

ALASKA STATE LEGISLATURE

BICAMERAL PERMANENT FUND WORKING GROUP

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Transcript

Bicameral permanent fund Working Group

**Anchorage Legislative Information Office
Large Conference Room
1500 West Benson Boulevard
Anchorage, Alaska 99503**

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Testimony

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Senator Bishop: I call the Bicameral permanent fund working group to order. The time is 10:00 a.m. Today is June 19, 2019. We're meeting in the Anchorage Legislative Information Office. Senate members present are Senator Stedman, Senator Hughes, Senator Olson and myself, Senator Bishop. And, I'll let Co-Chair Johnston introduce her staff.

Representative Johnston: Yes, you have Representative Wool, Representative Kreiss-Tomkins, and Representative Merrick present. And, I am Jennifer Johnston.

Senator Bishop: Thank you. Everyone please silence your cellphones. I want to take this opportunity to welcome members of the public here to partake in these proceedings today. I'd also like to recognize; I see Senate President Giessel here in attendance. Good morning Ma'am. Representative Andy Josephson. How many others? Representative Hannan. Who else am I missing? If I missed you, raise your hand. It's not on purpose. So, that's all I see here from the House and the Senate in the audience. Okay, the working group was created by the passage of House Concurrent Resolution 101, which directs us to review the historical and present date use of the earnings of the Alaska permanent fund and provide policy recommendations to the

legislature. We intend to have our initial reports ready to the presiding officers on or before the start of the next Special Session on or about July 8, 2019.

And, we have a special guest here today, that has graciously taken time out of his schedule to come address this Bicameral Permanent Fund Working Group, and it's our sitting Governor Dunleavy. And, I would just like that before we invite the governor up to let him speak with us today, and the people at home, I'd like to ask everyone that we maintain decorum to the inch degree. Thank you. And, governor, the floor is yours and please come on up.

Governor Dunleavy: I'm not sure how to address? It is two chairs, correct? Co-Chairs, thank you. Members of the committee, thank you. It's an honor to be invited to speak and I'll just be very brief because I know you have lots of work to do. So, again, I want to thank you for allowing me to say a few words.

This is a, this is an issue that that is near and dear to all Alaskans. Both the permanent fund and the PFD as we know, and it's been an issue that has caused some consternation for all of us as we try and work through what the, what these islands are going to look like going into the future. And, just to, you know, just a couple of things, I wish you nothing but the best. I wish you luck in working through this process. I know that once a final decision is made as to where we're going to go with the PFD and the permanent fund, I think it opens up all kinds of avenues of possibilities for us all to work together to move Alaska forward.

It's an issue for all Alaskans. About 650,000 Alaskans are eligible for the permanent fund dividend. The permanent fund itself impacts all Alaskans, that's roughly 730,000 people. And, the dividend has been in place, as we know, since 1982, but the discussions about the dividend predates that for many, many years. Going back even before Governor Jay Hammond's concept on an Alaska deed in selling shares or giving shares to Alaskans. And the program came into existence in 1982, we're talking about the dividend program, and it worked well for many, many years until our oil revenues started to fall.

And, so now we have this discussion between what revenue we're going to have for government, and what transfers are we going to have from the Earnings Reserve, or the permanent fund to the people of Alaska. It's my position, as we know, it's no secret that we continue to follow the law. As the issues, we've got two sets of laws on the books now. One dealing with SB 26 and the POMV, and one dealing with the decade's old calculations for the permanent fund. I think it's a worthy discussion to look at where we're going to go with this process, both the earnings reserve and the PFD into the future.

And, again, I would encourage us all to look at the history. There are still some folks around that were intimately involved in this. Senator Rick Halford was around. Senator Clem Tillion was around and Representative Dick Randolph, and others that I have left out, but they are around. So, these are the individuals that I think would serve your work also if they were invited to speak for you.

We can't get through this without working together. We know that. The legislature can pass a bill, the Governor either signs the bill or vetoes the bill, depending upon what the bill looks like and what the body and what the Governor believes the bill will have in terms of impact on the state of Alaska. But in the end, we really can't get anything done without the people of Alaska.

And, like I've said before, we are one of only 24 states that has a repeal and initiative process embedded in our constitution. The framers put that in the constitution. The governor didn't make that up. Legislators didn't make that up. That was part of the deliberations over the constitution convention. What role the people of Alaska play in their government. And, they decided that they are going to allow the people of Alaska to have a greater role, and a direct democracy process. Again, that's the initiative and the deep field process. The referendum processes. So, the point I'm trying to make is, we all have to be on the same page, and moving in the same direction. If we're not, we don't get the issues dealt with. And, so, we need to have the people of Alaska with us.

There are two sets of statutes on the books. By convention to follow those two sets of statutes, the decade's old calculation for the PFD as well as SB 26. And, then have a conversation with the people of Alaska and that's what I am hoping, and I think, what your group is going to be doing is having a conversation with the people of Alaska as to what the history is, what were the discussions, where we are now in terms of our fiscals and the size of our budget, and where we want to go into the future.

And, again, that's the part I wish you all the best with. I truly believe, and I know you do too, in the people of Alaska. It's a small state. We know everyone in the state of Alaska, whether you're in Barrow or Ketchikan, or out in Dutch Harbor, or up in Fairbanks, we run into people that we know from all over the state, different parts of the state. It's a small enough state that we can have discussions, but in the end, everything we do is for the people of Alaska.

And, we've got to maintain that trust with the people of Alaska, in terms of following our statutes. If we want to change the statutes, I think we have to, especially in this particular case, I think we have to engage the people. Now, there have been people that have said, well, that's what they elect us for is to get down to Juneau and make the hard decisions. That's true, but again, you have embedded the constitution, the referendum, the initiative and the repeal process, which the framers said, once again, we look at the minutes of the constitutional convention, that the people should have a role, and in some case, a final say. And it's so, once again, we believe that we can get through this process with engaging the people of Alaska in a vote of the people.

I think it's a worthy discussion once again as to where we're going to go with the PFD, and the earnings reserve of the permanent fund. The corpus, of course, is protected constitutionally. But we have to take into consideration what the people of Alaska want in this particular issue.

Ninety-nine percent of the work we do in Juneau, the people of Alaska have basically said, you guys do it. We're too busy with our lives. We're too busy with our jobs, and that's your role. But when it comes to something of this magnitude, that's been around for decades, that impacts virtually every Alaskan, I think it behooves us to really think about engaging the people in a positive manner.

And, so, with that, again, I just want to wish you nothing but the best. Our staff is available if you want them to assist in any manner, and all of Alaska is, I think, hoping that what comes out of your committee is going to be good for Alaskans. Not just for today, but for some time to come. So, with that, I appreciate your time, and again, good luck. Thank you.

Senator Bishop: Thank you, Governor, for those opening comments today, and I'd like to say we appreciate, the committee appreciates you making your staff available last week, and as we started building this template going forward for these discussions, and prove evident to that today is your folks' kicking off this meeting right now. So, thank you. Thank you to your staff and we really appreciate you coming by.

So, with that being said, the agenda and presentation materials have been distributed, and are posted online at www.akleg.gov for those listening at home or watching from afar. You can click on the daily schedule. You can click on the document's icon. That's all been posted, uploaded and I'm seeing nodding heads so we're good to go in that respect from staff. I do want to thank the staff of Representative Johnston's office and my office and everyone's office, and the administration for pulling this together. It's nothing short of a miracle, and in about five days or less, this presentation. And, typically, this takes longer, but it's a time sensitive issue and we all want to get to a conclusion.

So, with that being said, our first presentation today is on the statehood act, the 1976 Constitutional amendment, Alaska's first dividend and the *Zobel* case. Our presenters today are Assistant attorney generals Bill Milks and Cori Mills. We also have representatives from the Department of Revenue and the Legislative Legal Services. From the Department of Revenue, we have Anne Weske and Corey Bigelow, the PFD Division Director and the Operations Manager.

