

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

August 27, 2021

1:36 p.m.

MEMBERS PRESENT

Senator Roger Holland, Chair
Senator Mike Shower, Vice Chair (via Teams)
Senator Shelley Hughes
Senator Robert Myers
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Senator Lora Reinbold (via Teams)

COMMITTEE CALENDAR

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

PREVIOUS COMMITTEE ACTION

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
04/21/21	(S)	Heard & Held
04/21/21	(S)	MINUTE (JUD)
04/26/21	(S)	JUD AT 1:30 PM BUTROVICH 205
04/26/21	(S)	Heard & Held
04/26/21	(S)	MINUTE (JUD)
04/30/21	(S)	JUD AT 1:30 PM BUTROVICH 205
04/30/21	(S)	<Bill Hearing Canceled>
08/27/21	(S)	JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

ED KING, Staff
 Senator Roger Holland
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Explained amendments to SB 53 on behalf of Senator Holland.

EMILY NAUMAN, Attorney
 Legislative Legal Services
 Legislative Affairs Agency
 Juneau, Alaska

POSITION STATEMENT: Answered legal questions during the discussion of SB 53.

ALEXI PAINTER, Director
 Legislative Finance Division
 Legislative Agencies and Offices
 Legislative Affairs Agency
 Juneau, Alaska

POSITION STATEMENT: Answered questions on SB 53 on behalf of the agency.

BRIAN FECHTER, Deputy Commissioner
 Department of Revenue
 Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of SB 53 on behalf of the administration.

ACTION NARRATIVE

[1:36:16 PM](#)

CHAIR ROGER HOLLAND called the Senate Judiciary Standing Committee meeting to order at 1:36 p.m. Present at the call to order were Senators Myers, Hughes, Kiehl, Shower (via Teams), and Chair Holland.

SB 53-PERM FUND; ADVISORY VOTE

[1:37:21 PM](#)

CHAIR HOLLAND announced the consideration of 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."

[SB 53 was previously heard on 4/21/21 and 4/26/21. Public testimony was opened and closed on 4/26/21.]

[1:37:38 PM](#)

CHAIR HOLLAND stated his intent to take amendments on SB 53 and hold the bill in committee. He reminded members that passing this bill would change the statutory permanent fund dividend formula established by Senate Bill 26 in 2018. Under SB 53, the permanent fund dividend (PFD) would receive 2.5 percent, or half of the average 5 percent market value of the permanent fund as calculated over the first five of the last six years. This calculation would yield the \$2,350 PFD in 2021 currently being discussed.

[1:38:23 PM](#)

CHAIR HOLLAND stated that this bill is part of the governor's larger fiscal plan. Further, it was supported by the legislature's Fiscal Policy Working Group (FPWG). He pointed out that the legislature has not followed the existing PFD statute for the past six years. SB 53 would provide the legislature with an opportunity to follow the statutory provisions when deciding the amount of the dividend each year by aligning the statute with the proposed constitutional amendment [SJR 6].

[1:38:55 PM](#)

CHAIR HOLLAND acknowledged that many Alaskans would prefer to maintain and follow the historical formula. However, the 50:50 plan in SB 53 is a compromise that meets the original intent of the historical formula. He stated his intent to consider amendments.

[1:39:15 PM](#)

SENATOR HUGHES related her understanding that additional amendments would be considered at the next hearing.

CHAIR HOLLAND agreed. He further indicated that the committee is authorizing Legislative Legal Services to make technical changes to meet the intent expressed during this hearing.

[1:40:14 PM](#)

CHAIR HOLLAND moved Amendment 1, work order 32-GS1693\A.13.

32-GS1693\A.13
Nauman
8/26/21

AMENDMENT 1

OFFERED IN THE SENATE
TO: SB 53

BY SENATOR HOLLAND

Page 1, lines 3 - 4:

Delete "**providing for an effective date by
repealing the effective date of sec. 8, ch. 16, SLA
2018;**"

Page 2, line 6:

Delete "**five** [5.25]"

Insert "five"

Page 5, line 2:

Delete "First"

Insert "Second"

Page 5, lines 13 - 14:

Delete all material.

Re-number the following bill sections accordingly.

Page 5, line 16:

Delete "sec. 12" and the

Insert "sec. 10"
Delete "July 1, 2021"

SENATOR KIEHL objected for discussion purposes.

[1:40:40 PM](#)

ED KING, Staff, Senator Roger Holland, Alaska State Legislature, Juneau, Alaska, explained Amendment 1. SB 53 was debated during the regular legislative session. Since this is a new fiscal year, some of the terms and provisions in the bill are out of date. For example, Senate Bill 26 had a delayed effective date from 2018 to June 30, 2021. When SB 53 was originally discussed that provision had not yet taken effect. It has now taken effect. Thus, the phrase "providing for an effective date by repealing the effective date of Sec. 8 ch. 16 SLA 2018;" is no longer necessary since it is in effect.

MR. KING referred to page 2, lines 6-7 of SB 53 to language that reduces the POMV rate from 5.25 to 5 percent. This language is no longer needed because the delayed effective date has taken effect. The rest of the changes are consistent and conform to the new fiscal year, he said.

MR. KING directed attention to lines 19-22 of Amendment 1 pertaining to the effective date clause. He explained that Amendment 1 would delete the effective date of July 1, 2021, since that date has passed and replace it with July 1, 2022.

[1:42:28 PM](#)

SENATOR HUGHES asked whether the date should remain as July 1, 2021, since the legislature would want the bill to be in effect now.

