

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 21, 2021

1:33 p.m.

MEMBERS PRESENT

Senator Roger Holland, Chair
Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Robert Myers
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 6

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

- HEARD & HELD

SENATE BILL NO. 53

"An Act relating to use of income of the Alaska permanent fund; relating to the amount of the permanent fund dividend; relating to the duties of the commissioner of revenue; relating to an advisory vote on the permanent fund; providing for an effective date by repealing the effective date of sec. 8, ch. 16, SLA 2018; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 122

"An Act relating to the definition of 'victim.'"

- HEARD & HELD

SENATE BILL NO. 82

"An Act relating to elections and election investigations."

- BILL HEARING CANCELED

SENATE BILL NO. 23

"An Act relating to elections and election investigations."

- HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SJR 6

SHORT TITLE: CONST. AM: PERM FUND & PFDS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	STA, JUD, FIN
02/04/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/04/21	(S)	Scheduled but Not Heard
02/09/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/09/21	(S)	Heard & Held
02/09/21	(S)	MINUTE(STA)
02/11/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/11/21	(S)	Scheduled but Not Heard
02/23/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/23/21	(S)	Moved SJR 6 Out of Committee
02/23/21	(S)	MINUTE(STA)
02/24/21	(S)	STA RPT 1DP 1NR 2AM
02/24/21	(S)	DP: SHOWER
02/24/21	(S)	NR: COSTELLO
02/24/21	(S)	AM: HOLLAND, KAWASAKI
04/21/21	(S)	JUD AT 1:30 PM BUTROVICH 205

BILL: SB 53

SHORT TITLE: PERM FUND; ADVISORY VOTE

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/25/21	(S)	READ THE FIRST TIME - REFERRALS
01/25/21	(S)	STA, JUD, FIN
02/04/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/04/21	(S)	Scheduled but Not Heard
02/09/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/09/21	(S)	Heard & Held
02/09/21	(S)	MINUTE(STA)
02/11/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/11/21	(S)	Scheduled but Not Heard
02/23/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/23/21	(S)	Moved SB 53 Out of Committee
02/23/21	(S)	MINUTE(STA)
02/24/21	(S)	STA RPT 3NR 1AM

02/24/21 (S) NR: SHOWER, HOLLAND, COSTELLO
02/24/21 (S) AM: KAWASAKI
04/21/21 (S) JUD AT 1:30 PM BUTROVICH 205

BILL: SB 122

SHORT TITLE: VICTIM DEFINITION

SPONSOR(s): REINBOLD

04/07/21 (S) READ THE FIRST TIME - REFERRALS
04/07/21 (S) JUD
04/14/21 (S) JUD AT 1:30 PM BUTROVICH 205
04/14/21 (S) Heard & Held
04/14/21 (S) MINUTE(JUD)
04/19/21 (S) JUD AT 1:30 PM BUTROVICH 205
04/19/21 (S) Scheduled but Not Heard
04/21/21 (S) JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

BRANDON BREFCZYNSKI, Special Assistant to the Policy Advisor
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Presented SJR 6 and SB 53 on behalf of the administration.

MIKE BARNHILL, Deputy Commissioner
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: Presented a PowerPoint on SJR 6 and SB 53 on behalf of the administration.

WILLIAM MILKS, Senior Assistant Attorney General
Legislation & Regulations Section
Civil Division

Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions on SJR 6 and SB 53.

SENATOR LORA REINBOLD
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 122.

KELLI TOTH, Staff
Senator Lora Reinbold
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the sponsor during the hearing on SB 122.

ACTION NARRATIVE

[1:33:45 PM](#)

CHAIR ROGER HOLLAND called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Myers, Hughes, Shower, Kiehl, and Chair Holland.

SJR 6-CONST. AM: PERM FUND & PFDS
SB 53-PERM FUND; ADVISORY VOTE

[1:34:17 PM](#)

CHAIR HOLLAND announced the consideration of SENATE JOINT RESOLUTION NO. 6, Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund, appropriations from the permanent fund, and the permanent fund dividend.

And

SENATE BILL NO. 53, "An Act relating to use of income of the Alaska permanent fund; relating to the amount of the permanent fund dividend; relating to the duties of the commissioner of revenue; relating to an advisory vote on the permanent fund; providing for an effective date by repealing the effective date of sec. 8, ch. 16, SLA 2018; and providing for an effective date."

