

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 5, 2023

1:30 p.m.

MEMBERS PRESENT

Senator Matt Claman, Chair
Senator Jesse Kiehl, Vice Chair
Senator James Kaufman
Senator Cathy Giessel
Senator Löki Tobin

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 53

"An Act relating to involuntary civil commitments."

- MOVED CSSB 53(JUD) OUT OF COMMITTEE

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 20

"An Act relating to an appropriation limit; relating to the budget responsibilities of the governor; and providing for an effective date."

- HEARD & HELD

SENATE JOINT RESOLUTION NO. 4

Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit.

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 53

SHORT TITLE: FIVE-YEAR INVOLUNTARY COMMITMENTS

SPONSOR(s): SENATOR(s) CLAMAN

02/01/23	(S)	READ THE FIRST TIME - REFERRALS
02/01/23	(S)	HSS, JUD
02/21/23	(S)	HSS AT 3:30 PM BUTROVICH 205

02/21/23 (S) Heard & Held
 02/21/23 (S) MINUTE(HSS)
 02/28/23 (S) HSS AT 3:30 PM BUTROVICH 205
 02/28/23 (S) Heard & Held
 02/28/23 (S) MINUTE(HSS)
 03/09/23 (S) HSS AT 3:30 PM BUTROVICH 205
 03/09/23 (S) Moved CSSB 53(HSS) Out of Committee
 03/09/23 (S) MINUTE(HSS)
 03/10/23 (S) HSS RPT CS 3NR 2AM NEW TITLE
 03/10/23 (S) AM: WILSON, TOBIN
 03/10/23 (S) NR: DUNBAR, GIESSEL, KAUFMAN
 03/10/23 (S) JUD AT 1:30 PM BUTROVICH 205
 03/10/23 (S) Heard & Held
 03/10/23 (S) MINUTE(JUD)
 03/15/23 (S) JUD AT 1:30 PM BUTROVICH 205
 03/15/23 (S) <Bill Hearing Canceled>
 03/22/23 (S) JUD AT 1:30 PM BUTROVICH 205
 03/22/23 (S) <Bill Hearing Canceled>
 03/24/23 (S) JUD AT 1:30 PM BUTROVICH 205
 03/24/23 (S) <Bill Hearing Canceled>
 03/29/23 (S) JUD AT 1:30 PM BUTROVICH 205
 03/29/23 (S) Heard & Held
 03/29/23 (S) MINUTE(JUD)
 04/05/23 (S) JUD AT 1:30 PM BUTROVICH 205

BILL: SB 20

SHORT TITLE: APPROPRIATION LIMIT; GOV BUDGET

SPONSOR(s): SENATOR(s) KAUFMAN

01/18/23 (S) PREFILE RELEASED 1/9/23
 01/18/23 (S) READ THE FIRST TIME - REFERRALS
 01/18/23 (S) JUD, FIN
 03/10/23 (S) SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
 03/10/23 (S) JUD, FIN
 04/05/23 (S) JUD AT 1:30 PM BUTROVICH 205

BILL: SJR 4

SHORT TITLE: CONST. AM: APPROP LIMIT

SPONSOR(s): SENATOR(s) KAUFMAN

01/18/23 (S) PREFILE RELEASED 1/9/23
 01/18/23 (S) READ THE FIRST TIME - REFERRALS
 01/18/23 (S) JUD, FIN
 03/10/23 (S) SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
 03/10/23 (S) JUD, FIN
 04/05/23 (S) JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

EMMA POTTER, Staff
Senator Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the CS for SB 53.

NANCY MEADE, General Counsel
Administrative Offices
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of SB 53.

MATTHEW HARVEY, Staff
Senator James Kaufman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the sectional analyses for SJR 4 and SB 20 on behalf of the sponsor.

KEVIN BERRY, PhD., Associate Professor of Economics
University of Alaska Anchorage
Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony on SB 20.

ACTION NARRATIVE

[1:30:34 PM](#)

CHAIR MATT CLAMAN called the Senate Judiciary Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Giessel, Kaufman, Kiehl, Tobin and Chair Claman.

SB 53-FIVE-YEAR INVOLUNTARY COMMITMENTS

[1:31:08 PM](#)

CHAIR CLAMAN announced the consideration of SENATE BILL NO. 53 "An Act relating to involuntary civil commitments."

Speaking as the sponsor, he noted that this was the bill's third hearing in the Senate Judiciary Standing Committee and that there was a committee substitute (CS) for the committee to consider. He asked Emma Potter to present the CS.

