

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

February 4, 2021

3:34 p.m.

**MEMBERS PRESENT**

Senator Mike Shower, Chair  
Senator Lora Reinbold, Vice Chair  
Senator Mia Costello  
Senator Roger Holland  
Senator Scott Kawasaki

**MEMBERS ABSENT**

All members present.

**COMMITTEE CALENDAR**

SENATE JOINT RESOLUTION NO. 5

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

- HEARD & HELD

SENATE JOINT RESOLUTION NO. 7

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

- 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."

- SCHEDULED BUT NOT HEARD

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.

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SJR 5

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

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

BILL: SJR 7

SHORT TITLE: CONST. AM: STATE TAX; VOTER APPROVAL

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

**WITNESS REGISTER**

CAROLINE SCHULTZ, Chief Policy Analyst  
Office of Management and Budget  
Office of the Governor  
Juneau, Alaska

**POSITION STATEMENT:** Introduced SJR 5 on behalf of the administration.

MIKE BARNHILL, Deputy Commissioner  
Department of Revenue  
Juneau, Alaska

**POSITION STATEMENT:** Co-presented SJR 7 on behalf of the administration.

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

**POSITION STATEMENT:** Co-presented SJR 7 on behalf of the administration.

## **ACTION NARRATIVE**

[3:34:05 PM](#)

**CHAIR MIKE SHOWER** called the Senate State Affairs Standing Committee meeting to order at 3:34 p.m. Present at the call to order were Senators Kawasaki, Holland, Costello, Reinbold, and Chair Shower.

CHAIR SHOWER stated that several committee members have asked him to highlight once again that work on SB 39 began three years ago and he filed the first version a little more than two years ago. He clarified that SB 39 was not introduced because of the last election.

### **SJR 5-CONST. AM: APPROP LIMIT; BUDGET RESERVE**

[3:36:57 PM](#)

CHAIR SHOWER announced the consideration of SENATE JOINT RESOLUTION NO. 5 Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit; and relating to the budget reserve fund.

[3:37:09 PM](#)

CAROLINE SCHULTZ, Chief Policy Analyst, Office of Management and Budget, Office of the Governor, Juneau, Alaska, began her presentation with some background on the appropriation limit. She explained that Alaska already has a constitutional appropriation limit that voters ratified in 1982. That provision had a sunset clause and in 1986, voters re-approved the constitutional appropriation limit. Also in 1986, the legislature enacted a statutory spending limit and the statutory budget reserve as a rainy day savings account. In 1990, voters ratified the Constitutional Budget Reserve Fund (CBR) in Art. IX, Sec. 17, Constitution of the State of Alaska.

MS. SCHULTZ said SJR 5 amends the appropriation limit in Art. IX, Sec. 16, of the constitution. Importantly, SJR 5 amends the calculation of the appropriation limit. It provides that state spending may not exceed the prior three-year average by more than the greater of inflation or population growth. SJR 5 also clarifies the definition of appropriations subject to the spending cap. It includes all undesignated general fund (UGF) and designated general fund (DGF) spending. The exceptions include the PFD, bond proceeds and debt service costs, deposits to state savings accounts, disaster response, and non-state funds for a specific purpose.

[3:39:39 PM](#)

SENATOR REINBOLD highlighted that disaster relief money is not included.

MS. SCHULTZ explained that state or federal funds used to respond to a disaster, as defined by state disaster statutes, would not be included in the appropriation limit

SENATOR REINBOLD asked how much disaster funding had come into the state since March 2020 and if the resolution excludes that from the cap.

MS. SCHULTZ said she would follow up with the exact numbers. She clarified that most federal funds would not be counted under the cap and state funds expended for a disaster would not count toward the cap.

