatic increase in agency operations was probably unwise. The salient question, he said, is whether the legislature needs to make the spending limit more relevant.

SENATOR KAWASAKI pointed out that this legislation does not account for how litigation might be treated and that could potentially jeopardize funding for an entire agency. He noted that when a lawsuit was settled in 2007-2008, the joint legislative education taskforce made recommendations that resulted in significant increases in education spending.

CHAIR SHOWER countered that the lawsuit forced the state to reset the baseline spending [for education] and if that static position makes sense today, that should cover the question of lawsuits going forward.

SENATOR COGHILL noted that the state has lived under a couple of consent decrees that do not take the budget into account, one of which was the Kasayulie case. He said "equality" and "adequacy" are always considerations and if the budget is cut to the point that one of those is out of balance, another lawsuit is inevitable.

CHAIR SHOWER said he'd be curious to see what drove the increases because some expenditures were probably a choice.

He asked if anyone from the Department of Law had data about the increases in agency operations.

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CORI MILLS, Assistant Attorney General, Civil Division, Legislation and Regulation Section, Department of Law, Juneau, confirmed that the consent decrees in the Moore and Kasayulie settlements had monetary provisions that were subject to appropriation by the legislature, just as in most settlements. She talked about not binding the hands of the legislature when it comes to appropriations and that departments work within the constraints they're faced with in that regard.

CHAIR SHOWER asked if SJR 6 ensures that the state will be able to continue to meet its obligations or if it increases the likelihood of a new court case. "Where does that baseline put us, above or below that threshold?"

MS. MILLS said the state can always be sued, but the litigation in the Moore and Kasayulie cases is over. The consent decrees in both cases were satisfied. It's not clear what new issues may arise, she said.

CHAIR SHOWER clarified that he was curious about whether this spending cap would meet those past obligations.

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MR. KING responded that if SJR 6 were to pass in its current form, a restriction to the average of the last three years spending would be required. If the resolution were to pass without any budget cuts, the legislature would have the capacity to maintain the same level of spending as today. If there were significant reductions to spending, that would set the limit lower. If there were future settlements or agreements that require appropriations, those appropriations would have to live within that cap.

CHAIR SHOWER commented that he heard the answer to be "maybe."

SENATOR MICCICHE pointed out that if inflation were factored in the numbers would be reduced by the difference between two percent and whatever actual inflation was each year.

MR. KING agreed and added that as written, the resolution provides that the allowable annual increase in the budget is lower than the anticipated rate of inflation.

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SENATOR MICCICHE commented that it's creative to look at agency spending through just 2013 (the highest spending year) but it's

not very helpful with actuals because the growth rate is significantly lower if the data for the five years after that is also included. He asked Mr. King if he could provide a chart that has the expanded data and if the 23.6 percent inflation over the period reflects the Anchorage consumer price index (CPI).

MR. KING agreed to provide the expanded data that shows reductions in the last 4-5 years and confirmed that the inflation is based on the Anchorage CPI. He clarified that he highlighted that particular time period to illustrate the type of growth that was allowed under the constitutional limit.

SENATOR MICCICHE said he assumes everyone at the table knows he strongly supports an appropriation limit. He was trying to evaluate the actual growth rate that is required by inflation. He expressed interest in looking at the additional numbers.

SENATOR COGHILL recalled there was double-digit inflation years ago and because that could happen again, he didn't know if it was wise to lock in outside the limits of normal inflation.

CHAIR SHOWER asked Mr. King to discuss the smoothing effect of the three year averaging.

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MR. KING explained that the resolution, as currently drafted, limits spending increases to no more than one-half of the combined rate of population and inflation or two percent, whichever is less. While the maximum rate of growth year-over-year is two percent, that is based on a rolling three-year average of actual expenditures that are subject to the cap. He said the way the numbers work out for what was proposed is effectively 0.8 percent growth per year, at the given projections.

MR. KING said the spending cap is intended to help smooth volatility in oil prices and other revenue so the legislature is forced to save for the future in high revenue years. Historically, the legislature has responded to increases in revenue with increases in spending. This bill is trying to rectify that, he said.

SENATOR MICCICHE said people need to understand that the 0.8 percent growth trend is 1.9 percent below typical inflation over the last 10 years. Flat spending (like was seen in the 1990s) is controllable in the short term as the legislature is looking to

get to an efficient baseline, but when spending is flat too long legitimate needs do pop up.