[This was the first hearing for both SJR 6 and SB 53.]

[1:35:01 PM](#)

BRANDON BREFCZYNSKI, Special Assistant to the Policy Advisor, Office of the Governor, Juneau, Alaska, stated that SJR 6 is the governor's constitutional amendment related to the permanent fund and SB 53 is the governor's statutory 50:50 rule for the permanent fund dividend (PFD). On behalf of the governor, he related that these two pieces of legislation are Governor Dunleavy's top priorities. The first step to securing the state's fiscal future is to protect the permanent fund and the PFD constitutionally. After years of spending down the Constitutional Budget Reserve (CBR) and the Statutory Budget Reserve (SBR) accounts, a simple majority vote could deplete the accounts and jeopardize the permanent fund. This could potentially eliminate the PFD for future generations of

Alaskans. The governor senses the urgency of the fiscal crisis, he said. The governor has proposed this legislation to establish a framework for managing the permanent fund and implementing the necessary protections to prevent ad hoc spending and allow for continued growth. In addition to protecting the permanent fund, this proposal will protect the PFD. It will also restore Alaskan's confidence and trust that they will receive the annual share of Alaska's resources and wealth. The governor believes the public must be included because it was through the people of the state that the permanent fund was initially created. SJR 6 and SB 53 must be considered together to make sense. This resolution and bill will protect the permanent fund, provide for the fund's continued growth, and involve Alaskans in the process.

[1:37:51 PM](#)

SENATOR SHOWER asked him to explain why both the bill and resolution are necessary.

MR. BREFCZYNSKI responded that SJR 6 proposes two provisions. First, it would provide an annual draw from the permanent fund through a percentage-of-market-value (POMV) rule and establish the permanent fund dividend (PFD) in the Alaska Constitution. Second, it would require that a portion of the funds withdrawn be used for the PFD. SB 53 proposes a change in the PFD formula to 50 percent of the 5 percent-of-market-value (POMV) draw from the permanent fund earnings. Thus, SB 53 provides the formula referenced in the constitutional amendment proposed in SJR 6 and will ensure that the PFD will be paid as provided by law.

[1:39:09 PM](#)

SENATOR SHOWER stated that he has heard some legislators express that enshrining the formula into the Alaska Constitution could bind future legislatures. He said that this concern could be assuaged since SB 53 establishes the formula in statute. This provides the legislature with the ability to work on the formula. SJR 6 would guarantee the POMV draw for the PFD, he said.

MR. BREFCZYNSKI added that while PFD formula would be provided for in statute, any further changes to the formula would require a vote of the people to ratify the change.

[1:40:15 PM](#)

SENATOR HUGHES asked if the reason for the 50:50 split was not only because it was how then-Governor Hammond established the permanent fund, but also because 50 percent falls halfway

between the amount of the permanent fund that would be available to fund government and the amount that could be paid out in PFDs.

She recalled that initially, the governor suggested paying out dividends at 70 to 80 percent of the draw and depositing the remaining 20 to 30 percent in the general fund to provide for government services. However, some legislators wanted to reverse that ratio, so the 50:50 split falls in the middle, she said.

[1:41:42 PM](#)

MR. BREFCZYNSKI replied it is both. Alaska's resources are owned in common by the people of the state. He agreed that a disconnect exists between the current statutory PFD formula in law and how the legislature uses the POMV formula to draw from the permanent fund. The governor has decided to meet halfway with the 50:50 proposal.

SENATOR HUGHES asked if the governor is proposing a midway point or if he is using the 50:50 rule to negotiate some other split, such as 20 percent for the PFD and 80 percent for government services.

MR. BREFCZYNSKI said the governor believes the 50:50 formula is the appropriate split.

SENATOR HUGHES asked him to verify that the governor supports the statutory PFD, but he is willing to meet at the mid-point.

MR. BREFCZYNSKI answered yes. The governor believes that 50 percent for PFDs and 50 percent for government services is the appropriate split.

[1:43:47 PM](#)

At ease

[1:44:04 PM](#)

CHAIR HOLLAND reconvened the meeting.