This afternoon the gavel will then transfer to Representative Co-Chair Johnston and she will take off or kick off the afternoon briefing on the Legislative Legal Services history of the dividend and Emily Nauman and Linda Bruce will then be our afternoon presenters. We will take, at 11:10 a.m., we're going to take a five-minute break for committee members. We have a jam-packed schedule today and we want everybody to be able to stretch their legs for a minute and not sit here the whole day, so with that being said, the floor is yours and the kickoff. So if members have questions, just, if you don't mind, as they pop up, is that fine if they have a question on your slide, can we? I get a nod, we'd like, or I'd like, to see an answer.

Cori Mills: Yes, we have no problem with that. Do you want to introduce yourself?

Bill Milks: Yes, good morning committee members, Bill Milks, Assistant attorney general of the Department of Law.

Cori Mills: And, Cori Mills, Assistant attorney general of the Department of Law. As the co-chair stated, we're going to start with the statehood Act and we're definitely going to do this from a very, kind of, factual and what the law said, sort of angle. As the Governor indicated, we have people in this state who were actually around for a lot of these events if you would like that perspective. So, we were asked to go back to the statehood Act and the creation of the Alaska constitution, to really set the stage for the passage of the permanent fund constitutional amendment and then following up with the permanent fund dividend statutes. Again, we won't go into a lot of granular details, but just hit the highlights that really do give the background and the foundation. You know, as the general background, I think we all know Alaska is pretty unique in its constitution in Article 8.

We actually address natural resources in our constitution to stain yields, you know, maximum benefit for all Alaskans. And that is very unique, and it's, when the Alaska constitution was being put together. It was actually adopted in 1956. That's another reminder, our constitution was drafted and adopted before we actually got statehood. So, the constitution was adopted in 1956, and in part, the constitution was meant to try to sell congress on the idea of statehood, to give it that final push.

And, as the *Citizen's Guide to the Alaska Constitution* explains, proponents of statehood believe that the future of the state of Alaska depended upon the successful development of all its natural resources. This was to Article 8. And, at the time, there was really no other constitution that the delegates could draw on, because no other constitution had embedded this type of protection in its constitution. And, the concept was to enshrine in the state's constitution the principal that the resources of Alaska must be managed for the long-run benefit of the people as a whole. Another way to put this, is the state should, the natural resources of the state should be managed as a public trust.

So, that kind of sets the stage, then you move to the statehood act, which at those concepts in Article 8, and gives the mineral rights to the state, and, in fact, the federal government and Congress even went a little further required the state to maintain those mineral rights. So, they could not give them up, they could only lease them, or they'd revert to the federal government. And, so, that brings us to Section 6(i) which is what is up on this slide, and this is the main portion of the statehood act, that deals with these mineral rights.

And, we've highlighted the pertinent language; all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the state of all the minerals in the lands so sold, granted, deeded, or patented. And, like I said, as you go on, it discussed forfeiture of those mineral rights if the state were ever to try to sell them, instead of leasing them.

Senator Bishop: Cori, could you finish the last sentence?

Cori Mills: Read that whole last sentence?

Senator Bishop: Yes.

Cori Mills: So, the last sentence reads, provided that any lands or minerals hereafter disposed of contrary to the provisions of this section, shall be forfeited to the United states by appropriate proceedings instituted by the attorney general for that purpose in the United States District Court for the District of Alaska.

Senator Bishop: Okay, and I'm going off your slide on the statehood act. And, I'm just wanting to say, or patented together with the right to prospect for mine and remove of the same. So, an individual Alaskan does have the ability to go out and pick location, make application, mine that prospect, that load, make their royalty payments to the state. There's nothing that precludes them from that right. They have the right to do that.

Cori Mills: That's correct. And, that's definitely also very much embedded in the law at the time, and the feeling at the time, of those mining claims and the ability for people to go out and make those mining claims, and that still exists.

Senator Bishop: Thank you.

Cori Mills: So, to give context to both the statehood Act and Article 8, we go to what the state looked like in 1959; 99.8% of the land was owned by the federal government. And, if you look at it, there was a case actually on the statehood compact, where the state argued that they in *Alaska vs. United States*, that the federal government had violated the statehood compact, the statehood Act, by not, by withdrawing certain lands for minerals development and not upholding financial promises, such as the 90% of royalties.

And, the court in that case, determined that carefully reading the entire legislative history, it is impossible to come away with the sense that the provision for finances was, in the end, the key to achieving statehood. Instead, the court focused on the most traumatic evidence of the increasing press of the statehood package with the incremental increases of proposed federal land grants to the state. It is clear from the entire record that the land grant was seen as the main vehicle for making Alaska free from dependence on the federal government.

And, so, with the statehood act ultimately provided, gave the state the right to select and acquire approximately 105.5 million, of the nearly 365 million acres of federal lands. And, currently we are at about 95% of that, or about 100 million acres. In addition, the state also owns 65 million acres of submerged and tied lands. Some would also have some natural resource potential.

And, the other bullet point on this slide just, kind of, goes over what the land looks like now. And, the focus is the state owns 26%, the federal government owns approximately 60%, and there's less than 1% of Alaska land owned by private owners, and that doesn't include the tribes, Alaska Natives tribes, or ANCSA [Alaska Native Claims Settlement Act] corporations.

So, just for context, the next highest state in terms of public ownership of lands is Nevada, with around 80%. Utah was around 70%, and that's followed by Idaho with around 65%. Thirty-four of the states in the United States have less than 20% of their land in public ownership. So, that just shows you that Alaska is in a pretty unique position in terms of the lands we own, as well as the land owned by the federal government, and, the lack of lands owned by private ownership.

Senator Bishop: Senator Stedman.

Senator Stedman: Thank you, Mr. Chairman. I'm just, kind of, curious if you happen to know the 13 original colonies, or the 13 original states, and how much federal land is within those 13 original states?

Cori Mills: So, I'm happy to provide. There is a listing in, as I recall from my brief review, most of those had very small, they were definitely under the 20%, and a lot of them were actually under 10% of public ownership of land.

So, moving on unless there are other questions on this slide?

So, now we move to the permanent fund constitutional amendment, and we just kind of wanted to lay out a timeline. Again, kind of leading us to the final amendment. So, everyone is very familiar with this timeline, but we'll go over it so that everyone is on the same page. So, 1969: Prudhoe Bay oil and gas lease sale, you know, brought in around \$900 million.

Early 1970s, that \$900 million was spent, even though it was a multitude times what the budget had been in prior to that amount. Then in 1974, you have construction of the trans-Alaska pipeline.

And, during this whole time in the early 1970s, the idea of a permanent fund had been brought forward in terms of legislation. It hadn't passed yet; it was only statutory. But also, during that time, the attorney general at the time looked at it and said, you really can't do this in statute, it would be a violation of the dedicated funds laws. So, there was an AG opinion already out there when in 1975. Governor Hammond vetoed legislation, HB 324, that sought to create a permanent savings fund by statute. And, that was again, because of the Alaska constitution prohibits dedicating state revenues.

So, Governor Hammond turned around in 1976, and introduced a proposed constitutional amendment that would permit saving a portion of the royalties and the creation of a permanent fund. And, then in 1976, the legislature passed that house joint resolution. It was put on the ballot and passed by an overwhelming majority on November 2, 1976. And, what we've. Go ahead.

Representative Johnston: Yes, through the chair, do we have the record of the vote? I was trying to remember the other day.

Cori Mills: So, it's on there, unfortunately I can't read it from my angle. Oh, 75,588 to 38,518.

Representative Johnston: Sorry.

Cori Mills: No worries. Sorry, I was actually going to read it, but realized I didn't have it in front of me. So, as you can tell, an overwhelming majority voted in favor of the permanent fund. So, moving on, what we decided to focus on was actually the language that was in front of the voters at the time.

And, this is one of the tools that the Alaska Supreme Court uses in interpreting the constitutional amendments, is to look at what the voters had actually seen. What would they understand an amendment to do? And, so, this was the actual ballot summary that was in front of the people in 1976.