[3:41:03 PM](#)

MS. SCHULTZ continued the presentation. She explained that the second part of SJR 5 amends Art. V, Sec. 17, Constitution of the State of Alaska. It changes how the legislature accesses the CBR by removing the three-fourths vote requirement. SJR 5 provides that appropriations from the CBR may be made by a majority vote if there are insufficient general fund revenues to meet expenditures. Further, it removes the general fund liability to the CBR. She noted that this is known as the CBR "sweep" provision.

CHAIR SHOWER asked what the governor's intent is in changing those two provisions.

MS. SCHULTZ explained that the first of the two gates of the CBR says that if the amount available for an appropriation is insufficient to meet the budget and the budget is smaller than the previous year, the legislature can access the CBR with a majority vote. Importantly, in 1994 the court ruled in *Hickel v. Cowper* that the amount in the permanent fund earnings reserve counts as available for appropriation. She said that is billions of dollars so the bar is too high to qualify for the majority vote provision to access the CBR for a traditional rainy day fund. Instead, the three-fourths rule, which allows an appropriation from the CBR for any state purpose, applies.

MS. SCHULTZ said a provision in the current CBR language requires that if the state has made expenditures from the CBR, it must pay that back at the end of the fiscal year. At the end of FY 2020, there was approximately a \$10 billion liability to

the CBR. SJR 5 eliminates the requirement to repay the liability and the three-fourths vote for access, which eliminates the year-end political problem of the reverse sweep.

CHAIR SHOWER commented that these are significant changes that the body will need to consider very carefully.

MS. SCHULTZ said the idea is to make the CBR a traditional rainy day account.

She said the next slides model quantitatively what the funding cap would look like under different scenarios.

[3:44:22 PM](#)

MS. SCHULTZ turned to the line graph on slide 3 that illustrates that the appropriation limit articulated in the constitution is ineffective. The heavy black line represents the current appropriation limit. She pointed out that the heavy black line that starts in FY1982, when voters approved the constitutional appropriation limit, grows beyond the scope of either state revenue or state general fund expenditures. UGF revenue matched the current cap just two years, and UGF spending never approached the limit. While there was an awareness that the appropriation limit was ineffective, voters reapproved it in 1986. She said the concept is still popular but the math needs fine-tuning.

CHAIR SHOWER mentioned the extensive work that several members did on this topic several years ago and asked why this model did not include revenue in addition to inflationary factors.

MS. SCHULTZ answered that this version intends to be as close as possible to the measure from two years ago.

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SENATOR REINBOLD asked if she was recommending that the approximately \$10 billion liability to the CBR not be paid back.

MS. SCHULTZ confirmed that SJR 5 proposes to remove that liability.

SENATOR REINBOLD said she liked the idea of tightening the budget and paying the liability back because she thinks it was the result of overspending. She also pointed out that the three-fourths vote and reverse sweep can be a big deal and her preference would be for the legislative branch to discuss this.

CHAIR SHOWER said that is why it is under debate and he was open to changes if that was the will of the committee.

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SENATOR COSTELLO asked whether the \$10 million liability affects the state's bond rating and if so, how it is affected.

MS. SCHULTZ said she would follow up with a response after consulting the bond manager.

[3:48:55 PM](#)

MR. BARNHILL, Deputy Commissioner, Department of Revenue, Juneau, Alaska, added that he did not believe that rating agencies account for that liability but he would check with DOR's debt manager and follow up with the answer.

[3:49:28 PM](#)

SENATOR COSTELLO asked if the administration could look back to see how much the bargaining to get the three-fourths vote to access the CBR increased the budget over time.

MS SCHULTZ said she would try to get the information but that kind of analysis would require a level of subjectivity and perhaps offline calls with former co-chairs.

[3:50:54 PM](#)

MS SCHULTZ clarified that while she was modeling UGF spending, the appropriation limit applies to a broader definition of state spending than just UGF. For ease of the presentation and the historical lookback, she used UGF as a proxy for state spending. She added that when she shows the finer points within a three-year timeframe, she would use the actual amount defined under the appropriation limit.