[1:44:06 PM](#)

SENATOR MYERS offered his view that the 50:50 rule is not accurate. He said that SJR 6 relates to 50 percent of earnings from investments. However, the state has already diverted 75 percent of royalties to fund government, perhaps more. Thus, the state has already shifted a significantly higher proportion than 50 percent to fund government services.

MR. BREFCZYNSKI agreed. It is not 50 percent of the pure royalty wealth, but it also includes the investment earnings from the royalties. Then through a formula, 50 percent of the annual statutory net income from the royalties and investment earnings provides for the dividends. He explained that since Alaskans cannot own the subsurface rights, this is a compromise. Landowners in the Lower 48 receive royalties for any resource development on their property, so if they choose to save a portion of those royalties, it will result in investment earnings, which would pay these landowners an ongoing dividend.

[1:45:42 PM](#)

SENATOR SHOWER agreed with Senator Myers that the amount to fund government does not represent 50 percent. He asked Mr. Brefczynski to highlight the differences between SJR 6 and SJR 1 introduced by Senator Wielechowski. He expressed his interest in inflation proofing the permanent fund for the continued protection and growth of the fund.

[1:46:40 PM](#)

MR. BREFCZYNSKI deferred to Mr. Barnhill to speak to SJR 1. In terms of inflation proofing, SJR 6 will constitutionally protect the permanent fund, so it will not be necessary to inflation-proof the fund by depositing a portion of the Earnings Reserve Account into the fund's principal. He said that the permanent fund is also protected from inflation by having a set draw. Currently, statutes set the draw at 5 percent. The goal is to have the permanent fund earn more, he said. He illustrated how the calculation in SJR 6 would work, such that permanent fund earnings of 7 percent with a 5 percent draw would have real growth of 2 percent. He explained that basing the 5 percent draw means it would be based on a five-year average, so the effective rate would also be considered. He reported that currently, the fund balance is \$78 billion. He clarified that the five-year average goes back 6 years. Thus, it is a much smaller number than a 5 percent calculation on \$78 billion, the fund's current value.

[1:47:49 PM](#)

SENATOR KIEHL agreed it is not a 50:50 split for the people and government. As Mr. Brefczynski said when he paraphrased the preamble of the Alaska Constitution, the state is the people so it is the peoples' roads, bridges, troopers, prisons, courts, education, schools, clean air, clean drinking water, biologists and fish managers.

[1:48:49 PM](#)

At ease

[1:51:47 PM](#)

CHAIR HOLLAND reconvened the meeting.

[1:52:22 PM](#)

MIKE BARNHILL, Deputy Commissioner, Department of Revenue, Juneau, Alaska, began a PowerPoint on behalf of the administration. He said that the proposals are relatively straightforward. In response to Senator Shower's request, he offered to compare SJR 1 and SJR 6 during his presentation.

MR. BARNHILL referred to slide 2, which outlines the objectives of SJR 6. The first objective is to protect the permanent fund to ensure it lasts forever by aligning the permanent fund structure with the modern approach to managing institutional funds and endowments. As the third bullet point suggests, that will happen if the legislature adopts a single-account structure for the permanent fund. The current structure was placed in the Alaska Constitution in 1976. The drafters crafted the amendment based on historic trust law and trust structures which used a two-account structure: a principal account and an income account. Historically, the mantra was to save the principal and spend the income. In the last few decades, investment advisers, consultants, and investment managers have recommended that endowments update their structures to a one-account structure. A specific percentage can be spent annually. Once that percentage is devised, it will automatically inflation-proof the institutional fund or endowment and its inflation-adjusted value will last forever.

MR. BARNHILL stated that the second objective is to constitutionally protect the PFD. SJR 6 would require that a percentage of the distribution from the permanent fund be dedicated to the permanent fund dividend (PFD). Since the enactment of Senate Bill 26 in 2018, the state has been using the permanent fund to pay the PFD and provide funds for government spending. The spending demands on the permanent fund have increased, therefore the percentage of funds drawn from the permanent fund has also increased. One reason the administration and other stakeholders, including the trustees of the Alaska Permanent Fund Corporation, are suggesting the state update the structure in the Alaska Constitution is concern about prematurely depleting the Earnings Reserve Account (ERA). It is possible that the ERA could be depleted in a series of years by annually drawing 5 percent from the fund, combined with a downturn in the investment market. To avoid that occurrence, the

APFC trustees and the administration propose to covert the existing two-account structure to a one-account endowment structure. Finally, this measure requires an advisory vote by the people of Alaska when statutory changes to the allocation for PFDs are made.