And, it's very, very much just follows the language of the amendment, and I won't go through and read it all, but it talks about creating an exception to the dedicated funds clause and adding a permanent fund into Article 9 of the constitution, that would have at least 25% of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses paid into the permanent fund. And, the principal could only be used for income producing investments. So, that you can't reach into the principal. And, then the rest would be available for the general funds unless otherwise provided by law.

And, then, if you go to the next slide, it's just the language that ended up in the constitution, which very much the ballot summary follows, and is the language, I think a lot of us have been focused on the last several years. And so now, and that's Article IX, Section 15 of the constitution.

And, so, now what we're going to do is Mr. Milks is going to move through the actual permanent fund dividend and the history surrounding the dividend, unless there are questions on the constitutional amendments?

Senator Bishop: Representative Wool.

Representative Wool: Thank you, Mr. Chair. So, is it fair to say that the overall majority who voted on the constitutional amendment also supported that all of the income that the funds produced could be, would go to the general fund and spent at the will of the legislature? At the time, that's what that ballot statement says, correct?

Cori Mills: So, Representative Wool, through the chair, this is the ballot summary that was in front of the people, and the way the constitutional amendment read. So, you can, I guess, infer by that that people thought it would go to the general fund unless the legislature decided to do something else with it.

And actually, went into quite a bit of detail reviewing the history and what they thought the voters probably thought. So, we'll get to that at the very end of the day. We're going in chronological order.

Representative Wool: Thank you.

Bill Milks: Okay, so now we're going to transition and speak some about permanent fund dividend, the first dividend program and the legal challenge to that. And, I guess at this point I think what, sort of, struck these, is if you were reviewing this in the last several days to get ready for the presentation to the working group here is that, you know, when you look at a history of the permanent fund dividend, the permanent fund, it seems like this is where you see all of Alaska really involved.

Because you have the people involved, people have to adopt a permanent fund amendment, as Ms. Mills just went over, so they had a vote, they adopted an amendment, and you have all three branches of government have been involved with this permanent fund issue. You have the legislature that enacted two main dividend laws, the courts have reviewed the dividend laws, as well as the process for paying dividends. So, it's interesting looking back the last forty some years, how you can see the people, the legislature, the executive and judicial branch have all, sort of, played their own unique roles in trying to work through this process of Alaska's permanent fund.

So, the first place we start to see the judicial branch becoming involved is we have the first dividend. And, so, we have the amendment passed in 1976. Then we have the legislature in 1980 decides to pass the first dividend law. And, there's a couple interesting things about this dividend law that said in the overall context of the history. I wanted to...I just want to see if we could bring up the 1980 dividend law.

Cori Mills: The first dividend fact sheet. Do you want that one?

Bill Milks: Yes, the first dividend statute.

Cori Mills: I can try and zoom in here.

Bill Milks: Well, you know, in the first dividend statute we had some legislative findings regarding the dividend, and you can see there it is to provide (1), to provide a mechanism for equitable distribution to the people, at least a portion of the state's energy wealth, from resource development. That's number 1. And, so that's sort of, and also under subsection (c)?

Cori Mills: Yes, that's at the very bottom.

Bill Milks: You have a statement by the...that the legislature finds that the payment of permanent fund dividends...

Cori Mills: Yes, that's at the very bottom.

Bill Milks: The very bottom.

Bill Milks: I can read it, if you just go back to the...payment of permanent fund dividend to state residents of their equitable ownership in the state's natural resources. So, you can see embedded right in the first dividend in law is a continuation of this history of Alaska statehood and the resources for the state and ... so we see a recognition of that in our first dividend law.

Senator Bishop: Senator Hughes has a question.

Senator Hughes: Yes, thank you very much for being here today. We're starting with the law in 1980, but as I reviewing some of the materials, I believe it was the material that Erin [Shine, aide to Representative Jennifer Johnston] provided and was going through things yesterday, I noticed that 1980 wasn't really when it was first on the record and discussed.

It was actually on the record and discussed in 1976, prior to the HJR 39. Are you going touch on that later? Is that part of what is at the end of the day? I just feel like we jumped to 1980, and there was discussion of a dividend in the constitutional amendment for the permanent fund.

Bill Milks: Through the chair, Senator Hughes, yes, that actually was the second point I was going to make when we looked at how the history developed here.

You have the dividend bill is expressing a recognition of the individual's state residence and their interest in the ownership of the minerals in the state. And, as far as the constitutional amendment, yes, so you see, when you look back at the constitutional amendment that Ms. Mills was reviewing, in 1976, you see when we talked about the...at the end of the Constitutional amendment, it talks about the income of the fund, and how it will go to the General fund, unless otherwise provided by law.

And, when you look at the history of the adoption of the amendment, if you look at the legislative history, you can see that at times dividends are mentioned, and there is an important house resolution from 1976, when the amendment was being introduced in which the leaders point out that they were intended to provide a maximum flexibility to the legislature, and how do you use income from the permanent fund. And, some of the ideas that were expressed by legislators included a possible dividend in the future. So, we have that, sort of, historical background that leads us to the 1980 amendment, the 1980 bill, which is the first permanent fund dividend bill.

Senator Bishop: I'd like to let the record reflect that Speaker Edgmon has been with us from the onset and it's my fault for not catching that right off the bat. So, I apologize, Mr. Speaker.

Bill Milks: So, first at Slide 6, we have a timeline and we'll go into a little detail on it. But we see that the amendment, I mean the first dividend law was enacted in 1980, and you can see, and most individuals know, there was a legal challenge that resulted in a U.S. Supreme Court decision in 1982, finding that law unconstitutional. And, then, basically the current dividend program, most of its substance was then also enacted in 1982, in response to the U.S. Supreme Court decision. So, the first...

Senator Bishop: Representative Johnston.

Representative Johnston: Actually, I might have spoken too soon if you're going to be talking what the first dividend looked like, correct?

Bill Milks: Yes. So, the next slide, Slide 7, shows us what the dividend law looked like, and this is part of the law where we focus because we know this became the one legal challenge, not the other issues about why the legislature wanted to have a dividend, but the manner in which the dividend was established and divided. So, you can see from Slide 7 that what we, the legislature, did was establish a dividend that paid different amounts, based on your years of residency in the state.

They basically provide you a dividend unit, and that first one I think was a \$50 unit. And, then, you got one dividend unit for each year of residency and that resulted you to, you know, if you were a first year, you got \$50. If you've been there twenty-one years, and it went back to statehood, then you would be at \$1,050.

Now, that type of dividend that was distinguishing between residents and the amount that they received, was immediately challenged by the *Zobel* plaintiffs. It was immediately challenged in court as a violation of equal protection clause, because of this distinction between residents.

The case first went to Alaska's superior court, our trial court that ruled the law is unconstitutional. It went to our state supreme court that reversed, and said, no the law is constitutional.

Then it goes directly to the U.S. Supreme Court and the U.S. Supreme Court put a stay on any payment of dividends under this law, until they had had an opportunity to review it.

So, the U.S. Supreme Court then ruled in 1982, that the dividend law violated the people's protection rights of Alaska residents by this distinction based on residency. And, the supreme

court in the *Zobel* case was just addressing this issue about when providing varying amounts to residents of state money and in the form of state resources in the form of money based on length of residency, that that violates the equal protection clause.

And, the supreme court, the U.S. Supreme Court, both at the beginning and the end of their decision, seemed focused on the way this law was written it would create six permanent distinctions between an ever-increasing number of perpetual classes of conceding bonified residents.

How do I say this? The way you construct this, every year you are going to have a multitude of different dividend amounts to pay to people. And, the supreme court said there's just that, even under the lowest level of scrutiny, or rational basis scrutiny, which is the lowest level of a port scrutiny of the law passed by the legislature, it's the most common one used, that even under that scrutiny the dividend law was unconstitutional. So, in reaction to *Zobel*...

Senator Bishop: Yes, sir, question?

Representative Kreiss-Tomkins: Thank you, Mr. Chair. I'm just curious in terms of the *Zobel* case, my work team got a, Senator Hughes and I, were reviewing this yesterday and two days ago, and my first question is, can you summarize whether there's been any federal caselaw since the *Zobel* case, that could potentially questions or changes the basis of one year being the, sort of, golden standard for state interest or purpose in establishing residency, and therefore PFD eligibility.