She pointed to the black dotted line on the graph that shows the spending cap if the voters had approved SJR 5 in FY1982 instead of starting with \$2.5 billion and letting it grow with inflation and population. If SJR 5 had gone into effect in 1982, about \$35 billion of unrestricted general funds would not have been spent. It is speculation to say what would have happened to those funds but if \$35 billion was put into the permanent fund over that timeframe, the fund would be valued at \$100 billion and the percent of market value (POMV) would be enough to cover the current structural deficit.

[3:52:48 PM](#)

CHAIR SHOWER commented that the chart was worth a thousand words. UGF expenditures nearly doubled since 2006 and when revenue started to become an issue, the legislature did not act. Now this legislature has to make the hard choices so the state is not in the same position 14 years from now.

[3:54:30 PM](#)

SENATOR KAWASAKI pointed to the large expenditure spikes in 2008-2010 and asked how much of that was capital spending versus operating expenses.

MS. SCHULTZ said she did not have the exact numbers but capital expenditures drove the majority of the increase.

CHAIR SHOWER pointed out that while the capital spend was high, there were also significant payments to PERS and TRS.

SENATOR KAWASAKI asked to see a chart that also represented operating expenses because the years with spikes in capital spend were to fill potholes that were unfilled for 20 years. He said he agrees with paying back the billions owed to the CBR but there were also billions of dollars in deferred maintenance that normal operation and maintenance does not address. There needs to be a recognition that some of those big spending years were to catch up, he said.

[3:56:41 PM](#)

CHAIR SHOWER said it was a valid point but the problem today was how to balance the budget when capital budgets are minimal.

He asked Ms. Schultz to get that data to the committee.

[3:57:25 PM](#)

SENATOR REINBOLD commented that the governor has 95 percent of the budget so he has whatever cap he wants. Regarding the deferred maintenance issue, she said the administration must be held accountable for bloated budgets and not using the funds the legislature gave for specific things.

[3:58:52 PM](#)

MS. SCHULTZ turned to the next slide and explained that the green line in the background is for UGF revenue and the orange line is for UGF expenditures. She noted that the graph only looks at FY2000 through FY2022 because she wanted to show that a positive aspect of using the three-year rolling average was that the spending cap could adjust. She said what is modeled with the various blue lines is the retrospective notion of what the

spending cap would look like if SJR 5 had been implemented in FY2005. She pointed out that the blue line follows a fairly linear progression with some growth for the greater of inflation or population. She noted that recent history in Alaska chronicles inflation as a higher growth factor than population.

CHAIR SHOWER commented that there had been a net outflow from the state for the last three years.

MS. SCHULTZ agreed. Continuing, she pointed out that if SJR 5 had been implemented in FY2005, the line tracks along the FY2000 line. However, if SJR 5 had been implemented during a period of higher spending, such as FY2010, that higher period of budget growth allows for a larger spending cap but then it adjusts down. It would have been the same for FY2015. It starts at a very high level because it is factoring in those prior record budget years into the three-year average, but it tapers to meet the fiscal reality of the situation. She said that is an important notion when you consider what calculation to use. Something that auto corrects versus the current Art. IX, Sec. 16, limit. She observed that the latter grows and grows.

[4:01:14 PM](#)

CHAIR SHOWER asked her to talk briefly about the effect of factoring in revenue and what the legislature decides to spend versus what is available to spend.

MS. SCHULTZ said it would depend on how revenue is weighted. It can mean that the spending limit calculation is more responsive to a changing revenue environment, but periods of high revenue spikes can allow the spending cap to grow more than if spending alone were the basis.

CHAIR SHOWER said he brought it up because part of the discussion two years ago was about including factors such as CPI, inflation, or some combination and he wanted that still to be part of the discussion.

MS. SCHULTZ said she would be happy to provide more information if she visits the committee again on this topic.

[4:03:19 PM](#)

SENATOR KAWASAKI asked if the graphs include the annual permanent fund dividend (PFD) payments.