[1:31:30 PM](#)

EMMA POTTER, Staff, Senator Matt Claman, Alaska State Legislature, Juneau, Alaska, presented the CS for SB 53. She pointed to the first two changes found in Section 3(a) and Section 5(a). The previous version of the bill stated that the court may release a defendant on bail. Recent conversations with the court system revealed that the court does not release defendants. Consequently, the bill amends Section 3 and Section 5 to use accurate language regarding the court. The language states that the court may order a defendant to be examined. She continued with the third and final change in Section 9(d). The change removes reference to "five years" in the language related to successive commitments.

CHAIR CLAMAN asked committee members for questions or comments related to the CS.

[1:32:39 PM](#)

CHAIR CLAMAN solicited a motion to adopt the committee substitute as the working document.

[1:32:44 PM](#)

SENATOR KIEHL moved to adopt the committee substitute (CS) for SB 53, work order 33-LS0172\P, as the working document.

[1:32:59 PM](#)

CHAIR CLAMAN found no objection and version P was adopted.

SENATOR KIEHL asked how the court determines a potential commitment under this new standard of "up to five years." He wondered what standards a judge might utilize to determine the proposed period.

CHAIR CLAMAN deferred the question to Nancy Meade.

[1:34:08 PM](#)

NANCY MEADE, General Counsel, Administrative Offices, Alaska Court System, Anchorage, Alaska, replied that she was unsure about the exact standards the court would employ. She stated that the judge reviews a clinical report from the Alaska Psychiatric Institute (API) at each hearing apprising the court of the status of the individual. She added that the API reports include a recommendation. In these types of cases, the court will hear any pertinent arguments from the public defender, the prosecutor, and API to arrive at a sound conclusion.

SENATOR KIEHL responded that he was interested in the standards applied. He asked if the medical judgment was weighed most heavily when considering the potential commitment.

MS. MEADE responded that the evidence (API report) holds a great deal of weight in the proceeding because the clinician has the most expertise in the area. She revealed her experience with this type of hearing where vigorous debate is frequently absent. She added that the defense and the counsel often agree on an appropriate time limit. She opined that disagreement would proceed appropriately and the clinician's opinion would likely receive an abundance of consideration. She found it unlikely that the judge would opt for a longer commitment than the clinical recommendation of API staff.

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CHAIR CLAMAN pointed to evidentiary standards and wondered if the debate would focus on the preponderance of evidence standard or by clear and convincing evidence.

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MS. POTTER replied that Section 9(b) states the court will find clear and convincing evidence.

SENATOR KIEHL attempted to understand the debate related to commitment time when a person has not been found guilty. He found it difficult to use medical judgment as the standard for setting a commitment length when medical judgment is not used to end the commitment period.

CHAIR CLAMAN asked Ms. Meade for additional background related to different evidentiary standards: the preponderance standard, the clear and convincing standard, and the beyond a reasonable doubt standard. He wondered how the judge reviews the evidentiary standards.

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MS. MEADE replied that preponderance of the evidence is the lowest standard in civil cases. She stated that criminal cases require a jury to have proof beyond a reasonable doubt. She added that clear and convincing evidence involves a position between the two standards displaying more evidence than the preponderance of evidence standard. She pointed out that this bill has specific findings necessary, including proof that the respondent is mentally ill and likely to cause serious harm to self or others, which is an opinion best offered by the clinician. She stated that the clinician would have expertise on

mental illness and the respondent's condition. She added that the respondent's criminal history related to incompetence would be based on clear evidence from their record. Another issue addresses whether a person is found incompetent again. The final matter relates to public protection by issuing a longer-term commitment. She stated that the attorneys may debate the issue of public protection. She relayed that the judge commonly makes these decisions.

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SENATOR KIEHL appreciated the framework Ms. Meade provided. He surmised that the bill introduces a new situation related to civil commitments based on the standards described. Currently, when a medical professional determines that a person is not seriously mentally ill, they are deemed innocent and released from commitment. He discerned that SB 53 alters the process when a commitment exceeds 180 days. He surmised that the person constrained must show by clear and convincing evidence that they are eligible for release, which is a new standard. He valued the aspects of the bill that protect victims, but he compared the proposed action to medical incarceration.

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CHAIR CLAMAN disagreed that the bill flips the burden of clear and convincing evidence. He stated that a person committed for five years could shorten the time by displaying changed circumstances. He explained that the initial burden for involuntary commitment rests upon the state.