Bill Milks: Okay, well, there's been, you know, I tried to look through but I'm sure if some of my colleagues, including some of my colleagues from Legislative Legal Services, might have some finite answers on that too as the day goes on, but in general, that kind of...well, first of all, our current law, not the one that was rules unconstitutional, but our current residency requirement, the Alaska Supreme Court found were constitutional in a decision in 2013. And, there they focused on what's important and the protection was that you were looking at bona fide, the state was looking to make sure that these were bona fide residents of the state. And, so under our current law, it's been upheld as one year.

As far as a survey of other cases, and this federal court's, you know, there's been a variety of decisions issued by federal courts over the years on different kinds of state benefits, whether or not they're welfare benefits, or they're tuition benefits, and the courts will derive, sort of, different levels of scrutiny.

The issue was talking about scrutiny or national basis system levels of scrutiny. What's a little bit difficult with the PFD is we are the only state with the PFD, with a permanent fund dividend. So, it's a little to draw really firm conclusions from looking at other states. I do think, you know, when we discuss it, we don't necessarily take the only dividend law to ever be constitutional, the current dividend law, and our dividend law also has a number of exceptions, but I don't think we think those exceptions are, you know, at least mostly, legally required to represent policy judgments.

So, to circle back to the *Zobel* case. The *Zobel* case was really dealing with a pretty, you know, in retrospect, you can look at it and say, well, that was a pretty severe distinction between state residents. So, in retrospect, it's not all that surprising to find it unconstitutional.

Representative Kreiss-Tomkins: Mr. Chair?

Senator Bishop: Follow-up.

Cori Mills: Cori Mills, for the record, I was just going to add, if you read the *Heller* case, it's actually very informative, because it talks about how even Alaska statutes have different residency requirements for different programs.

And, that's, kind of, evident in the caselaw as well, on determining are you doing a durational residency requirement, where you are trying to distinguish between two residents that could otherwise be treated equally, or are you really saying, we are trying to make sure you are a resident of our state and therefore, entitled to this benefit.

And, that seems to be the focus, what is the intent and motivation as well as, what is the type of benefit. All of those factors have weighed in, I think, to the cases which is why, as Mr. Mills said, it can be difficult, and it takes something as unique as the permanent fund dividend, and say, when would it go too far? We know *Zobel* went too far.

We know one year has been upheld. Is there anything in between? We'd have to really evaluate that.

Bill Mills: And, just to follow up on that, we'll just mention the case thing, as I mentioned the Alaska Supreme Court made the decision, Ms. Mills identified *Heller*. In *Heller vs. State of Alaska, Department of Revenue*, and it's a 2013 case.

And, there, I think, as we read that case, like Ms. Mills' explained, the courts really, sort of, distinguishing between a residency requirement that is focused on verifying that the individual is a bona fide resident of the state, which would be giving a rational basis or lower level of scrutiny, and they upheld our current residency law because they said that's what this is.

But they also said that there are durational types of requirements that you have to be a resident for a certain period of time, that are not really focused on verifying that you're a bona fide resident. So, those durational residency requirements are given the higher standard, which is a certain scrutiny.

And, the last point I'd make, I guess, Representative, is I mentioned federal cases, of course, we also have our Alaska Constitution and the Alaska Constitution has the protection clause too. So, in that *Heller* case, the court went through both the U.S. Constitution equal protection requirements and Alaska's equal protection requirements, and just looked at our current law and reach that conclusion.

Senator Bishop: Yes, and I have two more in the cue, so make this a good again.

Representative Kreiss-Tomkins: Yes, to sharpen the question, my question is, has there ever been a residency requirement longer than a year, that has been challenged in federal court and upheld? And, I think that should be a yes to that question. Is there an answer?

Senator Bishop: And, if you can't answer right off the top of your head, get back to the committee and I'll disperse it to the members.

Cori Mills: I think we'd prefer to do that in this case. We do...we have gone through them; I just want to shift through them again and remind ourselves of what the different requirements were that the court looked at.

Bill Milks: Yah.

Cori Mills: And which ones were upheld versus not. Because they definitely looked at ones that were...most of them were longer than a year in some way, or had some sort of requirement that, what was upheld versus what was not. I just don't have off the top of my head.

Senator Bishop: So, we've got two more in the cue and this I would leave off of this and go to Co-Chair Johnston. This isn't the first residency challenge that has went through the United States Supreme Court under the Department of Labor, *Hicklin vs. Orbeck*, U.S. Supreme Court too on a residency requirement. So, Representative Johnston?

Representative Johnston: Yes, and similar follow-up. I was trying to remember when our longevity bonus was challenged, because the first dividend was more like our longevity bonus, and it was basically, you got more of a dividend, depending on how long you had a blood, sweat, and tears investment in the state. And, I was thinking that was during Governor Murkowski, but I can't quite remember.

Bill Milks: Through the chair, Representative Johnston, that's another one that we can certainly follow-up on, but I know during Governor Murkowski's term, there was an Alaska Supreme Court case about the longevity bonus. But the issue there was the governor had vetoed the appropriation for the longevity bonus, and the statute had not been appealed and the court upheld the Governor's action.

Senator Bishop: Representative Wool.

Representative Wool: Thank you, Mr. Chair. The first dividend formula mentions 18 years of age or older. Did that get challenged? That wasn't really a residency question, that's just an age question. Whatever happened to that, sort of, that part of the law?

Bill Milks: Through the chair, Representative Wool, it wasn't really a part of the legal challenge, so I think, you know, the legal challenge was focused on the distinction of the amount of dividends based on years of residency.

So, the qualifying being 18 years old, we, or perhaps Legislative Legal Services, are going to go over the statutes as they've developed. They might have an answer for you on why the law went from, the 1980s law of 18 years, to the current law of any age. We don't have that answer. If our colleagues don't have that answer for you in a while, then we will find the answer.

Representative Wool: Thank you.

Senator Bishop: Senator Hughes.

Senator Hughes: I just have a comment, because in that case, the 1980 dividend for someone that has been a resident since statehood, would have been \$1,050. So, I just pulled up an inflation calculator to see what that would be in today's dollars. It would be \$3,263.31.

Senator Bishop: Please continue.

Bill Milks: So, on the next slide, it's Slide 10. So, here I have the basic review of what our current dividend law is. And, a fuller review of our current permanent fund statutes is coming, from your division of Legislative Legal Services.

So, what this slide number 10 shows is interesting. This basic structure of our permanent fund dividend has been the same since 1982. There's been some changes in the dividend law, but they usually dealt with exceptions, you know, added to such as the ability to be out of state for periods of time for some particular purpose.

But the basic structure from 1982, that's the same as when we talk about the statutory formula, that's the statutory formula, Slide 10, it's the same as it's been since 1982. There's a percentage of income coming out of the permanent fund earnings reserve account, that's based on a percentage of the net income of the fund.

That amount, and then there's a calculation, 50% of that is available for distribution by the permanent fund corporation from the earnings reserve account to the dividend fund. And, then, the third step, or the leg of this, is then that money, when it is...goes from the permanent fund corporation, they, of course, don't handle the issuing of the checks. It goes over to the Department of Revenue, and they perform the calculation, based on the amount of money coming over. And, then, based on the eligibility requirements and the applications.

This is the spot in our presentation where we were going to our next slide, I think it says, Alaska permanent fund statutes, which we know Legislative Legal Services Division has pulled that comprehensive list for you. So, I guess, do you have any?

I mean, we tried here just to cover from the, basically the foundation of the permanent fund and the dividend. Going from Alaska statehood, onto the reasons why we have a permanent fund dividend to begin with, that's because of our constitutional prohibition against dedicating revenues.