CHAIR SHOWER said the next committee of referral will continue looking for potential modifications to make the spending limit that is already in the constitution more relevant.

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SENATOR KAWASAKI noted that in addition to the base agency operations for education, the Moore and Kasayulie cases also added funds for school construction.

MS. MILLS said that's correct; the Kasayulie case in particular was primarily about building schools. The Regional Education Attendance Area (REAA) fund was created at that time to ensure equity between urban and rural schools.

SENATOR KAWASAKI asked what would happen if there was a "Kasayulie II" case and it specifically talked about the REAA school construction and maintenance fund.

MS. MILLS replied that without a specific set of facts she could not say what a claim might be. Her understanding of Kasayulie is that it had to do with equity between urban and rural schools so the question would be is there an inequity or is there another claim being brought forward.

SENATOR KAWASAKI discussed the tax cap in his city and the process the city uses to handle disagreements. He described it as a way to get around the tax cap and acknowledged that it hasn't been very successful. The state wouldn't want to use that process, he said, but there should be some sort of a relief valve to pay for litigation. He cautioned against putting the proposed constitutional spending limit in place because it's already low and even declining with inflation. A legislature in the future could find itself in a bad situation, he said.

CHAIR SHOWER highlighted the safety valve of overriding the limit with a super majority vote in cases of true emergency. He acknowledged that getting 45 legislators to agree could be a problem.

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SENATOR MICCICHE said he supports the traditional statutory dividend, but he wonders why the administration thinks it's a good idea to increase the rate of growth for the permanent fund dividend beyond what it is today.

MR. KING said he didn't know the policy intent other than that the excess revenue would be off limits to the legislature and the principal account of the permanent fund is the highest yielding account.

SENATOR MICCICHE asked if the administration considered isolating the revenue into a separate permanent fund account that not only would be out of reach of the legislature but also would not result in accelerated growth of the dividend.

MR. KING said he was not part of the deliberative process, but his team would be happy to look at any options that might be proposed.

SENATOR MICCICHE continued to argue in support of isolating the new account from the traditional calculations because it would result in such accelerated growth of the dividend.

MR. KING said he'd be happy to work with the committee on any future ideas.

SENATOR MICCICHE asked if he agrees with the comment that the current proposal would result in such an accelerated growth of the permanent fund dividend that it would be outside the original spirit of the program.

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MR. KING said he's be happy to model that, but he agrees with the concept that putting more money into the account will result in higher earnings and therefore future PFDs will become larger.

CHAIR SHOWER posited that it was less likely now than in the past that the dividend would grow dramatically over time.

MR. KING said the opportunity for required sweeps into the principal account are fairly small at the current price and production levels. However, at some point in the future it's likely that oil prices will rise to the \$100 per barrel range and the question is how will the legislature react to the circumstance of excess revenues. It's also likely that oil prices will fall to \$30 per barrel in the next decade and it's important that government and the expectations of the people haven't grown to levels that can't be sustained when that circumstance unfolds.

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SENATOR MICCICHE said what he's trying to protect Alaskans against is taxing to pay the bills and saving to pay a larger permanent fund dividend. He clarified that saving the way it's done today to protect the existing PFD is a different discussion.

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SENATOR COGHILL observed that this proposal is for a hard cap that doesn't allow any cash flow wiggle room. Under the current process the legislature can address cash flow issues by drawing from the CRB. He specifically cited the open-ended Medicaid budget as an example

MR. KING said the proposed cap has six or seven exceptions but no other opportunity to exceed the cap. If an additional appropriation is required, the legislature would need to back out some other appropriation so as to not exceed the cap. He clarified that the current resolution does have a provision that if excess revenues exist, then the CBR is refilled in the amount of one year's appropriations. There's room to manage volatility but the resolution would not allow an additional appropriation for a structural issue.

SENATOR COGHILL mentioned the \$100 million supplemental request last year that was funded at \$45 million and pointed out that that would not be possible under the current resolution. This means the legislature will need to rethink all the open ended entitlements, he said.

MR. KING described the statement as accurate.

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CHAIR SHOWER noted that there were no proposed amendments and asked if there was any further discussion on SJR 6.