SENATOR KIEHL proposed a hypothetical case in which a committed person or medical professional advocated for a shorter commitment period and the prosecutor disagreed.

CHAIR CLAMAN surmised that a person is released if API providers recommend the discharge. The bill requires a hearing for court agreement before release. He added that the civil division attorney would not be able to prevent the hearing if the medical professional advises release.

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SENATOR TOBIN stated her concerns. She agreed that the testimony provided by the woman stabbed at the Loussac Library was tragic. She agreed that facets of the proposed legislation help close a fundamental gap in the civil commitment process. She shared her concerns related to the violation of an individual's due process rights. She interpreted that a person's freedom might be withheld based on the subjective opinion of a prosecutor

overriding a medical professional's expertise or recommendation. She expressed concern about reversing the burden of proof. She encouraged a holistic view rather than the focus on one single tragic incident. She expressed concern about the bill affecting a particular population with historical injustice and trauma. She hoped that the legislative process would encourage further dialog, but she invited the committee to carefully consider the statutory changes.

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At ease

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CHAIR CLAMAN reconvened the meeting. He found no further comments or questions and solicited a motion.

[1:48:36 PM](#)

SENATOR KIEHL commented on his concerns with the bill and then moved to report the CS for SB 53, work order 33-LS0172\P, from committee with individual recommendations and attached fiscal note(s).

[1:49:03 PM](#)

CHAIR CLAMAN found no objection and CSSB 53(JUD) was reported from the Senate Judiciary Standing Committee.

SB 20-APPROPRIATION LIMIT; GOV BUDGET
SJR 4-CONST. AM: APPROP LIMIT

[1:49:12 PM](#)

CHAIR CLAMAN announced the consideration of SPONSOR SUBSTITUTE FOR SENATE BILL NO. 20 "An Act relating to an appropriation limit; relating to the budget responsibilities of the governor; and providing for an effective date."

and

SPONSOR SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 4 Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit.

[1:49:56 PM](#)

SENATOR JAMES KAUFMAN, District F, speaking as sponsor of SB 20 and SJR 4, summarized the following sponsor statement:

SJR 4 and SB 20 work together to create a constitutional and statutory framework for how we limit appropriations. A spending limit was one of the elements agreed upon by Comprehensive Fiscal Plan

Working Group as a necessary component of a comprehensive fiscal plan.

Alaska has been operating without an effective appropriation limit for nearly 40 years, resulting in less than-meaningful control of our state spending. The current limit was enacted in 1982 when Alaska was approaching peak oil production. The timing of this cap's passage, plus its population and inflation adjustment mechanism, have made the cap so high that it no longer plays any role in capping our appropriations or spending.

Successful appropriation limits have boundaries that meet the needs of the unique way that government operates; the right mix of rigidity where it counts and flexibility when and where it's needed. Alaska's inflation rate often varies significantly from national inflation numbers, our tax structure is unique, and our spending per capita is wildly different than other states. If Alaska bases our cap on any of these factors, we risk failure because that formula does not meet our unique needs.

SJR 4/SB 20 proposes a new, functional cap which bases its formula on a five-year trailing average of our private sector economic performance; specifically, Real GDP minus government spending, which measures the value produced within our borders.

By tying the state's spending limit to the success of our state's private economy, the government is incentivized to support policy that will enable the growth of our private sector economy if there is a desire to spend more on state services. The five-year trailing averaging of GDP will moderate the effects of our economy's volatility, leading to stability that prevents the worst consequences of drastic cuts and binge spending. SB 20 would set a statutory spending cap at the most recently approved budget levels at the time of drafting and SJR 4 would set a constitutional upper limit that gives the state flexibility to respond to capital and unforeseen operational needs.

Our Permanent Fund is a tremendous asset, but it creates the risk of Alaska becoming a "financialized" economy. Instead of maintaining commitment to build,

add value, and produce, we risk becoming Alaskans who wait and passively watch the market hoping for the best. A spending limit tethered to GDP creates a constructive link between state government and our private sector ensuring that government does not grow past the private sector that it is meant to support.

Alaska needs a strong link between government and our productive economy before it's too late. We have an opportunity to solve our biggest structural issues and deliver a better future for all Alaskan's centered around our people's productive efforts.

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MATTHEW HARVEY, Staff, Senator James Kaufman, Alaska State Legislature, Juneau, Alaska, presented the sectional analyses for SJR 4 and SB 20 on behalf of the sponsor.