MR. KING answered that under Amendment 1 the bill would not take effect until the first day of the next fiscal year. He said July 1, 2022, might be too late if the legislature wants changes in this bill to affect FY 2022. He deferred to Ms. Nauman to recommend how to correct it.

[1:43:34 PM](#)

EMILY NAUMAN, Attorney, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, answered that to the extent the committee would like the bill to take effect for the current fiscal year, the language could be amended to read "take effect immediately."

[1:44:43 PM](#)

CHAIR HOLLAND asked whether the preference would be to use the language "take effect immediately" or to strike lines 21 and 22 of Amendment 1.

[1:44:03 PM](#)

MS. NAUMAN opined that retaining some amendment to those lines is important. Essentially, the bill will have an effective date that has already passed unless the committee adds a retroactivity provision. She advised that under *Wielechowski v. State*, the legislature could appropriate at any time any amount from the Earnings Reserve Account (ERA) in FY 2022 regardless of the effective date in the bill.

[1:44:46 PM](#)

SENATOR HUGHES said one goal Chair Holland articulated in his opening remarks was that the committee wants legislative appropriations to align with the law. She related her understanding that if the committee wanted to follow the statutes this year, lines 21 and 22 of Amendment 1 should remain as written. She asked for guidance on the specific language to make it work.

CHAIR HOLLAND asked Ms. Nauman to provide specific language that would replace line 22, "Delete July 1, 2022".

MS. NAUMAN responded that the language should read "take effect immediately." She opined that language should be sufficient for now.

[1:45:44 PM](#)

CHAIR HUGHES ask for clarification that the amendment would delete "July 1, 2022" and replace it with "take effect immediately."

MR. KING pointed out that the language "take effect" is currently in SB 53 so adding the word "immediately" would suffice.

CHAIR HOLLAND stated that Legislative Legal is authorized to make conforming changes to the bill.

[1:46:18 PM](#)

SENATOR HUGHES asked if the remedy would be to delete the date on line 21 of Amendment 1 and insert "immediately."

CHAIR HOLLAND reiterated the language.

MS. NAUMAN cautioned members that it is difficult to determine what effect specific language changes made during the committee meeting will have on the rest of the bill. For example, [on page 5, line 15 of SB 53,] Section 12 establishes an immediate effective date for Section 9. She opined that the entire bill should be included in that change. Since this language provides a more technical change than the committee likely contemplated, she suggested the committee adopt a conceptual amendment to make the entire bill effective immediately.

[1:47:40 PM](#)

At ease

[1:48:08 PM](#)

CHAIR HOLLAND reconvened the meeting.

[1:48:16 PM](#)

SENATOR HUGHES noted that during the break the committee learned a forthcoming amendment contains a provision that would delete Section 12, if passed.

SENATOR HUGHES moved to adopt Conceptual Amendment 1 to Amendment 1, on line 22, delete July 1, 2022, and insert "immediately."

CHAIR HOLLAND found no further objection, so Conceptual Amendment 1 to Amendment 1 was adopted.

SENATOR HUGHES asked Legislative Legal to make any conforming changes necessary.

[1:49:18 PM](#)

SENATOR KIEHL removed his objection.

CHAIR HOLLAND heard no further objections and Amendment 1, as amended, was adopted.

[1:49:39 PM](#)

CHAIR HOLLAND moved Amendment 2, work order 32-GS1693\A.8.

32-GS1693\A.8

Nauman

8/26/21

AMENDMENT 2

OFFERED IN THE SENATE

BY SENATOR HOLLAND

TO: SB 53

Page 2, line 19, following " AS 43.23.045,":

Insert "not less than

Page 2, line 22, following "fund,":

Insert "up to"

SENATOR HUGHES objected for discussion purposes.

[1:49:59 PM](#)

MR. KING explained that Amendment 2 would align SB 53 to the changes this committee made to SJR 6. The committee discussed ensuring that the permanent fund dividend (PFD) calculation would be based on the full calculation. Thus, if the legislature opted to appropriate an amount less than that, the calculation for the dividend would not change. On page 2, line 19, "not less than" would be inserted in relationship to the PFD calculation. On page 2, line 22, the language "up to" is inserted to indicate that the government's portion of the POMV can be less than or equal to that amount.

CHAIR HOLLAND asked Senator Shower (participating via teleconference) to confirm that he is online and has no objections to the actions taken thus far.

[1:51:18 PM](#)

SENATOR SHOWER responded that he did not have any issues thus far.

[1:51:29 PM](#)

SENATOR HUGHES asked the record to reflect that legislators can participate remotely and vote on amendments.

[1:51:47 PM](#)

SENATOR KIEHL stated that he was not 100 percent clear that Amendment 2 is necessary. The legislature always has the authority to deposit extra general fund monies in the permanent fund. He asked whether Amendment 2 was symbolic.

MR. KING stated that as Legislative Legal counsel mentioned earlier, the legislature has the power of appropriation and regardless of the current or future statutory language, that power is not diminished.

[1:52:29 PM](#)

CHAIR HOLLAND asked if Amendment 2 would symbolically align this bill with the proposed third special session's constitutional language in SJR 6.

MR. KING answered yes. He related his understanding that the committee's intent is to align the law with the proposed constitutional amendment. Although it is not necessary to align SB 53 with the proposed constitutional amendment, it is symbolic to do so.

[1:53:07 PM](#)

SENATOR MYERS related his understanding that the intent is to tie SB 53 to the constitutional amendment. Thus, Amendment 2 provides the language to match SB 53 to the constitutional amendment, SJR 6.

[1:53:34 PM](#)

SENATOR SHOWER commented that three committee members participated in the Fiscal Policy Working Group (FPWG). He stated that part of the challenge is to restore the public trust in the legislature's ability to follow the law. While he viewed Amendment 2 as symbolic, it is important in terms of accountability to the public that this legislature and future legislatures intend to follow the law.