Otherwise, we wouldn't have to have a permanent fund, but we do and that's why we have one and it was determined in 1976, through your predecessors and Governor Hammond that we obey. In 1975, I have to veto this permanent fund statute, because the attorney general told me that it was unconstitutional. So, I'm going to introduce an amendment. And, the amendment was debated in the legislature. It goes to the people, as you've seen, you know, the vote was pretty strong in favor of it. Through that debating process, there's certainly the legislative records shows that the intent, as far as the income coming out of the permanent fund, was to provide

maximum flexibility to the legislature to decide how to use that. And, they debated some ideas, or they talked about some ideas, such as dividends for sure, and other subjects.

But at time in 1976, most of their focus is on, we're going to figure out how a bunch of our incoming revenues should we, do we feel that we should save for the future. A real insight for those individuals to realize that we had a, you know, a great resource that was here, but it was a finite resource in front of us.

We should save for the future. Balance that versus their current needs, and they end up with the constitutional amendment that has the percentage, at least 25% of royalties. Four years later we have the dividend. We then have the introduction of the judicial branch into this whole conversation. And, they say, that calculation...the way you did that is wrong. It's unfair to the current residents, newer residents. The legislature reacts and passes, basically, the current formula. So, maybe at this point we'll let our, or have our colleagues move on and maybe give you the permanent fund statutes. Unless you have a question? We've taken notes on a couple of questions that we've received here.

Senator Bishop: Thank you. Senator Hughes.

Senator Hughes: It's related to the history, but I do recall when I was reviewing the materials, that the phrase that was added in the constitutional amendment, or as provided by law, that that was the part of the reason was that because they were having discussions at that time about a possible dividend. They were also, there was talk about having a loan program, and different things, but it was specifically that phrase was added to the constitutional amendment, is my understanding, to accommodate a dividend as one example. Is that correct?

Bill Milks: Through the chair, Senator Hughes, yes, that's correct. And that's, you know, as you just stated, the permanent fund amendment first identifies a percentage of royalties that will go into this permanent fund.

They can only be, the principal of which can only be used for investments. Senator Hughes is asking where the income is addressed? It's the last sentence. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law. So, it's that unless otherwise provided by law, which I think is fair to say the legislative record which the court saying, let's provide as much flexibility as we can for the legislature in the future to decide how to use this income.

Representative Johnston: Representative Wool.

Representative Wool: Thank you, Madam Chair. So, when the governor spoke earlier today, he said that this issue affects mostly all Alaskans, and it therefore should be put to a vote of the people.

Was there ever a discussion when the PFD statutes were coming on? That that should also be put to the vote of the people? I know that the constitutional amendment was to create the permanent fund, but the question of the permanent fund dividend, was that ever thought, hey, we should put this out to a vote of the people?

Bill Milks: I don't have specific recollection on that history. Our, my focus was mostly on what did the statute mean and why did it get legally challenged. We certainly tracked carefully the history of the amendment.

Senator Bishop: Senator Hughes.

Senator Hughes: Just in response, in my reading, they were having meetings in various communities, I remember reading that they were in Kotzebue having discussions and getting input from the public as it was developing the PFD statutes.

Senator Bishop: Thank you. Any other comments? Seeing none, we are going to take just a brief at ease just for a moment. Brief at ease. Nobody leave your seat.

Senator Bishop: I'd like to call this meeting back to order. Next up we're going to have, I believe it's an online presentation, Ms. Milks is going to, I think, probably run a visual and Revenue will be online, just as delivery. So, just keep that in mind colleagues, when you are framing your questions that person will be speaking through the microphone. So, just a quick update. I was informed that we have over 200 Alaskans watching this online. So, that's good. And, we appreciate the attention to detail. So, with that, Revenue, are you there?

Anne Weske: Thank you, Senator Bishop. This is Anne Weske, for the record, Permanent Fund Dividend Division director.

Senator Bishop: Thank you. And we can hear you. Also, I want to ask members when we speak, and I'm the worst, but speak clearly into our mic. One of my staff is transcribing the minutes of these meetings, because we are not a regular standing committee, we don't have a scribe assigned. She's a former court employee and is very good. So, let's speak clear into the mic for her benefit so she can capture all this in detail. Thank you. So, with that being said, Ms. Weske please take off your presentation.

Anne Weske: Thank you, Senator. I'll start with Slide Number 12. We'll begin with the annual timeline for the permanent fund dividend division. This is, there's a lot of words here on the slide and I'm going to really paraphrase. My assumption is that later you guys will probably go through this in-depth, and so, at that point you might have more questions.

But, the first major season that we have is the filing season, which is January 1 – March 31. At this time, we are collecting applications from all Alaskans. We are collecting feedback to see if the application is functioning properly or getting responses that we are wanting. This assists us in predicting the following year's application. So, there's always small tweaks that we make to ensure that we're not being confusing in the wording that we utilize. And then, we are also just making sure that we are collecting applications from every area of Alaska to ensure accessibility has been adequate throughout the state. So, this is a time when we have high public contact and we're simply just trying to get applications into the division.

The next major trunk of time for our division is April 1 – August 31. April 1 begins garnishment season. We typically have roughly 400,000 garnishment requests. Not all of those are able to be fulfilled due to, multiple people having multiple, or one person having multiple garnishment requests on the record. But this is one of the legal obligations of our division. We also take this

time to determine eligibility. The trunk, the large majority of eligibility is determined prior to August 31, with a goal of September 15, having 85% of all Alaskans determined, in order to qualify for the first mass payment of the year. This is also the time that we arrange with APFC to do the transfer of the funds that will help, not only fund the operating budget for the division, but it will also fund the funds needed to pay out Alaskans their dividend.

The following slide 13 covers September 1 – December 31. This is the time when we logistically arrange for the payment of the dividend to occur. This involves the department, or the Division of Finance printing, mailing, cash management. It is a full state process truly as we audit, warrant, we alert banks of the amount that we estimate to be received by their institutions so that they can have cash on hand. As that's a very common request once the dividend has been paid out. Individuals often go to the banks to cash those checks. Disbursements go in all directions, as you've heard before. We have multiple garnishing agencies, including the state of Alaska, which benefits greatly from the PFD program garnishment. We have charitable contributions that also occur. And, then, of course, payments to individual applicants as well. Slide number 14...

Senator Bishop: Ms. Weske, before we leave this, do you have, off the top of your head, know how many employees it takes you to execute this program?

Anne Weske: In house, we have 76 employees for the division, however, I would probably add in about another 30 for the actual physical disbursement of the checks in October. And, that includes mailrooms, printing rooms, finance, cash management, and our fiscal staff here in Revenue.

Senator Bishop: Thank you. Co-Chair Johnston has a question.

Representative Johnston: Yes, thank you. Do you have what the costs are insofar as the garnishments? Do you have that separated out?

Anne Weske: Through the chair, so, the costs of the garnishments are...are you asking the dollar amount of what is typically requested? Or the dollar amount of what typically goes out the door?

Representative Johnston: Actually, what I'm asking is, how much does it cost the division to that part of the work?

Anne Weske: Sure. So, we employ four full-time employees to handle garnishments and the payment. The payment is a smaller area of that, but I would say probably, roughly \$100,000 is dedicated to the time it takes to process garnishments.

Representative Johnston: Thank you.

Senator Bishop: Please continue. Representative Wool has a question.

Representative Wool: Thank you, Mr. Chair. When you say garnishments, does that include say people that are incarcerated who don't actually apply? And, secondly, if there's a change in the amount of the permanent fund check, say a few years ago when the amount was vetoed to one-half, do a lot of state agencies then have to make adjustments for the lack of revenue they normally would have got through garnishment?

Anne Weske: Through the chair, as far as the incarcerated go, we don't have to make any kind adjustment on that. They don't typically qualify for the PFD because they are incarcerated. There is a chunk of the payments that is calculated prior to us actually estimating the amount for all of Alaskans. And, we get a file with the DOC [Department of Corrections] numbers on that. But so those are accounted for outside of individual payments.

Let's see, the second question was about other departments. So, when a dividend gets cut or, you know, a reduced amount is out there. That would be up to the actual department in how they will handle what they receive. We will pay up to the maximum amount of the dividend, but I'm not exactly sure how budgetarily other departments deal with a reduced anticipated amount of money, due to a reduced dividend amount. That would have to be handled internally. And, of course, there is always the clause with the dividend that we don't know the amount until the calculation is done and it is set in stone. So, you know, the past couple of years, I'm sure that that has been a big question for agencies who do rely a lot on garnished funds.