[1:57:07 PM](#)

SENATOR KIEHL asked which provision in SJR 6 will protect against eroding the real value of the permanent fund. The drafting structure for SJR 6 would allow the legislature to draw 10 percent in a year with a simple majority vote by each body and the governor's signature.

MR. BARNHILL answered that his PowerPoint contains a slide that discusses the real value versus the nominal value of returns. He explained that the real value of a fund is its inflation-adjusted value. The purpose of using the inflation-adjusted value of the fund is to ensure that the purchasing power of the fund will be no less over time. Governor Dunleavy has proposed to allow the legislature through statute to specify the distribution percentage. In 2018, the legislature passed Senate Bill 26, the distribution rule. Initially, the distribution rule specified 5.25 percent of the lagging five-year market value of the permanent fund and today it is 5 percent. As Mr. Brefczynski described, the five-year lagging average is the average of the first 5 of the last 6 fiscal years (FY). The legislature has had ongoing discussions about whether 5 percent is the correct number in the past few years. He opined that this discussion would never end. The state must always evaluate the spending from the fund in relation to the real return of the fund to protect the fund from inflation. That calculation is subject to fluctuations in capital markets, inflation, and spending levels.

MR. BARNHILL said this creates a bit of a dilemma. One solution would be to hardwire a specific percentage into the Constitution, but as capital markets fluctuate, the percentage could be too high or too low. SJR 1 proposes placing a 5 percent distribution of the permanent fund's lagging five-year percentage-of-market-value (POMV) in the Constitution. Governor Dunleavy's proposal in SJR 6 would not specify the percentage in the Constitution. Instead, SB 53 would establish an annual distribution rule of 5 percent of the lagging five-year market value. This will give the legislature the flexibility to pick a distribution rate consistent with protecting the fund's real value over time.

[2:00:31 PM](#)

MR. BARNHILL responded to Senator Kiehl's question of whether the legislature could draw 10 percent. He argued that the Alaska Constitution sets out that it must be a permanent fund, which means that the fund's real value must be permanently maintained. Enacting distribution rates are at odds with that constitutional purpose.

He said the markets could have such high returns that a 10 percent distribution is consistent with the real return of the permanent fund. That has happened for brief periods over the past 50 years, but it is not likely to be sustainable. He offered his belief that the legislature will focus on the spirit of the Alaska Constitution and that any distribution rate that risks eroding the real value of the permanent fund over time will likely be found invalid.

MR. BARNHILL said that the governor's approach would allow flexibility and for indefinite, ongoing discussions because that is how endowment funds are managed. However, if the legislature so desires, the governor is willing to let the legislature make the policy decision to hardwire a specific percentage into the Alaska Constitution. This could happen in a variety of ways. One approach taken in 2018 in House Bill 213 was to convert the Public School Trust from a historic two-account structure to an endowment with not more than a 5 percent distribution rate. Adding specific language "not more than" provided it some flexibility to distribute less if APFC's staff and consultants determined there was a risk of overdraw. HJR 1 takes that approach, he said.

[2:03:09 PM](#)

SENATOR MYERS asked if the constitutional language should use the average real realized rate of return rather than hardwire in a specific figure into the Alaska Constitution or statute.

MR. BARNHILL answered that would be worth considering because the goal of modern institutional fund management is to try to match the real rate of return to the spending rate. One difficulty is that market rates can fluctuate substantially. The danger of using the real rate of return is that when markets are high, it is possible to draw out too much and fund the budget at a higher level, which would need to be ratcheted down. However, setting the percentage of distribution rate in statute, using the lagging five-year market value of the permanent fund, provides the permanent fund and the legislature some consistency each year. Currently, under the Senate Bill 26 formula, the permanent fund distributions have been about \$3 billion a year.

[2:05:48 PM](#)

SENATOR HUGHES asked if there is universal or general agreement among financial experts that a 5 percent POMV will allow for inflation proofing. She said she has heard some people supporting a lower amount.