[1:54:33 PM](#)

CHAIR HOLLAND highlighted the importance of aligning SB 53 and the proposed constitutional amendment. He emphasized the necessity for the legislature to follow the law.

[1:54:53 PM](#)

SENATOR HUGHES observed that Section 2, AS 37.13.145 (b) on page 2, line 16 of SB 53 reads, "Each fiscal year, the legislature may appropriate" rather than "shall" appropriate from the earnings reserve account. She suggested that if today's amendments do not fix this, the committee should address this language at the next meeting.

MR. KING deferred to Ms. Nauman.

MS. NAUMAN agreed with Senator Hughes. She said "may appropriate" is retained because it is consistent with the decision under *Wielechowski v. State*. She opined that changing the law to say "shall appropriate" would be unconstitutional because the constitutional amendment has not yet passed.

MS. NAUMAN said that is the reason the term "may" is retained in subsection (b).

[1:56:23 PM](#)

SENATOR HUGHES asked if the committee could add contingency language to change "may" to "shall" if the proposed constitutional amendment were to pass.

MS. NAUMAN answered yes.

[1:56:42 PM](#)

SENATOR MYERS advised members that a forthcoming amendment to tie SB 53 to the proposed constitutional amendment contains "shall."

MR. KING confirmed it was in a forthcoming amendment. He offered to raise the issue when the amendment is offered.

[1:57:20 PM](#)

SENATOR HUGHES removed her objection.

CHAIR HOLLAND found no further objection and Amendment 2 was adopted.

[1:57:42 PM](#)

SENATOR MYERS moved to adopt Amendment 3, work order 32-GS1693\A.11.

32-GS1693\A.11
Nauman
8/27/21

AMENDMENT 3

OFFERED IN THE SENATE
TO: SB 53

BY SENATOR MYERS

Page 1, lines 3 - 4:

Delete "**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;**"

Page 2, line 6:

Delete "**five** [5.25]"
Insert "five"

Page 2, following line 14:

Insert a new bill section to read:

"* **Sec. 2.** AS 37.13.140, as amended by sec. 1 of this Act, is amended to read:

Sec. 37.13.140. Income. (a) Net income of the fund includes income of the earnings reserve account established under AS 37.13.145. Net income of the fund shall be computed annually as of the last day of the fiscal year in accordance with generally accepted accounting principles, excluding any unrealized gains or losses. Income available for distribution equals 21 percent of the net income of the fund for the last five fiscal years, including the fiscal year just ended, but may not exceed net income of the fund for the fiscal year just ended plus the balance in the earnings reserve account described in AS 37.13.145.

(b) The corporation shall determine the amount available for appropriation each year. The amount available for appropriation is five percent of the average market value of the fund for the first five of the preceding six fiscal years, including the fiscal year just ended, computed annually for each fiscal year in accordance with generally accepted accounting principles. In this subsection, "average market value of the fund" includes the balance of the earnings reserve account established under AS 37.13.145, but does not include that portion of the principal attributed to the settlement of State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior Court, First Judicial District). [THE AMOUNT AVAILABLE FOR APPROPRIATION MAY NOT EXCEED THE BALANCE IN THE EARNINGS RESERVE ACCOUNT DESCRIBED IN AS 37.13.145.]"

Renumber the following bill sections accordingly.

Page 2, following line 23:

Insert a new bill section to read:

"* **Sec. 4.** AS 37.13.145(b), as amended by sec. 3 of this Act, is amended to read:

(b) At the end of each [EACH] fiscal year, the corporation shall transfer [LEGISLATURE MAY APPROPRIATE] from the earnings reserve account to the [(1)] dividend fund established under AS 43.23.045, 50 percent of the income [AMOUNT] available for distribution [APPROPRIATION] under AS 37.13.140 [AS 37.13.140(b); AND

(2) GENERAL FUND, 50 PERCENT OF THE AMOUNT AVAILABLE FOR APPROPRIATION UNDER AS 37.13.140(b)]."

Renumber the following bill sections accordingly.

Page 3, following line 10:

Insert a new bill section to read:

"* **Sec. 6.** AS 37.13.145(c), as amended by sec. 5 of this Act, is amended to read:

(c) After the transfer [APPROPRIATIONS] under (b) and an appropriation under (g) of this section, the corporation shall transfer [LEGISLATURE MAY APPROPRIATE] from the earnings reserve account to the principal of the fund an amount sufficient to offset the effect of inflation on the principal of the fund during that fiscal year. However, none of the amount transferred shall be applied to increase the value of that portion of the principal attributed to the settlement of State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior Court, First Judicial District) on July 1, 2004. The corporation shall calculate the amount to transfer to the principal under this subsection by

(1) computing the average of the monthly United States Consumer Price Index for all urban consumers for each of the two previous calendar years;

(2) computing the percentage change between the first and second calendar year average; and

(3) applying that rate to the value of the principal of the fund on the last day of the fiscal year just ended, including that portion of the principal attributed to the settlement of State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior Court, First Judicial District)."

Renumber the following bill sections accordingly.

Page 3, following line 21:

Insert new bill sections to read:

"* **Sec. 8.** AS 37.13.145(d), as amended by sec. 7 of this Act, is amended to read:

(d) Notwithstanding (b) of this section, income earned on money awarded in or received as a result of State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior Court, First Judicial District), including settlement, summary judgment, or adjustment to a royalty-in-kind contract that is tied to the outcome of this case, or interest earned on the money, or on the earnings of the money shall be treated in the same

manner as other income of the Alaska permanent fund, except that it is not available for distribution [APPROPRIATIONS] to the dividend fund, for transfers [UNDER AS 37.13.140(b) OR] to the principal under (c) of this section, or for an appropriation under (g) of this section, and shall be annually deposited into the Alaska capital income fund (AS 37.05.565).