SENATOR KAWASAKI asked Ms. Mills to comment on the March 23, 2019 memo from Legislative Legal Services and the March 25, 2019 memo from the Department of Law. They both cite the *Bess v. Ulmer* case yet they came to different conclusions.

MS. MILLS explained that the Alaska Supreme Court in *Bess v. Ulmer* adopted a hybrid approach for looking at the qualitative and quantitative effect of an amendment. If the quantitative effect of the proposed change is minimal, the qualitative effect would have to be greater, and vice versa. She said Legislative Legal Services laid out a test in the second paragraph of its memo that describes the test the Florida Supreme Court adopted

whereas the Alaska Supreme Court adopted a test that's closer to the California approach, which weighs the qualitative and quantitative impacts of a proposed amendment. The Department of Law's position is that SJR 6 does not make a foundational change to the constitution. That's the main difference between the memos that resulted in different conclusions, she said.

SENATOR KAWASAKI asked what would happen if the Alaska Supreme Court struck this down before the measure appeared on the 2020 ballot.

MS. MILLS replied it would be up to the court and whether it struck the amendment down completely or struck just a portion and put the rest of the measure on the ballot. She said that happened in *Bess v. Ulmer* when the court struck one sentence from the marriage amendment and proceeded to put the rest of the amendment on the ballot.

SENATOR COGHILL expressed hope that the judiciary committee would consider two issues; the inflation formula and a formula that allows for construction capital.

CHAIR SHOWER called for final discussion on SJR 6.

SENATOR KAWASAKI said he understands there may be an amendment related to the construction capital issue and he looks forward to seeing it. He also appreciates the discussion about inflation and hopes the finance committee looks at that carefully. He added that he feels the committee missed an opportunity when it didn't ask legislative finance to come to the committee to discuss the resolution. Finally, he hopes that the next committees of referral discuss the litigation issue because those costs can be significant.

CHAIR SHOWER said he didn't consider having legislative finance in this committee because they will be part of the discussion when the finance committee considers the resolution. However, he'll entertain that in the future.

SENATOR MICCICHE said the clear message is the existing appropriation limit in the constitution does not work and he appreciates the administration bringing SJR 6 forward. He highlighted the growth curve as a pressure relief valve, the litigation issues, and the cascading of excess dollars, which he described as probably as important as the other issues moving forward. He summarized that the State Affairs Committee addresses the policy of whether an appropriation limit is

needed, the Judiciary Committee looks at the constitutional issues, and the Finance Committee looks at the numbers and trends and what the expected gap will be over time.

CHAIR SHOWER found no further discussion and solicited a motion.

[2:30:10 PM](#)

SENATOR COGHILL moved to report SJR 6, work order 31-GS1068\A, from committee with individual recommendations and attached fiscal note(s).

CHAIR SHOWER found no objection and SJR 6 was reported from the Senate State Affairs Standing Committee.

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At ease

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CHAIR SHOWER recessed the meeting until 3:30 p.m.

SJR 4-CONST. AM: STATE TAX; INITIATIVE

[3:35:46 PM](#)

CHAIR SHOWER reconvened the meeting and announced the consideration of 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.

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MIKE BARNHILL, Policy Director, Office of Management and Budget, Office of the Governor, Juneau, introduced himself.

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BILL MILKS, Assistant Attorney General, Civil Division, Labor and State Affairs Section, Department of Law, Juneau, introduced himself.

MR. BARNHILL explained that SJR 4 amends art. IX, sec. 1, Constitution of the State of Alaska to require a vote of the people on any new state tax or increase to an existing state tax that the legislature enacts. Conversely, any new state revenue or increase to an existing state revenue that the people pass through the initiative process would require approval from the legislature. This legislation is patterned after the Colorado taxpayer bill of rights which has a provision that requires a

vote of the people for any new or increased state or local revenue. He highlighted that two other states have similarly amended their state constitutions. Missouri requires a vote of the people if a new state tax increases revenue by more than \$50 million; and Washington State requires a three-fifths vote of the people for local property taxing jurisdictions to increase property taxes in excess of one percent of the property value.

MR. BARNHILL related that Governor Dunleavy strongly believes that the people should have a say in matters relating to new revenues, increasing revenues, and the permanent fund dividend. He said that Alaska's constitution already has direct democracy measures through referendum and initiative and SJR 4 brings those together more closely.