MR. BARNHILL moved to slide 4, distribution rates. He explained that discussions about the returns from the permanent fund typically relate to nominal returns. In order to calculate the real rate of return, it is necessary to subtract inflation. In order to inflation proof an institutional or endowment fund model, the fund needs to retain earnings in the amount of the inflation during that period. He clarified that the global capital market has been a bull market, meaning returns have been rising since 2009. Investment markets were concerned as to whether the bull market was sustainable. In March 2020, the global pandemic caused a sharp market correction with an almost automatic rebound. The bull market has continued or else the markets have entered a new business cycle and bull market.

He offered his belief that overall, the investment consultants never agree. However, most investment consultants and market advisors the state uses are concerned that over the next 10 years, hitting the 5 percent rate of return will be challenging. Currently, the year-to-date investment return is greater than 20 percent for the retirement systems and permanent fund.

[2:08:52 PM](#)

MR. BARNHILL offered his view that the capital markets are pulling returns forward and the state will pay the price for that over the next three to five years. However, no one knows for sure. The Department of Revenue recommends that the state always keep an eye on the 1, 3, 5, and 10-year real rate of return and the effective spending rate. In fact, the permanent fund has started reporting its effective spending rate in its presentations to the Finance committees. If the effective rate of spending is higher than the real rate of return over time, there is a risk of eroding the inflation-adjusted value of the permanent fund. He opined that investment consultants expressed concern that 5 percent may not be achievable over ten years, so the state must be very aware of spending versus the real rate of return.

MR. BARNHILL offered to bring reports to the finance committee to provide an understanding with respect to spending versus a real return.

[2:10:44 PM](#)

SENATOR SHOWER recalled that legislators have extensively discussed the spending cap related to the structure of the permanent fund in prior years. As Mr. Barnhill highlighted, it is possible to draw down permanent fund savings. He acknowledged that a spending cap would provide stability.

MR. BARNHILL opined that a 10 percent real rate of return is not likely to be sustainable.

[2:12:32 PM](#)

MR. BARNHILL restated the mechanics of SJR 6. SJR 6 proposes to convert the Alaska Permanent Fund in the Alaska Constitution from its existing two-account structure to a one-account endowment structure. SJR 6 would establish the formula as a percentage times the lagging five-year average of the market value of the Alaska Permanent Fund. It would establish the permanent fund dividend in the Alaska Constitution with the legislature setting the allocation formula in statute. Finally, SJR 6 proposes when statutory changes to the allocation for PFDs are made, it will require an advisory vote by the people of Alaska.

[2:14:06 PM](#)

SENATOR HUGHES stated that the State v. Wielechowski case determined that the appropriation powers of the legislature superseded the statutory formula for the permanent fund dividend. Some legislators consider the operating budget as law. She related a scenario in which SJR 6 and SB 53 both pass and the PFD formula is set in statute. The legislature could fund PFDs at a different amount in the operating budget. She asked whether SJR 6 would prevent that from happening since they are both laws. She referred to page 2, line 7 of SJR 6, which read, "A law that changes the amount allocated for dividend payments must be approved by the voters of the State under (d) of this section." Therefore, the formula could be set in statute but also the operating budget. If the legislature does not follow the statutory formula but uses the amount set by the operating budget, she asked if it must be put before the voters for approval.

[2:15:48 PM](#)

MR. BARNHILL referred to the language on page 3, lines 5-11 of the bill, which read:

(d) For purposes of the 2022 amendments to Section 15 of Article IX, the law governing the amount allocated for dividend payments to residents of the State under Section 15(c) of Article IX is the law setting forth the allocation for dividend payments at the time of adoption of the 2022 amendments to Section 15(c) of Article IX and that is not a law that is enacted as an appropriation bill, subject to the enactment of a law amending the law regarding dividend payments in accordance with the requirements of Section 15(d) of Article IX.

MR. BARNHILL explained that the bill drafters considered that question and included language in SJR 6 that the law setting forth the allocation for dividend payments could not be an appropriation bill.

[2:16:29 PM](#)

SENATOR HUGHES expressed concern that SJR 6 will give Alaskans less assurance that a dividend will be paid because the language related to the draw states "may". She related a scenario in which the state has a windfall, assuming it has a spending cap and it can fund the budget without a draw. She related her understanding that there would not be a PFD without a draw.

MR. BARNHILL responded that her scenario was considered at a hearing yesterday and that Mr. Brefczynski responded that it is the administration's intention that PFDs will be issued each year. He said that Mr. Brefczynski offered to work on an amendment to make that clear.