Senator Bishop: Okay. Please continue, seeing no other questions.

Anne Weske: Okay, Slide Number 14 addresses the agency deadlines that we have. There are some questions about appeals. So, every time an individual is deemed ineligible for a PFD, they receive a notification from the division, either electronically or by paper. And this states that they are ineligible for the dividend and they are provided in that same correspondence, an appeal form.

They have 30 days to fill out that form and return it to the division with either the \$25 appeal fee or a poverty waiver that checkbox that they would mark to state that they don't need to pay the \$25 fee. The fee is returned if the appeal is overturned by the division.

The application deadline is March 31 every year. There are exceptions for a late filing application. The most common three, I believe, maybe the only ones there, are an individual is deemed disabled on March 31 of the filing year. They have a one-year extension.

An individual who is active military and receiving hostile fire or imminent danger pay, they would also have a one-year extension. And then, if a deceased family member, if individuals chose to file for a deceased family member, who passed away passed July 1 of the prior year, they also have a one-year extension to file.

The other big deadline that we work a lot with are the child applications for individuals who, when they were a minor, for some reason, did not have applications filed for them. It could be that their parents missed a year. It could be that they got caught in the system between, you know, foster care and their biological parents, and so for those situations, a child has been their 18th and their 20th birthday to reapply, or apply for the prior year applications that they might have missed.

Slide Number 15, I won't go through in detail because Slide Number 16 probably is more useful, but I wanted you guys to have an opportunity to just review the allowable absences that are offered to individuals. So, those are listed there, but I'll skip to Slide 16, which covers the most common absences.

So, these have the largest impact on the number of people who utilize them. In total, roughly 40,000 individuals a year claim absences. So, the first one is vacation, up to 180 days. This accounts for 45% of the absences that are claims, and this is really, think of this between 90 and 180 days. It's because under 90 days, they don't need to claim anything. So, these are individuals that are gone between 90 and 180 days per year.

The second one is post-secondary education. So, that would be college students. We then have accompanying an eligible resident. Which means that anybody who falls into a category where they are not in the state, but they still qualify for a PFD. These would be their direct family members, a person's spouse or children. Which leads me to Number 4, a lot of individuals who are eligible residents, are with individuals who are armed forces. So, this would be our military, 11% of all absences are military absences outside of the state. And, the final one is medical treatment, which only accounts for 3%, but that is the fifth most common claimed absence.

The next slide is Slide Number 17.

Senator Bishop: Hold on one second. Representative Merrick has a question.

Representative Merrick: Thank you, Mr. Chairman. Specifically, Number 1, the vacation up to 180 days. How do you verify that information?

Anne Weske: Through the chair, so this information is verified through the receipt of flight details from the individual. The only way that we really...we have a criminal investigation unit. So, if fraud tips are turned in on an individual that has maybe falsely presented themselves on their application, then we have the resources to look into other areas of, you know, receiving flight records directly from the airlines. But, most of that is done just through Alaskans themselves claiming that and providing information.

Senator Bishop: Follow-up.

Representative Merrick: Thank you. So, if someone were, say, snow birding down south, can they be gone a total of 180 days, or is it consecutively? Because I have heard of people coming back just for say 24 hours to say that they were in state and then return south.

Anne Weske: Through the chair, they get 180 days and it could be consecutive. It can be broken up, but they cannot go one day over that. The 24 hours would not...that could be something that people I've heard do in December on the very last day of the year because they are trying to get that final day in. But there is not a 24 hour rule out there when it comes to the 180[-day] rule.

Representative Merrick: Thank you.

Senator Bishop: Thank you. Another question, Representative Kreiss-Tomkins.

Representative Kreiss-Tomkins: Thank you. I have a question in line with Representative Merrick, and that's a legal question about the allowable absences and exemptions. But I'll start with the former.

Would you, Ms. Weske, be able to comment on, sort of, other state benefits that are afforded PFD eligible people. So, I'm, sort of, thinking of the scenario Representative Merrick was describing, you come back to Alaska to squeeze in that 180th day, or whatever, to be PFD eligible, you know, if the PFD is \$1,500 and your flight to get up from Arizona is \$750, you're not exactly netting a lot, but I, sort of, want to develop an understanding when we're talking about PFD and PFD eligibility, what the second order affect in benefits of that are. So, I guess my question is, if you're PFD eligible, what other service state benefits, or residency benefits, are contingent on PFD eligibility?

Anne Weske: Through the chair, I'm sorry Representative Kreiss-Tomkins, I am not super familiar with all of the benefits in the state that are tied into the PFD eligibility, so I think I would probably not want to answer anything along those lines, just because I wouldn't be able to speak with confidence on that topic.

Senator Bishop: Okay. Thank you. Senator Hughes, do you have a question, Ma'am?

Senator Hughes: Yes, thank you. If we were to change the limit of days from 180 to 90, how many people would become ineligible, and you're probably going to have to get back to us on that. And, then, secondly, if we were to cap at four years, or five years, for those attending or getting their education outside, or military, if they haven't returned, or medical where there's been a long-term. If we cap that, or those absences, at five years, how many people would become ineligible?

Anne Weske: Through the chair, sorry about that, I was on mute there for a minute. I was calculating. So, as far as your first question goes, if we eliminated the 180 days down to 90 days, that would affect it by 18,000. So, we would basically have 18,000 more denials out of that 40,000, in general. Those are all estimates. I can get actual, well, I can get a better average for you if you'd like me to get back to you on that one. Can you please rephrase the second question?

Senator Hughes: Yes, follow-up, Mr. Chair. If we were to cap being gone for military, education or medical at five years, how many people would become ineligible?

Anne Weske: Through the chair, I will go ahead and put that one down as some research that we can do for you.

Senator Hughes: Thank you.

Senator Bishop: Thank you for that. Again, provide that to the chairs and staff, and we'll distribute that out, and post it online, as soon as we get that information. Thank you.

Representative Kreiss-Tomkins: Mr. Chair?

Senator Bishop: Representative Kreiss-Tomkins.

Representative Kreiss-Tomkins: Thank you, Senator Bishop. On the armed forces exemption, I have heard lots of anecdotes about what that is or how it works, and I wanted to ask if Director Weske could, sort of, synopsise what that exemption is and how it works.

Anne Weske: Through the chair, so I believe you are referring to the five-year rule for military, which mostly applies to the military. Basically, an individual must be on active duty. They can be gone for five years due to that; however, they have to return to the state for 72 hours consecutively, I believe, it's every other year.

And then, within that five-year period, they have to have 30 days consecutive time in Alaska in order to qualify for that five-year absence. So, above that they can have...technically the absence for 365 days one of those years, or a couple of the years, as long as they are still adhering to those two concepts. That one-time within the five years they are here for consecutive 30 days and that every other year they are here for 72 hours.

Representative Kreiss-Tomkins: Follow-up?

Representative Johnston: Follow-up.

Representative Kreiss-Tomkins: So, I'm going to, sort of, lay out my understanding based on your answer and let me know if I've got it right or got it wrong. So, if you've got somebody who is stationed in Alaska say Coast Guard Air Station Sitka, and they are not from Alaska, they are from Louisiana. They have a three-year tour in Sitka. They get their residency, they get their PFD eligibility, and then they get stationed at Cape Cod and other places in the Lower 48, for the rest of their twenty-year military career. Provided that they knocked out that 30-day and 72-hour requirement respectively, that you just outlined, will that military member, as well as his or her dependents, continue to collect PFDs for the rest of that twenty-year military career, even if they never come back to the state after they retire?

Anne Weske: Through the chair, they would still need to have residency ties throughout their entire time within the state of Alaska. So, they would not have been able to move a primary home, they would still have to claim Alaska as their legal state of residency through their military paperwork, and then again, of course, they would have had to have initially qualified for residency on the frontend. If all of those things were true, it could be that an individual, or a family, would still be able to maintain receipt of their PFD. There are quite a few details in there that would still have to be maintained in the state of Alaska.