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MR. MILKS presented a sectional analysis for SJR 4, speaking to the following prepared document:

Section 1: This section would add two new subsections to the tax clause of the Alaska Constitution. Taken together, the two subsections would require that any new state tax or increase to the rate of an existing state tax be approved by both the legislature and the voters.

Subsection (b) would require that any law enacted through the legislative process that would establish a new state tax or increase the rate of an existing state tax shall not take effect unless the voters approve the proposed law in the next statewide election. If the voters approve the proposed law, it would take effect 90 days after the election was certified.

Subsection (c) would require that any law proposed for enactment through the initiative process and approved by the voters that would establish a new state tax or increase the rate of an existing state tax shall not take effect unless the legislature, by resolution, approved the initiated measure by the end of the next regular session. The legislature would have to approve it by majority vote in a joint session. If the legislature approved of the initiated measure, it would take effect 90 days after the legislature's approval.

Section 2: This section would make a conforming change to the initiative process in Section 6 of Article XI, providing an exception to the effective date requirements for initiatives.

Section 3: This section would require that this amendment be placed on the ballot in the 2020 general election.

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CHAIR SHOWER asked if there were questions.

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SENATOR REINBOLD observed that SJR 4 is far broader than she realized. She asked if it would apply to new or existing taxes on income, fish, alcohol, oil, education, or designated general funds since some view the latter as fees. She noted that some people think that it's a tax on children who don't directly receive their PFDs.

MR. MILKS said there is a distinction between taxes and fees. The resolution would amend art. IX, sec. 1, relating to taxing power. It does not amend art. IX, sec. 7, relating to dedicated funds and including licensing fees.

SENATOR REINBOLD responded, "Just to verify. We can't increase taxes on fish, alcohol, education - nothing basically. ...It sounds like we can't do taxes on virtually anything or some people would say increase fees."

MR. MILKS clarified that the resolution is not intended to apply to licensing fees.

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MR. BARNHILL agreed with Mr. Milks that there is a distinction between taxes and fees. He said the intent in SJR 4 is that it would require a vote of the people for the legislature to initiate any new state tax or increase an existing state tax. He added, "For user fees, license fees, fees that we frequently consider as designated general fund - those would fall outside of the definition of tax for purposes of the constitution and would not be subject to going to a vote of the people."

SENATOR REINBOLD observed that this creates a loophole because things now identified as a tax could be re-designated as a fee.

MR. BARNHILL said the administration would be happy to draft the legislation to close any loopholes that are identified. He opined that constitutional amendments always try to strike a balance between language that is too restrictive and language that is too general. He reiterated agreement with Mr. Milks that taxes would be subject to a vote of the people but fees would not.

MR. MILKS said the Alaska Supreme Court sometimes looks at what the dictionary said about key terms when the constitution was framed. He read the following from a 1955 dictionary: "A tax is a charge laid by government upon persons or property for public purposes." He said that is key; a tax on the sale of alcohol would be a tax but what the bar pays to hold a license would be a licensing fee. He said that is the intent of the resolution but he agrees with Mr. Barnhill that suggestions to improve the language were welcome.

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SENATOR COGHILL listed various taxes in the statutes and highlighted that there are two pages of exemptions. He asked, should the resolution pass, if any modification to an exemption would require a vote of the people.

MR. MILKS restated that SJR 4 addresses establishing a new state tax and increasing an existing state tax, both of which would require a vote of the people. He also summarized the similar provisions that amended the Colorado and California constitutions.

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SENATOR COGHILL suggested that before passing SJR 4, the committee might want to review all the tax exemptions or place clarifying sideboards. He mentioned excise taxes, fish landing taxes, and unemployment insurance and said he agrees with Senator Reinbold that the application could be very broad. He suggested that it may be difficult to make the case that something is a fee but the tipping point may be the public fee for individual use versus the public fee that is broad-based use. He reiterated that dealing with the exemptions embedded in the law would be a real conundrum.

MR. BARNHILL advised that he and Mr. Milks would get back to the committee after they review the Colorado Supreme Court cases relating to increasing a tax rate and whether that includes just the increase to the rate in statute or whether it also includes an indirect increase through changing an exemption.