* **Sec. 9.** AS 37.13.145 is amended by adding new subsections to read:

(g) The legislature may not appropriate from the earnings reserve account to the general fund a total amount that exceeds the amount available for appropriation under AS 37.13.140(b) in a fiscal year.

(h) The combined total of the transfer under (b) of this section and an appropriation under (g) of this section may not exceed the amount available for appropriation under AS 37.13.140(b)."

Renumber the following bill sections accordingly.

Page 3, following line 25:

Insert a new bill section to read:

"* **Sec. 11.** AS 37.13.300(c), as amended by sec. 10 of this Act, is amended to read:

(c) Net income from the mental health trust fund may not be included in the computation of net income or market value [THE AMOUNT] available for distribution or appropriation under AS 37.13.140 [AS 37.13.140(b)]."

Renumber the following bill sections accordingly.

Page 4, following line 1:

Insert a new bill section to read:

"* **Sec. 13.** AS 37.14.031(c), as amended by sec. 12 of this Act, is amended to read:

(c) The net income of the fund shall be determined by the Alaska Permanent Fund Corporation in the same manner the corporation determines the net income of the Alaska permanent fund under AS 37.13.140 [AND SHALL BE COMPUTED ANNUALLY AS OF THE LAST DAY OF THE FISCAL YEAR IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, EXCLUDING ANY UNREALIZED GAINS OR LOSSES]."

Renumber the following bill sections accordingly.

Page 4, following line 27:

Insert a new bill section to read:

"* **Sec. 15.** AS 43.23.025(a), as amended by sec. 14 of this Act, is amended to read:

(a) By October 1 of each year, the commissioner shall determine the value of each permanent fund dividend for that year by

(1) determining the total amount available for dividend payments, which equals

(A) the amount of income of the Alaska permanent fund transferred [APPROPRIATED] to the dividend fund under AS 37.13.145(b) during the current year;

(B) plus the unexpended and unobligated balances of prior fiscal year appropriations that lapse into the dividend fund under AS 43.23.045(d);

(C) less the amount necessary to pay prior year dividends from the dividend fund in the current year under AS 43.23.005(h), 43.23.021, and 43.23.055(3) and (7);

(D) less the amount necessary to pay dividends from the dividend fund due to eligible applicants who, as determined by the department, filed for a previous year's dividend by the filing deadline but who were not included in a previous year's dividend computation;

(E) less appropriations from the dividend fund during the current year, including amounts to pay costs of administering the dividend program and the hold harmless provisions of AS 43.23.240;

(2) determining the number of individuals eligible to receive a dividend payment for the current year and the number of estates and successors eligible to receive a dividend payment for the current year under AS 43.23.005(h); and

(3) dividing the amount determined under (1) of this subsection by the amount determined under (2) of this subsection."

Renumber the following bill sections accordingly.

Page 4, line 29, through page 5, line 15:

Delete all material and insert:

"* **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Sections 2, 4, 6, 8, 9, 11, 13, and 15 of this Act take effect only if, by

November 30, 2023, the voters have not approved a resolution that appears on a statewide election ballot that amends the Constitution of the State of Alaska to

(1) specify that the amount that may be appropriated from the Alaska permanent fund is a draw based on the average fiscal-year-end market value of the permanent fund; and

(2) require deposit of the unencumbered balance of the earnings reserve account established under AS 37.13.145 into the Alaska permanent fund to become part of the principal of the fund.

* **Sec. 18.** If, under sec. 17 of this Act, secs. 2, 4, 6, 8, 9, 11, 13, and 15 of this Act take effect, they take effect July 1, 2023."

Renumber the following bill sections accordingly.

Page 5, line 16:

Delete "sec. 12"

Insert "sec. 18"

[1:57:44 PM](#)

CHAIR HOLLAND objected for discussion purposes.

SENATOR SHOWER asked for the work order number for Amendment 3 to verify whether he has the correct amendment before him.

[1:58:05 PM](#)

At ease

[1:58:46 PM](#)

CHAIR HOLLAND reconvened the meeting. He stated that the amendments to SB 53 were recently posted on BASIS. He identified the work order for Amendment 3 as 32-GS1693\A.11.

[1:59:25 PM](#)

SENATOR MYERS explained that Amendment 3 would tie SB 53 to the proposed constitutional amendment. Initially the bill called for an advisory vote of the people. He understood that a separate amendment would remove the proposed advisory vote.

[2:00:32 PM](#)

SENATOR MYERS elaborated that the concept was to align SB 53 with the constitutional amendment. He stated that the constitutional amendment cannot become effective unless voters approve it during the next general election to be held in

November 2022. If that constitutional amendment were to fail, the law would revert to the current statute by repealing SB 53.

[2:00:55 PM](#)

SENATOR MYERS directed attention to page 2, line 14 of Amendment 3, which would make the change Senator Hughes pointed out earlier by changing "may" to "shall." As Ms. Nauman indicated, the "shall" language is only constitutional if the voters approve the constitutional amendment, he said.

SENATOR HUGHES asked for confirmation that if the constitutional amendment were to fail in November 2022 and SB 53 was repealed, it would affect the PFDs issued in 2021 and 2022.

SENATOR MYERS answered that is correct.