MS. SCHULTZ answered no; the orange UGF spending line does not include PFD payments because the dividend is not subject to the appropriation limit.

CHAIR SHOWER commented that the language changed in 2017 to make it a government expense so including it over time would be an unreliable representation.

MS. SCHULTZ said SJR 5 specifically excludes the dividend from the cap.

[4:04:15 PM](#)

MS. SCHULTZ said the last graph was forward looking. She explained that the OMB forecast is based on some assumed reductions in the next few fiscal years along with an inflation factor and the DOR forecast is based heavily on the POMV draw, of which are relatively stable growth factors. She said the small dotted green line represents UGF revenue going forward if it were to grow as it did in FY2005 through FY2013.

MS. SCHULTZ directed attention to the solid lines. The gray line shows the cap if spending follows the Office of Management and Budget (OMB) 10-year plan and the black line shows the cap with maximized spending. She said she was highlighting this because she did not want to create the notion that SJR 5 overly limits spending or does not allow responsiveness. She also pointed out that the highest possible cap, based on normal inflation and population measures, is higher than the projected revenue. However, if revenue were to increase in a year, the appropriation could be more than it might otherwise be.

[4:06:22 PM](#)

CHAIR SHOWER mentioned the amendment to this provision two years ago that created a waterfall fund. The notion was that in years with high revenue, capital expenses could be increased to catch up on things like infrastructure projects. The question is how to do that without going in the hole again, he said.

MS. SCHULTZ responded that specifying where revenue beyond the cap would be directed is an important policy conversation for this committee to have.

CHAIR SHOWER said he would like that provision worked into a graph to help the committee see how that may play out and where it may be appropriate.

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MS. SCHULTZ said she would be happy to work with committee members and staff outside of meetings to look at modeling and the spreadsheets.

[4:08:06 PM](#)

CHAIR SHOWER held SJR 5 in committee.

**SJR 7-CONST. AM: STATE TAX; VOTER APPROVAL**

[4:08:06 PM](#)

CHAIR SHOWER announced the consideration of SENATE JOINT RESOLUTION NO. 7 Proposing amendments to the Constitution of the State of Alaska relating to prohibiting the establishment of a state tax without the approval of the voters of the state; and relating to the initiative process.

[4:08:13 PM](#)

MIKE BARNHILL, Deputy Commissioner, Department of Revenue, Juneau, Alaska, stated that SJR 7 amends Art. IX, Sec. 1, Constitution of the State of Alaska to require voter approval for any new tax enacted by the legislature. It was similar to Senate Joint Resolution 4 that this committee considered two years ago.

He reminded members that the Alaska Constitution already has two forms of direct democracy. These are the people's power to initiate laws through initiative and the people's power to repeal laws enacted by the legislature through referendum. SJR 7 adds a new form of direct democracy to the constitution, functionally authorizing an automatic referendum on new taxes. The people already have the power to initiate a referendum to repeal a tax measure enacted by the legislature and SJR 7 makes it automatic by placing it in the constitution.

MR BARNHILL said the second part of SJR 7 amends the people's constitutional power of initiative by requiring legislative approval with a majority vote in joint session of any new tax enacted by initiative. Functionally, it is a form of checks and balances. He described this as a new partnership between the people and the legislature.

[4:11:10 PM](#)

SENATOR COSTELLO asked if the majority vote requirement means 31 votes regardless of the votes in the individual bodies or a majority of the votes in each body.

MR. BARNHILL replied he reads it as a majority vote of 31 in a joint session.

[4:11:53 PM](#)

SENATOR REINBOLD pointed out that Alaska's government is a representative republic, which means that the voters elect people to make decisions on things such as taxes. She said she does not like taxes but she feels that this administration is tying the hands and reducing the power of the legislature.

CHAIR SHOWER referred to the last sentence in the proposed new subsection (c) and asked if this would be interpreted to apply to only this provision for a tax increase that the voters approve by initiative or if the judiciary could interpret it to apply to any initiative.