SENATOR COGHILL said he likes the idea of a low broad-based tax because it applies to everybody and generally affects the state positively. He noted that if Colorado isn't part of the United States Court of Appeals for the Ninth Circuit, it doesn't matter what that state did.

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MR. MILKS clarified that the Colorado Supreme Court would be the definitive interpreter of the Colorado State Constitution.

SENATOR COGHILL said it could be a conundrum if the legislature decided to tax income from other states.

MR. BARNHILL said an Alaskan court would look at cases decided by the Colorado Supreme Court as persuasive but not binding.

CHAIR SHOWER summarized that an Alaska court could look at and potentially use the information from the Colorado court even though that state is not under the jurisdiction of the Ninth Circuit.

MR. MILKS opined that the Alaska court would look at the intent of the legislature and how the proposal was communicated to the voters before it looked at other states.

SENATOR MICCICHE talked about the recent ballot measure to tighten protections for fish habitat from development and noted that the warring bumper stickers inaccurately reduced what was an intricate issue to either you like fish or you hate fish. He said despite the fact that legislators will sit through hours of meetings to learn the details of SJR 4, it, too, could be reduced to warring bumper stickers that ask if you want to pay more money or not. He said he struggles with SJR 4 because conservative districts like his will be ceding their vote to districts like Anchorage and Southeast that are much more likely to support a broad-based tax. He questioned how carefully considered policy can result from what comes down to a bumper sticker war.

MR. BARNHILL responded, "The important thing here is that we're combining the best of representational democracy, which really does resist the sound bite - the bumper sticker, with direct democracy." This involves the legislative process and it consults the people. He opined that policy makers are responsible for resisting the sound bite or bumper sticker and

having substantive discussion with the people of Alaska to convey the reasons that this is important.

MR. MILKS added that the framers of the constitution decided they wanted the people to have a role through the initiative and referendum processes.

SENATOR MICCICHE said he supports the right of the people to have a role in government through the initiative and referendum processes but he wonders how far a representative government should go and still be fruitful in answering to the people.

MR. BARNHILL responded that a tension exists now between direct democracy and representational democracy. The substantive public discussion in the referendum over Senate Bill 21 relating to progressivity and oil production tax is evidence of that. He said he believes that sort of high level discussion can occur in this context, but he also believes that if the legislature were to pass a broad-based income or sales tax, it's inevitable that a group of stakeholders would seek a referendum on that. This tightens the relationship between the roles of the legislature and the people, he said.

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SENATOR REINBOLD said the idea of no new taxes without a vote of the people sounds like a generally good idea because the constitution calls for government established by the will of the people. However, the people vote for legislators to go to Juneau for 90 days to dig deep into issues. She said part of the reason she wants to support SJR 4 is because of how abusive the federal income tax has become, but it's not clear what the overall impact will be. "I don't know if this is going to impact bonds. Are bonds technically a tax? Can we really vote to bond ourselves into taxes? Is that basically where we're going?" She further questioned whether this was intended to limit the size and scope of government. She predicted a massive boom in the state if SJR 6 and SJR 4 were to pass.

MR. BARNHILL responded that the two resolutions combined will have an impact similar to what happened in 1992 when the voters passed the Colorado taxpayer bill of rights. The intent was to restrain the growth of government spending and to require consultation with the people when enacting new taxes. He said Colorado has thrived economically since that legislation passed.

SENATOR COGHILL asked how this interacts with art. IX, sec. 11, Constitution of the State of Alaska relating to the exemptions for bonding.

MR. MILKS pointed out that the proposed legislation is about taxes, not bonding. He said bonding is about borrowing money and the constitution places certain restrictions on borrowing.

SENATOR COGHILL suggested he think about whether special assessments would be a tax. He also asked the reasoning for the statewide election to be held more than 120 days after enactment.

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MR. BARNHILL said he didn't know the intention or the reason that it was different than for referendums, which is 180 days after adjournment.

SENATOR COGHILL suggested the committee think of that as a timeframe issue.

MR. MILKS offered to follow up with the information.

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CHAIR SHOWER stated that he would hold SJR 4 in committee.

[4:11:17 PM](#)

There being no further business to come before the committee, Chair Shower adjourned the Senate State Affairs Standing Committee meeting at 4:11 p.m.