SJR 4

Section 1:

Amends Article IX, sec. 16 of the Constitution of the State of Alaska to slightly revise appropriations subject to the limit as well as the conditions that determine the appropriation limit. Sets a maximum statutory cap at 15% of Real GDP (not including government spending).

- Exceptions List [Article IX, Sec. 16]
- Adds appropriations to the Alaska permanent fund to exceptions list
- Moved from Appropriation Limit Section to Exceptions List
- Adds Appropriation of GO Bond proceeds to exceptions list
- Moved with slight variation from Appropriation Limit Section to Exceptions List
- Adds payment of principal and interest on revenue bonds to exceptions list

- Adds 'appropriations to a state account or fund that requires a subsequent appropriation from that account or fund as prescribed by law' to exceptions list
- Adds 'appropriations to meet a state of disaster declared by the governor as prescribed by law' to exceptions list
- Moved from Appropriation Limit Section to Exceptions List
- Appropriation Limit Conditions [Article IX, Sec. 16]
- Adds (Appropriations Not to Exceed) a percentage of the average Real GDP (not including government spending) for the first five of the last six years. This measure of Real GDP is as reported by the responsible federal bureau and expressed in current dollars.
- Adds language stating that the percentage shall be established by a law that is not enacted as an appropriation bill, or 15 percent, whichever is less.
- Adds language stating that with a 2/3 vote the legislature may appropriate above the statutory limit, but below the constitutional limit of 14% for capital improvements.
- Removes Old appropriation limit anchored to \$2.5 Billion + Pop. and infl. (since 7/1/81)
 - Removes language reserving 1/3 for capital projects and loan appropriations.
- Removes language adding exceptions to appropriations subject to the limit from this Appropriation Limit Conditions section and moves these to the exceptions list section.
- Removes specific language surrounding Capital projects exemptions

Section 2:

Adds a new section to Article XV of the Constitution of the State of Alaska (Schedule of Transitional Measures), section 30, which sets an 'effective date' of the end of the fiscal year immediately following the next possible opportunity for Alaskans to ratify a proposed amendment to the constitution.

Section 3:

Includes the provision that the constitutional amendments proposed by this resolution must be placed before the voters at the next general election.

SB 20

Section 1:

Amends AS 37.05.540(b) to conform to changes made by SJR 4. Changes affect the list of appropriations subject to the limit as well as the conditions that determine the appropriation limit. Defines a calculation for an appropriation cap at 12% of a trailing average of Real GDP (not including government spending).

- **Exceptions List [37.05.540(b)]**
 - Adds Appropriation of GO Bond proceeds to exceptions list
 - Adds payment of principal and interest on revenue bonds to exceptions list
 - Adds 'appropriations to a state account or fund that requires a subsequent appropriation from that account or fund as prescribed by law' to exceptions list
 - Adds 'appropriations to meet a state of disaster declared by the governor as prescribed by law' to exceptions list
- **Appropriation Limit Conditions [37.05.540(b)]**
 - Adds (Appropriations Not to Exceed) 12% of the average Real GDP (not including government spending) for the first five of the last six years

- Removes Old cap of 5% more than last year + the change in population and inflation since beginning of preceding fiscal year
- Removes language describing determination of change in population based on annual estimate by DLWD
- Removes language describing change in inflation based on CPI for all urban consumers for Anchorage

Section 2:

Adds a new subsection (f) to AS 37.07.020 which requires a comparison of the governor's budget requests, supplemental requests, and budget amendments to the calculated appropriation limit.

Section 3:

Repeals AS 37.05.540(e) due to section 1 of SB 20 adding disaster response spending to the exceptions list in subsection b.

AS 37.05.540(e) Notwithstanding other provisions of this section, appropriations may be made from the budget reserve fund needed by the governor to meet a disaster. In this subsection, "disaster" has the meaning given in AS 26.23.900.

Section 4:

Adds a new section to Uncodified Law of the State of Alaska which ensures that this act is contingent upon the ratification of an amendment to Article IX, Sec. 16 of the Constitution.

Section 5:

Sets an 'effective date' of the beginning of the fiscal year immediately following the next possible opportunity for Alaskans to ratify a proposed amendment to the constitution. Aligns with the effective date in SJR 4.

CHAIR CLAMAN asked Mr. Harvey to proceed with the PowerPoint presentation.

[2:00:31 PM](#)

MR. HARVEY presented the PowerPoint presentation titled "GDP-Based Spending Cap." He began with slide 2, "Appropriation Limits Overview."