[2:18:24 PM](#)

SENATOR KIEHL agreed that the language needs to be revised because the way it is currently written, without a draw it would take a vote of the people. He was unsure about the timing of an advisory vote under SJR 6. He asked what the approach and vision taken in SJR 6 would be. He said it seems like "protect the check" rather than a "protect the permanent fund."

[2:19:34 PM](#)

MR. BARNHILL answered that the administration's goal is to protect the inflation-adjusted value of the permanent fund going forward with no overspending. The proposed plan is consistent with modern institution and endowment practices, which attempt to balance access to the funds for the present versus access to funds in the future. The best way to accomplish this is to ensure that spending is limited to the real return of the fund

and nothing more. This needs to be viewed in 5 to 10 year averages because market returns can be volatile. The whole philosophy of governing endowments is to protect intergenerational equity. As long as the fund's real value is the same over time, it maintains purchasing power. The governor's proposal is similar to how the trustees of a university endowment fund would manage its fund. The legislature will decide the rate of distribution, but the legislature should always consider a distribution rate that will protect the fund's real value. He offered to work on the language in SJR 6 to make that clear. That is somewhat at odds with the 5 percent rate that is hardwired in the Alaska Constitution under SJR 1. He acknowledged that 5 percent could be too high during specific economic time periods in investment market climates. The administration's goal is to protect the permanent fund over time.

[2:23:09 PM](#)

SENATOR MYERS acknowledged that SJR 6 and SB 53 were designed to work concurrently. He asked what happens if SB 53 passes but SJR 6 does not pass since SB 53 will take 11 votes, but SJR 6 will take 14 votes to pass the Senate.

[2:23:48 PM](#)

MR. BARNHILL turned to slide 5. He explained that SB 53 implements SJR 6 but it also acts as a stand-alone bill if SJR 6 does not pass. SB 53 proposes a 5 percent distribution rate, a 50:50 rule to allocate the PFD, and it will require an advisory vote on the PFD. If SJR 6 fails to pass, but SB 53 passes, it will make some conforming changes to align the statute with State v. Wielechowski. The state would continue under that paradigm, he said.

[2:24:52 PM](#)

SENATOR MYERS offered his view that the legislature will face more problems if SB 53 passes but SJR 6 does not than if the statutes were left alone. He said in the interest of time and to allow people to consider this, he does not have any questions.

[2:25:28 PM](#)

MR. BARNHILL offered to compare SJR 1 to SJR 6 in response to Senator Shower's earlier request.

[2:25:58 PM](#)

MR. BARNHILL said SJR 1 would use the historical approach of distributing from the permanent fund using statutory net income, which considers cash and realization. These funds would be

deposited in the Earning Reserve Account. Using the statutory net income approach to investment management decisions would generate more income at times and less at other times. The point is that the statutory net income approach can be volatile.

He said SJR 6 proposes using an institutional endowment fund approach, a percent-of-market-value (POMV) approach, the standard method of distributing from one account fund. The (POMV) approach is used by institutional and endowment funds worldwide because it is more consistent over time. This percentage can be calculated in a variety of ways. The administration proposes using a 5 percent distribution rule using a percentage of the permanent fund's average lagging five-year market value, split 50:50 to fund PFDs and government.

MR. BARNHILL explained the fundamental difference between SJR 1 and SJR 6 is that SJR 1 would place the legacy statutory formula consisting of a 5 percent hardwired distribution rate into the Alaska Constitution. However, a lack of alignment exists for using that approach to distribute PFDs. He expressed his concern that SJR 1 is taking an approach to distribution that is nonstandard and can be volatile. There are times when it could be in excess of the 5 percent distribution rate. He suggested those are concerns the committee should consider.

[2:30:01 PM](#)

At ease

[2:30:40 PM](#)

CHAIR HOLLAND reconvened the meeting.

[2:31:32 PM](#)

WILLIAM MILKS, Senior Assistant Attorney General, Legislation & Regulations Section, Civil Division, Department of Law, Juneau, Alaska, stated that SJR 6 proposes an amendment to the Alaska Constitution and SB 53 would set out the specific percentage of market value (POMV) at 5 percent and a 50 percent split. He stated the Alaska Supreme Court State v. Wielechowski case relates to the statute that sets out how a PFD would be paid.