[4:13:43 PM](#)

MR. BARNHILL directed attention to the language on page 2, line 7 that confines the application to an initiative that establishes a state tax. He said that triggers the legislature's ability to approve the initiated law by a majority vote in joint session.

CHAIR SHOWER expressed concern about how the court might interpret that and said the committee would take a harder look.

[4:14:50 PM](#)

MR. BARNHILL said that in 1955 the direct democracy elements of initiative and referendum were added to the representative democracy in the Alaska Constitution. That is part of Alaska's legal heritage and the governor is proposing to automate a referendum in the sole instance of legislative enactment of a new tax.

[4:16:22 PM](#)

MR. BARNHILL proceeded to slide 7 and described other states that have similar constitutional provisions regarding voter approval of new or increased taxes.

Colorado, in 1992, amended its constitution to add the Taxpayer Bill of Rights (TABOR). He noted that TABOR was essentially a combination of SJR 5 and SJR 7. It requires voter approval of any new tax or increase to existing taxes at the state and local level. Notably, Colorado voters approved a marijuana tax in 2013 and certain tobacco tax increases in 2020.

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SENATOR COSTELLO asked if he had a definition of tax.

MR. BARNHILL said the Department of Revenue's view was that a tax includes a broad-based sales tax, a broad-based income tax, and an excise tax. It does not include user fees, such as court filings tied to a specific service to defray the cost of that service.

[4:19:23 PM](#)

SENATOR COSTELLO asked if a reduction in the permanent fund dividend (PFD) would be considered a tax.

MR. BARNHILL answered no.

CHAIR SHOWER asked Mr. Milks if he had anything to add to the definition.

[4:19:51 PM](#)

BILL MILKS, Assistant Attorney General, Labor and State Affairs Section, Civil Division, Department of Law, Juneau, Alaska, said the framers put the term "tax" in the constitution and the basic definition came from dictionaries used at that time. It was a charge levied by the government on persons or property for a public purpose. He agreed with Mr. Barnhill that user fees were different and would not be considered a tax.

[4:21:27 PM](#)

SENATOR KAWASAKI relayed that years ago in Fairbanks, property taxes paid for the garbage utility. Then the assembly changed that tax to a fee so it would be outside of the revenue cap. There was vigorous debate because residents inside the city were required to get the garbage utility but apartment complexes of more than four could contract with a private vendor. He asked, under that circumstance, if that was a fee or hidden tax.

MR. BARNHILL said it was difficult to assess but from a policy perspective, it sounded more like a fee than a tax. It was tied to a specific function and the purpose was to defray the cost of that specific function. That is different from revenue raised broadly for the purpose of funding public services generally. He added that he could see the argument going both ways. He deferred further explanation to Mr. Milks.

[4:23:29 PM](#)

MR. MILKS said Mr. Barnhill's explanation was reasonable but it was difficult to assess the example.

SENATOR KAWASAKI posed the hypothetical example of increasing the cost of what the Division of Motor Vehicles (DMV) charges far more than the cost to operate the division. He asked if that would be considered a tax.

MR. BARNHILL said it would be difficult to say categorically one way or the other in that situation.

MR. MILKS agreed with Mr. Barnhill.

[4:27:09 PM](#)

SENATOR REINBOLD asked how SJR 7 answers to Art. IX of the Alaska Constitution that says, "The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article."

MR. BARNHILL replied the resolution proposes to amend the constitution so it would fall under the existing words, "except as provided in this article."

CHAIR SHOWER asked if he was saying that the resolution would be constitutional because it would amend [Art. IX, Sec. 1] of the Alaska Constitution.

MR. BARNHILL agreed.

SENATOR REINBOLD questioned whether it made sense to allow and not allow something in the same sentence.

CHAIR SHOWER asked Mr. Milks to give a more precise legal definition of the process.