- Structure of an appropriation limit
 - Exemptions List: Appropriations subject to the limit
 - The Appropriation Limit: Define the calculation factor, starting point, growth rate, and other limit mechanisms
 - Other: Capital projects or other specific language
- Current Appropriation Limit
 - Constitutional: Article IX, §16 (effective in 1982)
 - Statutory: AS 37.05.540(b)
- Types of Appropriation Limits
- Proposed Appropriation Limit (SJR 4 / SB 20)

[2:01:47 PM](#)

MR. HARVEY moved to slide 3, "Current Constitutional Limit."

- Constitutional: Article IX, §16 (effective in 1982)
- "Appropriations from the treasury made for a fiscal year shall not exceed \$2,500,000,000 by more than the cumulative change, derived from federal indices as prescribed by law, in population and inflation since July 1, 1981."
 - \$2.5 B plus inflation and population growth since 1982
 - Calculation for FY 21 would be about \$9.8 billion.
- At least 1/3 of limit reserved for Capital Projects and Loans
 - Can also break the limit for appropriations to Permanent fund, capital projects if signed by governor or approved by the voters, and a state of disaster

[2:02:49 PM](#)

MR. HARVEY continued with slide 4, "Current Constitutional Limit: Exemptions."

"Expect for appropriations for Alaska permanent fund dividends, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a non-state source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the state that issues revenue bonds...No other appropriation in excess of this limit may be made except to meet a state of disaster declared by the governor as prescribed by law."

- o Creates exemptions for fund sources as well as purposes
- o Current limit applies to all UGF, most statewide items, and some DGF items
- o Excludes PFDs, bond proceeds, debt service payments, non-State sources of revenue, public corporation revenues, and disaster declarations
- o School Bond Debt Reimbursement is excluded from the limit

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MR. HARVEY continued with slide 5, "Current Statutory Limit."

- Enacted in 1986
- Based on appropriations made in a fiscal year, not for a fiscal year
 - Counts supplementals in the year appropriated, not effective
- Limits spending growth to population plus inflation plus 5%
 - The use of both factors to calculate the limit has caused the limit to outgrow effectiveness
 - The timing of data for calculation of this limit does not work well with the budget process. The limit is not known before the annual budget process

[2:04:38 PM](#)

MR. HARVEY moved to slides 6 and 7, "UGF Spending History." The timelines on the graphs depict milestones beginning with the North Slope oil flow initiated in FY 77. He pointed to FY 82, which displayed the passage of the Constitutional Spending Limit.

MR. HARVEY moved to slide 8, "Proposed Appropriation Limit."

- Calculated by subtracting government spending from historical State GDP values and adjusting for inflation
- Stability is improved by averaging these values over the previous full five fiscal years
- Constitutional amendment, as drafted, caps the statutory limit at 15% of the calculated value
- Statutory limit, as drafted, caps appropriations at 12% of calculated value
- We arrived at 12% based upon FY24GovAmd appropriation levels

[2:06:04 PM](#)

MR. HARVEY continued with slide 8, "Proposed Appropriation Limit." He informed the committee that the chart describes reactivity under the proposed changes. The reactivity results from changing oil prices and volatile revenues.

[2:06:38 PM](#)

SENATOR TOBIN assessed that 2009-2014 were recession years.

MR. HARVEY offered to provide the depiction of historical revenue figures for comparison. He stated that Alaska did see effects from the 2008 financial collapse.

SENATOR KIEHL noted that the period Senator Tobin highlighted was also a time of significant capital spending. He added that the state addressed a portion of the multibillion-dollar deferred maintenance backlog. He believed that the proposal in the bill would have constrained that effort to address the backlog. He wondered how the state can maintain the existing facilities under the proposed constraints.

MR. HARVEY responded that a vote of two-thirds is required to spend up to the constitutional limit for capital projects. He stated that the proposed plan would efficiently address the backlog of maintenance costs.

SENATOR KAUFMAN commented on the chart on slide 9. He explained that the area between the constitutional limit proposed by SJR 4, and the statutory limit proposed by SB 20 would be available for capital spending with a two-thirds vote from the legislature. He advocated for moderate spending and sweeping funds forward, which would allow continuity in project completion. He proposed that continuity would enable better workforce retention and development. The continuity would allow

the state to sustain capital projects, address the deferred maintenance backlog and prevent overbuilding in the future.