[2:01:51 PM](#)

SENATOR MYERS directed attention to the effective date on page 6, line 11 in Section 18 of Amendment 3. He asked for the outcome of the bill if the legislative vote on the passage of the effective date failed.

MS. NAUMAN asked whether he was speaking about SB 53 or Amendment 3.

SENATOR MYERS asked what the overall effect would be if SB 53 were to pass the legislature but the legislature failed to adopt the effective date clause.

MS. NAUMAN answered that the question is complicated. She predicted it would be chaotic for Legislative Legal to determine the legal implications. She suggested it was likely that the changes would occur simultaneously and so the outcome would result in no changes to the statutes.

[2:03:26 PM](#)

SENATOR KIEHL directed attention to the conditional effects provision on page 6, line 3 of Amendment 3. He stated that the language would revert back to the original PFD language "... if, by November 30, 2023 the voters have not approved a constitutional amendment..." However, the resolution can only appear on the ballot during a general election. He asked if there was a reason to use the November 30, 2023 date since the next general election is in November or if it was a drafting error.

[2:04:33 PM](#)

SENATOR MYERS deferred to Ms. Nauman.

[2:04:32 PM](#)

MS. NAUMAN responded that it was probably a typo since the year should read 2022.

[2:04:54 PM](#)

SENATOR HUGHES moved Conceptual Amendment 1 to Amendment 3 on page 6, line 3, to delete "2023" and insert "2022".

CHAIR HOLLAND found no objection and Conceptual Amendment 1 to Amendment 3 was adopted.

[2:05:29 PM](#)

CHAIR HOLLAND removed his objection. There being no further objection, Amendment 3, as amended, was adopted.

[2:05:48 PM](#)

CHAIR HOLLAND moved Amendment 4, work order 32-GS1693\A.6.

32-GS1693\A.6
Nauman
8/26/21

AMENDMENT 4

OFFERED IN THE SENATE
TO: SB 53

BY SENATOR HOLLAND

Page 1, line 3:

Delete "**relating to an advisory vote on the permanent fund;**"

Page 4, line 29, through page 5, line 12:

Delete all material.

Re-number the following bill sections accordingly.

Page 5, line 15:

Delete all material.

Re-number the following bill section accordingly.

Page 5, line 16:

Delete "Except as provided in sec. 12 of this Act, this"

Insert "This"

[2:05:53 PM](#)

SENATOR HUGHES objected for discussion purposes.

[2:06:10 PM](#)

MR. KING explained that the passage of Amendment 3 would put this question to a vote of the people through a constitutional amendment. Therefore, it would nullify the need for an advisory vote.

CHAIR HOLLAND withdrew Amendment 4.

[2:06:43 PM](#)

At ease

[2:07:00 PM](#)

CHAIR HOLLAND reconvened the meeting. He stated that he withdrew Amendment 4 in error. Amendment 4 was before the committee.

[2:07:20 PM](#)

SENATOR HUGHES asked if Mr. King could explain the necessity for Amendment 4.

[2:07:29 PM](#)

MR. KING explained that Amendment 4 proposes removing the advisory vote language in SB 53. With the addition of the constitutional amendment conditional language, the people will have an opportunity to vote on the constitutional amendment. Therefore, establishing an advisory vote in SB 53 is no longer necessary. Amendment 4 would remove the advisory vote requirement in SB 53, but it retains the requirement for a statewide vote on the constitutional amendment.

[2:08:27 PM](#)

SENATOR HUGHES removed her objection.

[2:08:31 PM](#)

CHAIR HOLLAND found no further objection and Amendment 4 was adopted.

SENATOR HUGHES advised members that Senator Shower was experiencing audio issues.

[2:08:46 PM](#)

At-ease

[2:11:50 PM](#)

CHAIR HOLLAND reconvened the meeting.

[2:12:04 PM](#)

SENATOR SHOWER confirmed his audio difficulties were resolved and he was online.

[2:12:29 PM](#)

CHAIR HOLLAND stated he would not offer Amendment 5, work order 32-GS1693\A.10, today but retained the option to offer it at a later date.

[2:13:05 PM](#)

CHAIR HOLLAND moved Amendment 6, work order 32-GS1693\A.14.

32-GS1693\A.14
Nauman
8/27/21

AMENDMENT 6

OFFERED IN THE SENATE
TO: SB 53

BY SENATOR HOLLAND

Page 4, following line 28:

Insert a new bill section to read:

"* **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to read:

USE OF THE EARNINGS RESERVE ACCOUNT.
Notwithstanding AS 37.13.145(e) and (f), for the fiscal years ending June 30, 2022, and June 30, 2023, in addition to the amount available for appropriation calculated under AS 37.13.140(b), the legislature may appropriate from the earnings reserve account to the general fund an additional 1.5 percent of the average market value of the fund for the first five of the preceding six fiscal years, including the fiscal year just ended, computed annually for each fiscal year in accordance with generally accepted accounting principles. In this section, "average market value of the fund" has the meaning given in AS 37.13.140(b)."

Renumber the following bill sections accordingly.

Page 5, line 15:

Delete "Section 9 of this Act takes"

Insert "Sections 9 and 10 of this Act take"

Page 5, line 16:
Delete "sec. 12"
Insert "sec. 13"

2:13:10 PM

SENATOR HUGHES objected for discussion purposes.

2:13:23 PM

MR. KING explained Amendment 6. He said the legislature has hesitated or resisted using more than the 5 percent of market value (POMV) cap for use of the Earnings Reserve Account (ERA). Amendment 6 would authorize the legislature to use additional funds from the ERA to assist the state in transitioning to a long-term stable fiscal plan. Amendment 6 would authorize the use of an additional 1.5 percent of the POMV for FY 2022 and FY 2023 to bridge the gap while the long-term fiscal plan of the Fiscal Plan Working Group is effectuated. He estimated this would use \$2 billion of the \$15 billion surplus earnings from last year.