Senator Bishop: Thank you. Representative Wool.

Representative Wool: Thank you, Mr. Chair. And, just following up on the previous question. That same individual could have four or five kids elsewhere, as long as they maintain their Alaska residency, the whole family could get checks for up to twenty-years, as long as they didn't declare residency in another state?

Anne Weske: Through the chair, assuming that the children are all minors. For the time that they are minors and living with the parent, the whole family would be able to utilize the receipt of PFDs and be eligible, assuming again, like you said, they took no residency ties elsewhere.

Representative Wool: Okay. Thank you.

Cori Mills: Cori Mills, for the record. I know Representative Kreiss-Tomkins had been asking about other residency benefits contingent upon the permanent fund dividend. I don't have a list, but just to be clear, the statutes I know of, they don't make it contingent upon receiving a PFD, or applying for a permanent fund dividend, the statutes just tie to the same residency requirements, and you have to meet those. I think there has been some confusion that you actually have to apply and get a PFD, but it's actually just that they basically take the residency eligibility requirements and say, we're going to apply those over here. And, that does happen in a few circumstances and I am more than happy to look that up if the committee would like.

Senator Bishop: Follow up, Representative Wool.

Representative Wool: Thank you, Mr. Chair. On that point, and I could be wrong, my understanding was to be in the marijuana industry currently in Alaska, you actually have to, I have been told that you have to actually get the check, but it may just be eligibility. I don't know.

Cori Mills: Representative Wool, I can look into that for you. I am not familiar with that one. I think they did that through regulation in order to determine residency. And it may be in that case that they did decide to actually require apply for and receiving, but I'll check.

Senator Bishop: Representative Kreiss-Tomkins.

Representative Kreiss-Tomkins: Thank you. And noted on the distinction between being eligible and being in receipt of the check. I would be interested in, sort of, that list of state benefits. My follow-up question for Director Weske is, we were talking about the appendence of armed forces members who are eligible for the exemption listed. Does the 11% figure on this slide, on slide 16, include those who are in the armed forces, as well as their dependents, their spouse and their kids?

Anne Weske: Through the chair, Representative Kreiss-Tomkins, it does not. If you look at Number 3, the accompanying an eligible resident would be the...that's where the dependents would fall, the spouse and the dependents of the military member. We're looking at this year possibly breaking that out into one more category on our application, which would literally be accompanying a military member; accompanying an eligible military member. Just so we can collect that statistic, because I know it has been discussed.

Senator Bishop: Okay, seeing no other questions, can you please continue.

Anne Weske: Thank you. Slide Number 17 is just an overview. You know, the last time that we actually did the SNI [statutory net income] calculation, and utilized it, was in 2015, and so I decided that would be a good example for me to put forward, because it's one that we are a little bit familiar with utilizing.

So, the dividend calculation, based on the volitively of, kind of, year to year changes, they decided that the amount of each year's dividend is calculated using the real-life earnings over the previous five years. And I won't go through all the numbers with you, but this is physically what we go through to get to the actual end amount. Those FY2011, 2012, 2013, 2014 and 2015 numbers are pulled directly from the APFC [Alaska Permanent Fund Corporation] website, but everything else you can see the calculations for right in front of you.

Slide Number 18 is just leading into, kind of, the misconceptions regarding the PFD program. Again, these are ones that we felt were, we've, kind of, heard the division come before us more than other ideas, and so I thought I would put a slide out, but just kind of assist everybody in this understanding a lot of the myths that we heard and then the reality from the statute side or the division side. If you have any questions on those, again, I am assuming that you'll probably review this more thoroughly later on, but I am happy to help clarify or answer any questions.

And that's all that I had for today.

Senator Bishop: Thank you. Now don't go anywhere just yet because I've got, boy, they are stacked up here now. Let's start with Representative Merrick.

Representative Merrick: Thank you, Mr. Chairman. You're taking myths and realities; I believe it is a reality if you chose to sign your permanent fund check over to the general fund. Please confirm that is true, and if so, how many people chose to do that?

Anne Weske: Through the chair, that is reality. Individuals are able to sign it over to the general fund. We have on average, between 1 and 3 individuals a year who contact the division requesting that to be done.

Representative Merrick: Thank you.

Senator Bishop: Thank you. Representative Kreiss-Tomkins.

Representative Kreiss-Tomkins: I was just pointing Representative Merrick out. She had a question.

Senator Bishop: Okay, good. Okay, does anyone else have any questions? Do you feel comfortable that we can move to the last slide? We can go to Slide 20.

Cori Mills: So, Cori Mills again, for the record. This last slide is about the *Wielechowski* case. We are happy to cover it now and then, kind of, leave the afternoon for going through the history of the statute, if that is what the committee would like?

Senator Bishop: Yes, go ahead, let's cover that now.

Bill Milks: Bills Milks, Assistant attorney general for the Department of Law again. So, it's like we talked earlier today, the history of the permanent fund and the permanent fund dividend, has involved and described the people is involved with each branch of the government. So, certainly the judicial branch.

We've described U.S. Supreme Court's involvement on the first dividend, and the Alaska Supreme Court has also been involved in reviewing issues regarding a permanent fund dividend. And earlier today we talked about how they reviewed 2013 and the *Heller* case, an eligibility rule, under the permanent fund dividend and found them to be constitutional.

Now, the *Wielechowski* case brought us to an issue to, sort of, the mechanics of how Alaska's constitution works. I think the courts in the *Wielechowski* case immediately described this as their rule, as far as interpreting the Alaska Constitution. And they're quite clear in that decision. They weren't making any policy judgments or weighing in on it, or anything related to the dividend, but they were called upon to access our basic rules under the Alaska Constitution regarding expenditure of money and the different checks and balances consistent. So, certainly, this is a much more recent case, so most of us remember this one pretty well.

So, in 2016, the legislature, as they had done historically, all the way back to the early 1980s, the amount of the dividend as described in the statutory formula, was appropriated to the operating budget. So, it provided for the transfer from the earnings reserve account to the dividend fund, through the payment of dividends. The amount according to that calculation.

Then, Governor Walker exercised his veto authority to reduce the appropriation for the payment of Permanent fund dividends. That triggered a lawsuit by one sitting member of the legislature, and two former members, that challenged that action. And it presented some very important issues for Alaska residents and for the different branches of the government to understand.

So, the basic question was, we talked about there's a prohibition against dedicated funds under Alaska's constitution. And, that's an important provision in the constitution that was adopted because the framers were concerned about earmarking of revenues, so that fewer and fewer policy and budget choices would be available for the legislature.

So, and then, we've also talked earlier today, that the permanent fund amendment was enacted in order to authorize a permanent fund, which otherwise couldn't have been created under Alaska law. So, what the Governor's...Governor Walker's veto in 2016 occurred, it was challenged by the three plaintiffs, and that required the Alaska Supreme Court to look at whether or not, as Senator Hughes referenced a while ago, this last sentence of the Alaska permanent fund section, which is. It's Article IX, Section 15, and it's the last sentence and it is the sentence that addresses income.

All the rest of the language in the permanent fund article is addressing what type of revenues are in place in the permanent fund, the minimum balance to be in the permanent fund, the restriction that those monies are placed in are in the principal and they cannot be used for anything, they cannot be appropriated. They can only be used for income producing investments.

So, then we have the last sentence, all income for the permanent fund should be deposited in the general fund, unless otherwise provided by law. So, the question for the...so, the governor made a partial veto. So that reduced the amount of the draw from the permanent fund earnings reserve Account.

It was properly challenged. First, the case went to the superior court, and the superior court, and there were basically three big issues presented here. Which was, was the constitution, when the voters voted for the permanent fund amendment, and they authorized a dedication of revenues sent to the permanent fund, the 25% of royalties. They authorized an exception to our prohibition against dedicating precedence. They also authorized to that last sentence, the dedication of the permanent fund income in the way that one legislature can dedicate it for one purpose. That was one issue.

The next issue was whether or not, regardless of if it was dedicated, which would still have to be appropriated, and related to that, does the governor have constitutional authority to veto these expenditures.