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SENATOR KIEHL responded that the constraint in FY 14 and FY 15 capital spending followed a reduction in revenue. He stated that he would contemplate the notion further.

SENATOR KAUFMAN surmised that moving the revenue forward would moderate the process.

[2:11:28 PM](#)

MR. HARVEY continued the presentation with slide 10, "Spending Subject to Limit." He noted that all Undesignated General Fund (UGF) operating, and capital expenditures would be subject to the limit. He mentioned that appropriations to capitalize state retirement accounts would not be subject to the limit.

CHAIR CLAMAN asked about the exclusion of the PFD from the appropriation limit.

SENATOR KAUFMAN replied that separate legislation seeks to establish new control limits for the PFD. He mentioned a constitutional resolution to combine the earnings reserve with the corpus and manage it with a Percent of Market Value (POMV) draw. He added that SB 20 and SJR 4 offer a solution to a specific subset of Alaska's fiscal challenges.

CHAIR CLAMAN recalled the Wielechowski v. Alaska case. The court ruled that the dividend must compete with every other state program for available revenue. He wondered if the effort before the committee might prioritize the dividend over other spending. He expressed concern about the lack of a dividend cap.

SENATOR KAUFMAN explained that the proposed legislation involves a constitutional resolution versus a revision. He agreed that the PFD presents a significant variable that must be addressed in separate efforts or legislation.

[2:15:23 PM](#)

SENATOR TOBIN expressed curiosity about Alaska's retirement systems and Article 12, Section 7 of the Alaska Constitution, which states that benefits from the retirement systems cannot be diminished or infringed upon. She opined that the spending cap counters the constitutional requirement.

MR. HARVEY responded that the proposed legislation does not alter the current constitutional limit. He offered to obtain a legal opinion related to the two provisions' interaction.

SENATOR TOBIN pointed out that the current constitutional limit considers the state retirement accounts since the number of retirees is projected to increase over the next decade.

[2:16:43 PM](#)

SENATOR KIEHL revisited the question about the PFD. He noted that the bills before the committee set a lower limit on the dividend amount, with permission to increase payment with additional revenue. He wondered if the issue relates to the earlier conversation about spreading capital budget needs to meet the deferred maintenance backlog.

[2:17:36 PM](#)

SENATOR KAUFMAN opined that the legislature must balance all spending. He declared that the current spending plan is not working, evidenced by the results. He stated that the legislature must balance an abundance of needs going forward. He remarked that rebuilding budget management processes and structures around budget performance is crucial. He acknowledged that the bills before the committee are not designed to address every fiscal concern.

[2:18:52 PM](#)

SENATOR GIESSEL revisited the PFD and *Wielechowski v. Alaska*. She wondered if the limits proposed in the bills prioritize those dividends over the money supporting state services. She wondered if the Internal Revenue Service considered the Permanent Fund exempt from taxation because it is considered a support fund. She added that the dividend is not the priority related to the spending of the permanent fund. If the dividend becomes the priority, then the fundamental purpose of the fund becomes the question.

CHAIR CLAMAN offered a time limit related to upcoming public testimony.

SENATOR TOBIN commented that disaster declaration exemptions and limited capital expenditures might impact economic recovery from the pandemic. She commented that Alaska might require an increase in state and nationwide capital expenditures. She wondered if placing disaster spending outside of the spending cap might create a situation where a governor might access

disaster declaration funds inappropriately. She asked how the bill provides ramifications related to loopholes.

SENATOR KAUFMAN agreed that spending caps lead to many questions about spending and mechanisms. He opined that a governor who spends disaster funding inappropriately would face significant reputation damage. He stated that inappropriate behavior would be unsustainable and come at a price. The current cap allows twice the spending permitted in the proposed legislation. He surmised that the state's fiscal issues are the result of established structures. He proposed a solution for better process control and budget development.

[2:24:06 PM](#)

MR. HARVEY continued the presentation on slide 11, "Benefits." He spoke to the following:

- Effective and Reasonable
 - This proposal would set the cap at recently approved budget levels and would include a constitutional provision for some flexibility in the case of unforeseen risks
- Stable and Predictable
 - The 5-year trailing average creates stability, smooths out overspending when revenues are up, allows government spending to fall much slower than GDP during poor years, and the limit can be known before the budget process begins
- Private-Sector Focused
 - Open the discussion to outcomes during the budget process

[2:25:08 PM](#)

SENATOR KIEHL asked for an explanation for the use of Gross Domestic Product (GDP) and Gross State Product (GSP).