CHAIR HOLLAND related his understanding that the governor's original plan included a \$3 billion bridge fund transfer from the permanent fund to the Constitutional Budget Reserve (CBR). Amendment 6 would provide a different funding mechanism to cover the anticipated shortfall for the next two years.

MR. KING agreed. He explained that if the legislature were to pass the PFD calculation as proposed by SB 53, it would require \$1.5 billion. Those funds have already been spent based on the appropriations bill that passed the legislature during the last legislative session. He estimated that roughly \$500 million of funding remains for any additional appropriations this legislative session, which leaves a shortfall of approximately \$1 billion.

2:15:43 PM

SENATOR HUGHES asked if Amendment 6 were to fail but the legislature passed SB 53, the legislature would be in the position that it could not follow the law.

MR. KING responded that is correct. He advised that there is currently enough money in CBR for the legislature to balance the budget, but it would take the CBR balance to a very low unsustainable level. Rather than transfer money from the ERA to the CBR as the governor has proposed, Amendment 6 would take the funds directly from the ERA and use it for the appropriations currently being debated.

SENATOR HUGHES indicated she had a question for Mr. Painter.

[2:16:39 PM](#)

ALEXI PAINTER, Director, Legislative Finance Division, Legislative Agencies and Offices, Juneau, Alaska, stated that he was experiencing audio difficulties and could not hear members.

[2:16:51 PM](#)

MS. NAUMAN indicated that she was also experiencing audio issues.

[2:17:26 PM](#)

SENATOR SHOWER advised members that his audio connection was now fine.

[2:17:37 PM](#)

At ease

[2:21:51 PM](#)

CHAIR HOLLAND reconvened the meeting. He explained that the committee was experiencing some audio difficulties so Mr. Painter has joined the meeting in person.

[2:22:17 PM](#)

SENATOR HUGHES asked if Amendment 6, which would allow a \$1.6 billion POMV draw in addition to the annual 5 percent POMV draw were to fail, whether the legislature could follow the law under SB 53 since it provides for a 50:50 POMV. The PFD would be approximately \$2,300. She asked if the legislature would have sufficient funds to pay for the draw, and if so, the source of the draw and the CBR balance after the draw. She offered her view that if the bill passed without Amendment 6 being adopted she did not believe the legislature could take the additional 1.5 percent draw.

MR. PAINTER responded that the current budget has a \$500 million surplus before the payment of the PFD or any other unrestricted general fund (UGF) items. The proposed PFD would cost \$1.5 billion, which would result in a \$1 billion deficit. Since the CBR balance is projected to be less than that amount and assuming a reverse sweep, there would not be sufficient funds to fund the budget. The legislature would need to turn to accounts such as Power Cost Equalization (PCE), the Higher Education Fund or some other account to bridge the deficit.

[2:24:07 PM](#)

SENATOR HUGHES related her understanding that it would essentially reduce the CBR to zero and the legislature would need to pull funds from other accounts if Amendment 6 does not pass and the legislature desires to follow the statutes and issue a full PFD.

MR. PAINTER answered yes.

[2:24:39 PM](#)

SENATOR SHOWER asked for clarification that if Amendment 6 were to pass as opposed to a bridge fund, the legislature could draw up to 1.5 percent from the permanent fund but the entire amount might not be needed. He asked whether Amendment 6 would provide more flexibility than making a direct transfer because the entire 1.5 percent might not be needed. He acknowledged that Mr. Painter indicated it wouldn't be necessary to draw the entire 1.5 percent, depending on moving other funds to cover the budget and fund the PFD.

He asked whether Amendment 6 would be more palatable politically because the legislature wouldn't be moving the entire 1.5 percent without knowing if the funds were needed. The legislature would only have to use what was needed until other things fell into place.

MR. PAINTER answered that the language in Amendment 6 reads "may appropriate up to" so the legislature could choose to appropriate less than the full 1.5 percent in additional funds depending on revenue performance over the next year. In FY 2023 the deficit is unknown so it would provide the legislature the flexibility to pick the amount needed.

[2:26:25 PM](#)

SENATOR SHOWER asked for a rough estimate of the percentage needed for the draw based on this year's projection. He asked if the percentage would be .75 percent or 1 percent.

MR. PAINTER answered that it will depend on the FY 2022 budget. He stated that the House would like to pay for oil and gas tax credits. Further, the governor identified \$7.5 million in budget vetoes of undesignated general fund (UGF) funds yesterday. Thus, there is some uncertainty in the final FY 2022 budget even though the legislature passed the appropriations bill.

[2:27:25 PM](#)

MR. PAINTER explained that currently the state faces a \$1 billion deficit. The additional 1.5 percent draw proposed in SB

53 would bring in an additional \$900 million. He suggested that the legislature may want to take the full 1.5 percent draw to maintain a higher CBR balance. On the other hand, the legislature might only need to draw 1 percent or .75 percent and spend down the CBR balance to \$500 million. However, there would be less funds available if the legislature added back funding to restore items the governor vetoed, address the oil tax credits, school debt reimbursement and other unfunded items. These items were unfunded at the end of the legislative session due to the CBR vote failure.

[2:28:34 PM](#)

SENATOR HUGHES asked if it would be possible to bring in other revenue sources retroactively to July 2021 to help solve the PFD funding shortfalls. In other words, the legislature could draw some funds from the CBR and rely on additional revenue rather than wait for an effective date of July 1, 2022.