[2:33:00 PM](#)

SENATOR HUGHES stated that Art. [XI], Sec. 7, pertains to restrictions for initiatives, including that an initiative cannot make or repeal appropriations. She asked if any conflict would arise by requiring the amount proposed by SJR 6 to be approved or disapproved by placing it on the ballot.

MR. MILKS said SJR 6 proposes a percentage of market value (POMV) draw from the permanent fund and in Sec. 2 (c) a portion of that amount shall be allocated for dividend payments (PFD). It includes language that a future law changing the amount allocated for PFDs must be approved by the voters. He stated that SJR 6 will govern over more general restrictions on initiatives in Art. XI than was identified.

[2:34:37 PM](#)

SENATOR HUGHES expressed concern that SB 53 does not ask the voters if the proposal is something the legislature should consider adopting as a resolution for a constitutional amendment. She asked if that were added to the advisory vote whether it could be combined as one question or if it must be two questions. She clarified her concern was that asking people if the law should be changed when they know that the law establishing the PFD statutory formula has not been followed might bring voters to conclude that changing the law won't mean much.

She said it seems as though an advisory vote would also include SJR 6. It would ask voters if the 50:50 rule is okay and whether the legislature should consider the Constitutional Amendment proposed by SJR 6 to establish this in the Alaska Constitution.

MR. MILKS responded that the legislature has a broad ability to draft language for an advisory vote. The legislature's goal is to understand what the people think. He said that if the legislature asks a compound question, it could create ambiguity. For example, some people may like the 50:50 rule but may not want that language in the Alaska Constitution. He cautioned members that the legislature must be careful how that language is drafted.

[2:37:01 PM](#)

SENATOR HUGHES related her understanding that combining the questions will not pose any legal issue, but care must be taken when drafting the language.

[2:37:09 PM](#)

SENATOR MYERS suggested that the advisory vote as written would not pass because an advisory vote on SJR 6 would require a yes or no answer. However, some people will vote yes because they like the change, some will vote no because they want a bigger ratio to increase government funding. Some will vote no because they support the original statutory formula for the PFD. He

suggested that an advisory vote as written might be like "putting the cart before the horse."

MR. MILKS deferred to Mr. Barnhill to answer why SJR 6 is written in this fashion. He said SB 53 would establish the framework for how to spend permanent fund income and establish an advisory vote to ask voters if the 50:50 rule sounds like a good idea.

[2:39:06 PM](#)

MR. BARNHILL said the administration wants a proposal that comprehensively addresses some thorny problems that have defied resolution. The three principles the governor is putting forward are first, protect the permanent fund forever; second, involve the people in a meaningful way; and third, protect the permanent fund dividend (PFD) forever. He said if you ask 60 people about these issues, there will be disagreement in the details, but there would be broad-scale agreement on the principles. He acknowledged that it is fair to ask which should come first. However, the administration is trying to put forth a comprehensive set of measures for the legislature to consider. He said he hoped a supermajority would agree.

[2:40:57 PM](#)

SENATOR MYERS expressed concern about meaningfully involving the people, such that the meaning will get lost. He offered his view that by changing the Alaska Constitution in SJR 6 and a statute in SB 53 first, then asking the people if they agree with those changes muddles the meaning. If an advisory vote fails, the legislature could interpret why it failed in many different ways. He offered his belief that it failed that test.

[2:41:58 PM](#)

SENATOR KIEHL offered his view that there is an order of operations issue in SJR 6 and SB 53 that the legislature should consider as this legislation moves through the process. SJR 6 proposes any change to the 50:50 distribution rule between government services and PFDs must be approved by the voters. However, the transitional language states that this happens after SB 53 becomes law, regardless of the outcome of the advisory vote. He said it strikes him as inconsistent to make changes in the Alaska Constitution, then require an advisory vote for further changes. Instead, it should require an advisory vote before changing the Alaska Constitution.