MR. HARVEY responded that different appropriation limits exist relative to population and inflation. He stated that GDP and GSP provide a holistic view of Alaska's economy.

SENATOR KIEHL appreciated the desire to obtain a holistic view, but he opined that Alaska's business activity involves varied commodities. He wondered why the element is included.

MR. HARVEY turned back to slide 9 and responded that the five-year trailing average provides one of the moderating mechanisms

to combat the volatility in GSP. He stated that volatility is also seen in state income because employment is driven by the industries. He remarked that the five-year trailing average provides the best mechanism to moderate and increase reactivity and drive the need for services.

[2:28:13 PM](#)

SENATOR KAUFMAN informed the committee that the modeling on slide 9 reflects the ebb and flow of the economy. He added that the cap is neutral to a revenue source. State spending is linked to a manageable percentage of our economic activity. He stated that the cap may prevent Alaska from becoming a service economy supported by the Permanent Fund. He remarked that the plan's averaging allows the potential to continue an upward and horizontal trajectory, which provides continued employment during recessive times. The mechanism enables lay-off protection because the state will not experience a contraction in the same way the private sector might. He added that the revenue source must exist. The structure presented will help in a downturn, but reserves must be retained.

[2:30:37 PM](#)

CHAIR CLAMAN turned to invited testimony.

[2:31:03 PM](#)

KEVIN BERRY, PhD., Associate Professor of Economics, University of Alaska, Anchorage, Alaska, spoke to his prepared remarks based on GDP-based spending caps. He intended to draw insights from tax and expenditure limits that share similar objectives with spending caps. He explained that Alaska has a non-binding existing and effective cap. He pointed to the graph on slide 2, "Proposed Cap Under SB 20 and SJR 4." He analyzed the graph and noted that the yellow line depicts the state's existing limit or cap. The two proposed caps are depicted with orange and grey lines. The blue bars indicate the spending subject to the cap. He remarked that lowering the cap requires less spending in peak years for use in down years.

DR. BERRY moved to slide 3, "Tax and Expenditure Limits Have Mixed Evidence."

- Reduced taxes are hoped to positively impact economic growth
 - Unclear, as taxes fund services and we can't disentangle these two things easily
- Also possible revenue sources (or spending) are just moved outside the cap

[2:33:48 PM](#)

DR. BERRY continued with slide 4, "Components of State Spending in Alaska." He pointed to the graph on the left side of the slide "FY2024 Governor Amended UGF." He reported to the committee that he included the Permanent Fund Dividend (PFD) in the data even though it is not subject to the proposed cap. He stated that the large budget items depicted in the graph include Education, Health, Corrections, and Family and Community Services. The graph on the right side of the slide depicts state spending by category, FY 75 - FY 21. The graph depicts the necessary source of cuts if the binding cap is used.

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DR. BERRY moved to slide 5, "Changes in AKGSP Excluding Government are More Volatile." He commented on the use of Gross State Product (GSP) to measure a spending cap. He noted that Alaska's GSP is volatile and heavily influenced by the price of oil. When the government is excluded, the volatility increases. He added that the government is stable compared to the private sector economy. When the government is excluded from the cap calculation, larger volatility is observed. He explained that the graph's blue bars indicate the percentage change in Alaska's GSP. The grey bars depict the percentage change in Alaska's GSP minus the government. The yellow bars indicate a five-year average.

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DR. BERRY moved to slide 6, "Longer Time Horizons Dampen but Do Not Remove Cycles." He pointed to the graph's dark blue bars indicating the percentage change in a three-year average: yellow bars depicting a five-year average, light blue indicating a seven-year average, and green showing a ten-year average. He explained that the longer time horizons show smaller changes and fluctuations. He remarked that despite the longer time horizons, fluctuations follow the GDP. He added that the orange line indicates the Alaska North Slope's first purchase price (dollars per barrel). He pointed to years with higher oil prices, the GDP spending cap allows the state to spend more, but spending must be cut when oil prices fall. He stated that the cap will smooth the spending out over time.

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DR. BERRY moved to slide 7, "GSP in Alaska is dominated by natural resources."

- Alaska GDP is dominated by natural resources (oil & gas).
 - Pre-2014 recession this was ~30% of Alaskan GSP
 - Now ~16% of Alaskan GSP
 - Production has been declining for decades
- Many of our fiscal shocks are due to changing oil prices

DR. BERRY continued with slide 8, "Issues with procyclical policy."