MR. PAINTER answered that it would depend on the specific revenue measures selected. The governor's proposed "S Corp" taxes could be applied retroactively because the companies have not yet filed their taxes. This could provide income in the current fiscal year. Similarly, changing oil and gas taxes could be accomplished in the current fiscal year with an effective date of January 1 or some other date. However, increasing an excise tax like the motor fuel tax cannot be done retroactively because people have already paid for the fuel. Further, setting up a new tax would require establishing infrastructure, which would take time to develop.

[2:30:15 PM](#)

SENATOR HUGHES asked for a rough estimate of potential revenue for some of the ideas Commissioner Mahoney outlined for the committee. Further, she asked for the revenue derived from raising taxes retroactively, such as corporate taxes. She said she assumed that Governor Dunleavy's gaming proposal would be complicated to set up but she expressed interest in revenue other measures could bring in.

MR. PAINTER answered that two Department of Revenue (DOR) measures come to mind. He recalled DOR estimated \$60 to \$70 million could be raised from "S Corp" taxes in the first year and in excess of \$100 million from the per barrel tax credit, which would be dependent on oil prices so it could be greater or less.

[2:31:41 PM](#)

At ease

[2:31:45 PM](#)

CHAIR HOLLAND reconvened the meeting.

[2:32:06 PM](#)

BRIAN FECHTER, Deputy Commissioner, Department of Revenue, Juneau, Alaska, asked for clarification of the question.

[2:32:19 PM](#)

SENATOR HUGHES explained that the committee was exploring new revenue sources to provide sufficient funds for the 50:50 PFD proposal. She asked for an estimate of the revenue that could be assessed retroactively. She said this is important because the public is understandably frustrated with the legislature since it has not solved the statutory issues with the PFD in the last six years. She offered her belief that the public wants the statutory PFD issue settled, the fiscal gap solved, and a sustainable fiscal policy. She expressed concern that if the legislature did not follow the statutory PFD, it will be confusing to understand the legislature's plan to solve these issues. If so, the constitutional amendment could fail and the legislature would need to address it again, she said.

SENATOR HUGHES highlighted that some members do not want to take a penny more than the 5 percent [POMV] but there's a tradeoff to doing so. The legislature could protect the ERA long term. This proposal does not contemplate taking money out year-after-year. Instead, these draws would be temporary and be "hands off" after several years. She stressed that to settle this, members must always bear in mind public sentiment and what may happen at the ballot box. She acknowledged some members favor a stair-step approach, which would work mathematically. However, such an approach could be very confusing and may derail the legislature's efforts. Her questions relate to addressing revenue sources as a path forward to pay a 50:50 PFD this year, she said.

[2:35:32 PM](#)

MR. FECHTER echoed Mr. Painter's comments that DOR's two proposals for FY 2022 were the changes to the corporate income tax structure and the per barrel tax credit. He explained that it would not be difficult for the DOR to implement any changes to the tax rates on alcohol or tobacco since those taxes are in place and increases to those tax rates would allow the revenue to flow.

[2:36:39 PM](#)

SENATOR HUGHES asked for the estimated revenue from increased taxes on the items mentioned.

MR. FECHTER estimated an additional \$116 million for per barrel credit limitation to \$5 per barrel from the current level and \$60 million in FY 2022 for changes to the corporate income taxes.

SENATOR HUGHES explained that the PFD program was established to provide residents with a dividend from the permanent fund. She said the state needs revenue to close the budget gap to pay for government. Although it is a matter of semantics for some, it is a matter of principle for her, she said.

CHAIR HOLLAND remarked that it seemed as though funding for PFDs is the last funding consideration when many legislators believe it should be funded first.

[2:38:17 PM](#)

SENATOR KIEHL reminded members that the PFD is a program and not a constitutional obligation. However, he agreed it would be wise for the legislature to protect the PFD in the Alaska Constitution for the future. He stated that according to Alaska Supreme Court decisions it is part of the budget. Therefore, it is part of the budget deficit issue. He recalled that there was a bill before the legislature related to Oil and Gas Property Taxes. He asked how much revenue that could bring in depending on the effective date. He recalled there was an increase in the total state property tax from 20 mills to 30 mills with no change in what municipalities can keep.

MR. FECHTER answered that a rough number for a 10 mill increase to the current Oil and Gas Property Tax would bring in just under \$300 million. He offered to report back to the committee on the feasibility of assigning a retroactive date.

MR. PAINTER highlighted that those payments are typically made at the end of the fiscal year but he believed they were based on the calendar year. He stated that this is typically one of the last sources of revenue the state receives.

[2:40:28 PM](#)

SENATOR SHOWER asked if the discussion on changes to the Oil and Gas Property Tax is similar to Senate Bill 57 from several years ago. If so, he asked if this would be separate from changing the oil tax structure that companies pay because this discussion is

about the amount that the North Slope and Valdez would receive from the property tax. He highlighted that some people were concerned about how much pressure the legislature is exerting on the oil companies but this relates to what municipalities are collecting.

[2:41:40 PM](#)

MR. PAINTER offered his belief that Senator Kiehl was asking about an increase in the mill rate of the Oil and Gas Property Tax. Two years ago, Senate Bill 57 did not change the tax rate but rather it eliminated the deductibility of municipal taxes against the state tax. It was a very different structure than what Senator Kiehl is referring to, he said.

SENATOR SHOWER clarified that a number of issues were being discussed so he appreciated the response.