[4:29:16 PM](#)

MR. MILKS explained that the constitution currently says that the power of taxation shall never be surrendered or contracted away except as provided in [Art IX, Sec.1]. SJR 7 adds two new subsections to that article that address the separate question of establishing a state tax.

SENATOR REINBOLD asked him to read the constitution with the addition of the two new subsections.

MR. MILKS directed attention to page 1, line 9 of the resolution and explained that the new subsections would fall immediately after the existing language in Art. IX, Sec. 1. The new subsections set the rules regarding establishing a state tax.

SENATOR REINBOLD observed that it sounds like, "it's shall not and then we're going to."

[4:31:29 PM](#)

MS. SCHULTZ said an example in the constitution appears in Art. IX, Sec 7, the anti-dedication fund clause. As originally drafted, it prohibited the dedication of state funds. That was amended in 1976 to add "except as provided in Sec. 15, which allowed the creation of the permanent fund.

SENATOR REINBOLD said the people voted to support the permanent fund and the dividend and now it is being taken. She said she appreciated Senator Costello's question about the permanent fund because many people feel the reduction in the dividend is a tax. She said she was not a fan of taxes, but this resolution gave her pause.

CHAIR SHOWER asked if the Department of Law could provide a written explanation, with examples, about how it was done before.

MR. MILKS agreed to do so.

[4:34:14 PM](#)

SENATOR HOLLAND asked how many tax proposals Colorado voters rejected after the passage of TABOR.

MR. BARNHILL said he would follow up with the information. He recalled that a number of taxes in Colorado failed from 1992 to the present.

CHAIR SHOWER asked him to provide the information by the next hearing on the resolution.

[4:35:17 PM](#)

MR. BARNHILL continued the presentation on slide 7 regarding states that require voter approval of new or increased taxes. He said he included Missouri and Washington to show the variation. The constitutional provision in Missouri requires voter approval of tax increases of \$50 million or more, adjusted for inflation. In 2018, voters defeated Proposition D to increase gasoline taxes by \$400 million.

He explained that the state of Washington has a constitutional provision that requires voter approval of certain increases to real and personal property taxes referred to as "levy lid lifts." In recent years, voters approved 75 percent of proposed

levy lid lifts. Further, California has a constitutional provision that requires voter approval of general local taxes and special local taxes.

CHAIR SHOWER asked him to provide information on any other states that have enacted similar constitutional provisions.

MR. BARNHILL replied that these four are the states that have amended their constitutions; there may be more examples at the local level.

[4:37:13 PM](#)

MR. BARNHILL displayed slide 8 and highlighted that the National Council of State Legislatures has summarized the pros and cons of the experiences of states from a policy perspective. They call the amendments proposed in SJR 5 and SJR 7 "tax and expenditure limitations." He noted that the link to the entire article was on slide 10. It exhaustively lists and categorizes the states, the nature of the tax, and expenditure limitations.

A sample of the pros of a tax and expenditure limitation includes make government more accountable and efficient; foster public prioritization of programs and services; and voter consent to new taxes may increase tax compliance. He noted the latter was from a study of Eastern Bloc countries post communism and the use of the referendum to engage voters and improve tax compliance. The researchers found a positive relationship.

A sample of the cons of a tax and expenditure limitation includes: more difficulty raising new revenue; waiting for voter consent can delay implementation and collection of new revenues (which may be an issue for Alaska that needs revenue soon); and it shifts fiscal decision making away from elected representatives (as Senator Reinbold pointed out).

MR. BARNHILL advised that slides 9 and 10 are cut and paste from the National Council of State Legislatures webpage of more pros of "Tax and Expenditure Limitations" for policy makers to consider.

[4:40:25 PM](#)

SENATOR KAWASAKI mentioned discussions in past years about locking in the price of natural gas. He described it as a contingency that the legislature did over a number of years so oil companies could figure out on the books how the gas line would work in the future. He asked what SJR 7 does to the situation in which the legislature enacts a longer-term tax that

the industry agreed to but is then subject to the will of the people.