"Balanced budget requirements lead to substantial procyclicality in state government spending, with the stringency of a state's rules driving the pace at which it must adjust to shocks."

(Clemens and Miran 2012)

Concerns for procyclical policy

- Government competes with the private sector to hire or purchase materials during periods of rapid growth
- Safety net programs grow in economic slowdowns

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DR. BERRY continued with slide 9, "Considerations with Real Gross State Product."

- Real Gross State Product is calculated using chain-type indexes weighted using current-period prices
 - current-dollar shares of GDP provide a more accurate measure of the relative importance of components and are preferable to chained-dollar shares
 - chained-dollar levels tends to overstate or understate sector contributions to GDP growth
- Real GDP by state does not capture state-to-state differences in the prices of goods and services that are produced and sold locally • Issues with measuring quality improvements and productivity, particularly in service industries

- Nominal GDP expressed in current year prices has similar issues

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DR. BERRY moved to slide 10, "RGSP Government Spending is Based on Infrequent Survey Data."

- Based mostly on quinquennial Census of Governments and annual Government Finances Surveys with regular revisions
- Takes about 2 years from the close of each fiscal year for the Census Bureau to tabulate and release COG and GF data. However, BEA's production schedule calls for more timely monthly and quarterly estimates.
 - Data on government receipts and expenditures are interpolated based on various data sources and revised later
- Annual revisions cover the prior 3 years and the current year and include both annual and quarterly estimates

DR. BERRY continued with slide 11, "Issues with Other Various Measures."

- Including population growth does not reflect population composition
 - Senior citizen or child population might grow faster than overall population
 - Focusing only on employment numbers ignores users of services
- Including inflation measures is not the same as measuring the cost of providing state services
 - Medicaid and medical costs growing faster than CPI
- Exclusion of funds and budget items biases spending, and excluded categories would likely grow as a share of spending

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CHAIR CLAMAN asked if there were questions.

[2:45:02 PM](#)

SENATOR TOBIN asked Dr. Berry to expound on the ebbs and flows coupled with the need for support services and social programming. She mentioned the Medicaid and Supplemental

Nutrition Assistance Programs' increase in beneficiaries. She wondered if the proposed cap would require a reduction in social services.

DR. BERRY responded that he was unable to provide precise data. He highlighted the idea of automatic stabilizers, which include government programs that naturally increase during recessions. Accommodating the binding cap with support programs and social services would require the state to limit total spending.

CHAIR CLAMAN wondered about the impact of including the PFD in the cap, with education spending outside of the cap. He wondered about the impact the hypothetical structural change would have on education spending.

DR. BERRY replied that the change would likely lead to an increase in education funding and a decrease in dividends. He noted that anything outside of the cap would compete for revenue above the cap.

CHAIR CLAMAN clarified that the program label was irrelevant, including the program in the cap was the limiting factor. A program or agency located outside the cap would be easier to spend money on.

DR. BERRY agreed.

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SENATOR KIEHL asked if there were periods in American history where a shift in government spending occurred.

DR. BERRY replied that large shifts occurred during the Great Depression and the Second World War. He offered to provide the committee with more details.

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CHAIR CLAMAN queried the effectiveness of the Anchorage tax cap related to constraints on municipal spending. He requested Mr. Berry's opinion about the effectiveness of the tax cap in Anchorage.

DR. BERRY replied that he had not reviewed the municipal tax cap in preparation for the presentation. He understood that the tax cap in Anchorage was binding and constrained the total amount of taxes collected, which forces budgetary choices. He noted recent debates about spending included in the cap.

CHAIR CLAMAN offered his perspective that the municipal tax cap is more effective than the spending cap for influencing spending decisions. He wondered if Mr. Berry perceived that revenue restrictions have more influence on spending decisions than a tax cap.

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DR. BERRY replied that both mechanisms have similar effects because of the requirements for balanced budgets, but he offered to follow up with more details.

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SENATOR KIEHL disclosed his apprehension about the economic measure. He opined that the government should have an interest in the economy, but government spending does not serve resources, it serves citizens. He pointed to the chart on slide four displaying state spending. He wondered about an indicator that would more closely address the service needs of Alaskans without resource volatility.

DR. BERRY replied that no one measure provides a perfect solution. He explained that each model comes with its challenges and benefits. He encouraged a comprehensive approach.

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CHAIR CLAMAN held SB 20 and SJR 4 in committee for further review.

[2:54:20 PM](#)

There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 2:54 p.m.