[2:42:22 PM](#)

SENATOR KIEHL said his question relates to what Senator Hughes alluded to in terms of how to bridge to a more thorough fiscal plan. One recommendation of the Fiscal Policy Working Group (FPWG) was to ensure that any bridge be one time and limited so Alaskans could depend on it. He pointed out that Amendment 6 would authorize two years of an "overdraw." This is a deviation from the 5 percent POMV limit. He highlighted that Senator Hughes expressed concerns that a constitutional amendment to the permanent fund constitutionalizing the POMV might fail. He asked what protections would prevent further draws to the permanent fund beyond the 5 percent draw.

[2:43:38 PM](#)

MR. PAINTER said absent passage of a constitutional amendment, the legislature could access the ERA at any time. Nothing would prevent the legislature from additional draws either in this case to follow a statute or by drawing in excess of the POMV.

SENATOR KIEHL expressed grave concern with Amendment 6 since it would allow drawing more than 5 percent POMV. Although he recognized members only plan for additional draws for two years, he was unsure the legislature could constrain itself. The benefit of the 5 percent POMV limit for the draw is that it constrains the legislature.

[2:45:40 PM](#)

CHAIR HOLLAND offered his view that the 1.5 percent POMV over two years was a good limit. He said he reviewed the history of the PFD. He noted that the government consistently limits the

PFD. The first PFD of \$1,000 represented approximately 14.4 percent of the market value. Although people express concern over the permanent fund, it continues to grow. He reviewed the percentage of market value (POMV) of the permanent fund dividend. From 1983 to 2003 the PFD was based on 4 percent POMV, during the next 10 years the PFD was based on 3 percent POMV, during the next 10 years the PFD was based on 2 percent POMV and now the legislature would be asking Alaskans to be happy with a dividend of 1 percent POMV, which is approximately \$1,000. He said this is not fair. While the state continually reduces the PFD, the permanent fund continues to grow at unexpected levels.

[2:47:25 PM](#)

SENATOR HUGHES said she appreciated the concerns that Senator Kiehl raised. Without a constitutional amendment, the PFD is vulnerable, she said. The only thing that might protect it is who sits in the 60 legislative seats. She advocated for the legislature to protect the PFD constitutionally. She expressed concern with public perception.

SENATOR HUGHES asked if the legislature did pass the 1.5 POMV draw for 2 years but the constitutional amendment did not pass, whether the money could be paid back to the permanent fund to provide some kind of stop gap. She stated that some endowment funds in the world work on the current balance rather than having a one-year lag and an average of the prior five years. Thus, the 5 percent POMV draw could be based on the current balance. Some funds have a range between 4 to 7 percent, she said. Since Alaska uses a 5 percent POMV but has a lag, it means the actual effective rate for this year is 3.7 percent of the current balance of the permanent fund. She suggested that if the legislature could use a bridge fund to win back the people's trust, the legislature could then pass a constitutional amendment to protect the fund by disallowing additional draws. Such an approach could be a win-win for everyone, she said.

[2:50:06 PM](#)

SENATOR HUGHES asked members to consider what would happen if the constitutional amendment did not pass but Amendment 6 passed which would allow for an additional 1.5 percent draw. She emphasized that it was possible that in the second year the additional 1.5 percent draw might not be needed. She acknowledged Senator Kiehl's concern yet there is a need to provide some protection. She offered her belief that the concerns could be addressed in some manner.

[2:50:52 PM](#)

SENATOR MYERS echoed Senator Hughes' point that SB 53 was in large part symbolic without passage of the proposed constitutional amendment. As Ms. Nauman and Mr. Painter indicated, the legislature could pay any size dividend and draw down the ERA for state services until the \$21 billion of unencumbered ERA funds are depleted. He acknowledged that Amendment 6 would be symbolic until the constitutional amendment passes.

[2:51:52 PM](#)

SENATOR MYERS said the legislature could do without this bill. However, a large part of this bill acknowledges the six years the legislature has ignored the statutory requirements for the PFD. Amendment 6 provides assurance that the legislature intends to follow its own laws. He highlighted that part of the public frustration stems from the legislature not following its own laws. He concluded that Amendment 6 is a good idea because it attempts to restore some of the public's trust.

[2:52:54 PM](#)

SENATOR HUGHES said she served as one of eight members of the Fiscal Plan Working Group (FPWG) along with Senator Kiehl and Senator Shower. She explained that the group put together economic models to show how to close the fiscal gap. Some models were based on the 50:50 split. Support for bridge funding varied, with 1.5 percent as the mid-point and 3 percent as the upper limit. Members wanted to keep in mind what would realistically pass on the Senate and House floor since it requires 11 and 21 for policy votes and 14 and 27 votes, for constitutional amendments. She emphasized that deciding on the 1.5 percent bridge funding meant members believed it might be possible to get the votes. She pointed out that 1.5 percent was less than the governor proposed.

[2:54:47 PM](#)

SENATOR SHOWER acknowledged Senator Kiehl's concerns were valid ones. The FPWG worked on issues and compromises had to happen. While the group could not unanimously agree, it generically stepped to the middle in an effort to find a path forward. He offered his support for Amendment 6 because it represents a compromise and gives the legislature some flexibility.

[2:56:36 PM](#)

SENATOR KIEHL said Amendment 6 does not get him to the level of security if bridge funding is necessary. He stated his objection to Amendment 6.

[2:57:35 PM](#)

At ease

[2:59:41 PM](#)

CHAIR HOLLAND reconvened the meeting

[2:59:47 PM](#)

CHAIR HOLLAND tabled Amendment 6.

[SB 53 was held in committee.]

[3:00:41 PM](#)

There being no further business to come before the committee, Chair Holland adjourned the Senate Judiciary Standing Committee meeting at 3:00 p.m.