[2:43:08 PM](#)

MR. BARNHILL answered that the people would be consulted at the first general election, after which the legislature would have the flexibility to set the PFD distribution rate. The advisory vote aims to determine whether the voters agree with the changes the legislature made. He acknowledged that there could be different ways to accomplish this. However, this process seems relatively efficient in that it gives appropriate accord to the legislative process. The people elect their legislators, the legislature uses its expertise, in consultation with the executive branch, to make decisions on behalf of the people. The people subsequently can voice their opinions in an advisory vote as to whether they agree with the legislature's decisions. As previously mentioned, many conclusions can be drawn on the advisory vote. He recalled that in 1999, the legislature seriously considered the outcome of the advisory vote on the use of permanent fund earnings. Therein lies the meaningful nature of this process since the legislature would consult with Alaskans on the decisions it made.

[2:45:21 PM](#)

SENATOR SHOWER commented on where the legislature is at this point. He related that the legislature is discussing and debating the level of services, including the value of services to the public, compared to them receiving PFD checks. He offered his view it is important to note that government services are not equally distributed. Some people are consumers, and others are producers; some use substantial government services, but others do not. However, PFDs are equally distributed. It's a philosophical issue about whether to support SJR 6 and SB 53 or how else to solve the level of government services compared to the amount of the PFDs. The legislature has many options to address these issues.

[SB 53 and SJR 6 were held in committee.]

[2:47:13 PM](#)

At ease

SB 122-VICTIM DEFINITION

[2:48:22 PM](#)

CHAIR HOLLAND reconvened the meeting and announced the consideration of SENATE BILL NO. 122, "An Act relating to the definition of 'victim.'"

[SB 122 was previously heard on 4/12/21 and public testimony was opened and closed.]

[2:48:32 PM](#)

SENATOR LORA REINBOLD, Alaska State Legislature, Juneau, Alaska, as sponsor of SB 122, said that this bill relates to the definition of victim. She read the sponsor statement:

[Original punctuation provided.]

SB122 is a bill that removes the word "adult" before the word "child" in the definition in AS 12.55.185 (C ii). By removing the word adult, the definition of a victim will include a child of a person who has been a victim of a crime when a parent or guardian is deceased. SB122 will ensure victim rights for a child of a deceased parent or guardian.

SENATOR REINBOLD provided a sectional analysis:

On page 2, line 1, delete language [AN ADULT] and insert "a"

[2:49:42 PM](#)

KELLI TOTH, Staff, Senator Lora Reinbold, Alaska State Legislature, Juneau, Alaska, on behalf of the sponsor, stated the reason for the bill is that a child wanted to be in the courtroom for the proceedings of a deceased parent but was denied by the judge.

[2:50:17 PM](#)

SENATOR HUGHES said she appreciated the sponsor working with Taylor Winston, who was denied access to courtroom proceedings. She said she understood that sometimes, minors were allowed in the courtroom when a parent was incapacitated. The judicial practice has allowed children who want to be in the courtroom to be present at the proceedings. She related her understanding that this was not a problem in those cases.

[2:51:13 PM](#)

SENATOR REINBOLD explained that SB 122 will address the issue so that any child can have those rights. She said that the courts have been lenient by allowing children to be present during court proceedings. However, one child was denied that privilege and she did not want that to happen in the future. She deferred to her staff to confirm.

[2:51:57 PM](#)

MS. TOTH answered that is correct.

2:52:03 PM

SENATOR HUGHES related her understanding that if the parent is deceased, the bill will allow a minor child to be present in court proceedings. However, if the parent is incapacitated, it does not change that language to a minor child. She related her understanding that this has not been a problem but at some point, the legislature may wish to address that aspect.

2:52:31 PM

SENATOR SHOWER asked the sponsor if she was happy with the bill or would like a friendly amendment.

SENATOR REINBOLD responded that she was comfortable with the change to address the initial concern. She was not aware of any other issues. She stated that the Office of Victims' Rights has vetted the bill.

SENATOR SHOWER asked if the Office of Victims' Rights is happy with the bill in its current form.

[There appeared to be assent.]

2:54:03 PM

SENATOR KIEHL said he appreciated the sponsor bringing the bill forward so minor children could be present during proceedings. He related his understanding that the departments continue to interpret this language as an inclusive list. This bill will clear up one incident that was handled differently.

2:55:16 PM

SENATOR REINBOLD stated that SB 122 has a zero fiscal note.

[SB 122 was held in committee.]

2:55:40 PM

There being no further business to come before the committee, Chair Holland adjourned the Senate Judiciary Standing Committee meeting at 2:55 p.m.