MR. BARNHILL clarified that Senator Kawasaki was talking about locking in the tax rate for a number of years to make the economics of the gas line predictable over a longer period. He offered his understanding that three attorneys general considered this at separate times and rendered three opinions expressing different views on the time a tax rate could be locked in. He deferred further discussion to Mr. Milks.

[4:42:04 PM](#)

MR. MILKS said the constitutional provision on taxing power would still be there so the question is whether the legislature can agree to limit potential to adjust a tax for a certain period. He offered to follow up with more information if the chair wished.

CHAIR SHOWER said he would rather have more information than less even if it leads down a bit of a rabbit hole.

SENATOR REINBOLD asked if it would be considered a statewide tax if the legislature applied the same tax formula on all mining products; if SJR 7 would limit the legislature's ability to establish such a tax; and if such a limitation would undermine the representative republic.

MR. BARNHILL opined that a new tax on mining products would be subject to SJR 7.

SENATOR REINBOLD asked if SJR 7 would prevent the administration from raising fees in any way or if it was just another step for revenue.

MR. BARNHILL replied nothing in the resolution controls costs or reduces the budget. With respect to raising fees, he said that state agencies that have regulatory authority to assess fees would still be able to do so.

SENATOR REINBOLD asked Mr. Milks to state for the record whether the administration believes Alaska is a representative democracy or a representative republic.

[4:47:52 PM](#)

MR. MILKS explained that the Alaska Constitution sets out that both the legislature and the people can enact laws and both can repeal laws enacted by either one. The people can repeal a law

through referendum and the legislature can repeal a law passed through initiative after two years. SJR 7 follows that model.

CHAIR SHOWER asked whether Alaska is a representative democracy or a representative republic.

[4:49:37 PM](#)

MR. MILKS replied Alaska has a representative form of government by having a legislative branch and a direct democracy component, which is the people's power to enact laws through initiative. Laws are made through a representative republic model and a direct democracy model. He advised that Art. 1, Sec 2 identifies the source of government.

MR. BARNHILL added that the US Constitution Art. IV, Sec. 4 states that, "The United States shall guarantee to every State in this Union a Republican Form of Government." He said he views the terms representative democracy and representative republic as synonymous. Importantly, multiple states have added direct democracy features to their constitution and those additions have never been found to violate the guarantee of the constitutionally required republican form of government.

[4:52:24 PM](#)

SENATOR KAWASAKI asked if Section 2 of the resolution would apply to modification of an existing tax. For example, the mining license tax that was created in 1959 was modified several years ago to change the progressivity in each of the tiers.

MR. BARNHILL answered no; a tax modification would not be covered.

SENATOR KAWASAKI listed the existing taxes on fish and mining licenses and asked if he was saying that changes to the percentages on those existing taxes would not be included in the proposed Art. IX, Sec. 1(b).

MR. BARNHILL said yes.

CHAIR SHOWER asked if this could be interpreted to apply to more things than intended.

[4:54:42 PM](#)

MR. BARNHILL replied, "It clearly just applies to a new tax."

SENATOR REINBOLD said she had a real problem with Section 2 based on concerns about a representative republic versus a representative democracy.

MR. BARNHILL said he believes subsection (c) in Section 2 of the resolution should help the concern about a direct democracy taking away from the elements of a representative republic, because it essentially restores that legislative power with respect to initiated taxes.

SENATOR REINBOLD emphasized that this was not transparent government and it caused her pause.

[4:58:24 PM](#)

CHAIR SHOWER said he had some of the same concerns, but the legislature has recourse when laws are enacted through initiative.

[SJR 7 was held in committee.]

[4:59:52 PM](#)

There being no further business to come before the committee, Chair Shower adjourned the Senate State Affairs Standing Committee meeting at 4:59 p.m.