So, first, it went to the superior court. The superior court decided not to, that it did not have to decide whether or not permanent fund income could be dedicated for one purpose. It instead went directly to appropriation of detail and said, regardless of whether or not it could be dedicated, the income still has to be appropriated and subject come next season. Then it goes up to the Alaska Supreme Court, and the plaintiffs there, Wielechowski and two former members of the legislature, Mr. Halford and Mr. Tillion, took the case on to the highest court and there is was the supreme court that went back and carefully reviewed.

They were trying to make this decision, is the permanent fund income something that can automatically be spent based on statute. And, the court faithfully and, you know, carefully go through the history of the permanent fund, and that's what Ms. Mills, I think, earlier described.

When you're talking about interpreting a constitutional amendment, as opposed to a statute, a constitutional amendment is what the supreme court said is critical is what did the voters understand that they were doing?

And so, they looked at basic polls, which is what did the language say and what was provided to the voters? And, importantly would be like the ballot proposition that we all get when we go and vote on a ballot. And the court also, essentially, said that the prohibition is dedicated to dedicating revenues, is basic part of Alaska's constitutional framework.

So, if the court's going to find that there's an exception to the dedicated revenue prohibition, it has to be explicit. So, the court views those tools to go through the process and make a decision. Since the knowledge and the decision, one of the arguments is that the dividend was considered as something that, and the constitution's adopted, I mean the amendment would have adopted, that the dividend was one of the ideas for utilizing income and the court recognized that yes, that is true, and there is legislative history that we specifically referred to earlier, from the debates within the legislature in 1976, the dividend, as well as other ideas, were actively discussed as, this is maybe one way we could use the income.

But the court's role here, and they're clear, is they're just being the referee. They're like, we're the referee, ultimately, we have to decide on the constitution how all these moving parts work.

The legislature's power of appropriation, the governor's veto power, the constitution's assumption that revenues cannot be dedicated and then you have to, whether or not you have an exception.

And, they said, there's definitely an exception with the permanent fund amendment, saying that at least 25% of revenues are dedicated to the permanent fund. Based on their views that the dedicated revenue prohibition is a very strong prohibition. It's earmarked.

They do not think that there was sufficient information to the voters to say that the income was also dedicated. And, that's ultimately left us in a place where the courts are saying that, two things that are important.

One, which is under the state of the law now, the permanent fund income is available for appropriation, and subject to the governor's veto. Whatever funding coming cannot, by one legislature be dedicated to one purpose under our amendment, and towards the end of the decision, after they've reviewed the constitutional history and talked about how they have to address this issue, they make it clear that they think the questions regarding the dividend are public policy questions for the elected branches of government. They essentially conclude by saying, absent another constitutional amendment, the dividend program competes for annual legislative funding.

Senator Olson: Mr. Chair?

Senator Bishop: Senator Olson.

Senator Olson: Thank you, Mr. Chairman. Was that supreme court decision unanimous, or were their dissenting opinions? And, if there were dissenting opinions, were they printed?

Bill Milks: Through the chair, the decision, Senator Olson, the decision is unanimous. I doubt if there's any dissent. There's no printed dissent that exists.

Senator Bishop: So, it was a unanimous decision?

Bill Milks: It was. So, that, sort of, brings us all the way around. The decision is very interesting to read because you can see the court has spent a fair amount of time talking about the history of the permanent fund amendment, and how it will interpret constitutional amendments, which is different than how do I interpret statutes. Because with a constitutional amendment, you really need to focus on what is the reasonable and plain understanding of the language, and what did the voters know.

Senator Bishop: Representative Wool.

Representative Wool: Thank you, Mr. Chair. Did the issue ever come up, because according to the amendment, it's been stated that all income from the permanent fund should be deposited in the general fund, unless otherwise provided by law. And, I guess, the law would be the PFD law, but if it was vetoed, or half of it, would the remainder, that didn't go out to PFD checks, would that go to the general fund? I mean, it's my understanding, that with the state and the earnings reserve, but did anyone say, well, that's fine you can veto it, but according to this, it should go to the general fund?

Bill Milks: Through the chair, Representative Wool, the court did talk about that because it was really, this decision is focused on what did that last sentence, the permanent fund amendment, mean? And, the court said what it means is income goes to the general fund, unless otherwise provided by law, as it says. And, if then provided by law that it goes into the earnings reserve account. And, the court said the earnings reserve account is subject to appropriation.

Senator Bishop: Questions? Please continue.

Bill Milks: I think we're there. We took some notes on some questions that were raised. I think our colleagues might have an answer, but we've taken notes on them. If we didn't provide an answer, we will follow-up on them.

Senator Bishop: Okay. Brief at ease.

Senator Bishop: Okay, we are back on the record. The moderator got us, and we are good to go...thumbs up from the moderator. Senator Hughes has a question.

Senator Hughes: Thank you. You may not be able to answer this off the bat. It might be something that you can provide to us, but as I was reviewing some the documents and discussions, Governor Hammond initially was just throwing out various ideas, including the dividend, including some kind of even home mortgage program and things like that, and at one point he consulted with a well-respected economist, at a national level, I remember one of them being Milton Freedman, and at that point he pivoted to the PFD as opposed to using for capital projects and other programs. If you could please provide us some of that information, I think it might be helpful, and the reasoning why it pivoted away from programs to direct payments to Alaskans. That would be helpful.

Bill Milks: Thank you. Through the chair, Senator Hughes, we will look at that and what you stated is an X instead of a Y, because when the amendment was passed in 1976, the ideas were pretty widespread. Basically, how would you use that permanent fund? You use income for the dividends when you use it for a big capital, to develop infrastructure in the state. Is that how we'd use it? Within a few years, to settle into, a payment of, you can invest that income and produce earnings and some of those dividends. We moved away from that development model, but we've tried to provide you some background on that.

Senator Bishop: Follow-up?

Senator Hughes: And, along with those conversations, and the reasoning why it moved to that and how the PFD then was considered to be a safeguard to the fund itself and the permanent nature of it. Thank you.

Bill Milks: Through the chair, Senator Hughes, also in your materials you do have the decisions in the court cases like *Zobel*. You will see in there that the state expressed some of the reasons about why to have a dividend program, which included issues that covered to protect the dividend, I mean protect the permanent fund. So, some of that is right in the record so far as the Court's decision, particularly in *Zobel*, where you can see what was articulated at that time, what some of the reasons to have a dividend were.

Senator Bishop: Representative Wool.

Representative Wool: Thank you, Mr. Chair. On that point made by Senator Hughes, and I seem to recall reading it in some of this material that Governor Hammond, again I really don't want to quote it, but there's some reference to, he wants to benefit many and not the few, and

that if it was a capital project in a certain area, or if it was a loan program, I guess we were talking about loan programs back then, they would benefit a few, but not the many.

And, that the PFD would benefit many and that the individuals can then use that PFD amount to benefit themselves in however they saw fit; whether it was to support a local amputee or make a purchase, but it seemed, for that portion of it anyway, to support or benefit, as many people as possible.

Senator Bishop: Follow-up.

Bill Milks: Just for your record then, I referenced the *Zobel* case, the U.S. Supreme Court case. And, it is in the *Zobel v. Williams* which the citation is 457 US 55, and it's at page 60. You can see where the state articulated its reasons for the dividend program, and the supreme court says, the state advanced, and the Alaska Supreme Court accepted, three purposes justifying the distinctions of the dividend program. It also justified the dividend program. The creation of a financial incentive for individuals to establish and maintain residence in Alaska.

An encouragement of prudent management of the permanent fund and a portion of benefits of recognition of what the court called undefining contributions of individuals prior to the years of the establishment.

So, the court then looked at those to try to sort out the distinction between residents; in their length of residency and found that they couldn't it, such a distinction between residents and not a dividend. But I think that case does, you know, set out that you have the issue but encouraging prudent management of the fund, and set it up for individuals to stay, was articulated at that time in 1980.

Senator Bishop: Thank you. Questions? Seeing none. Okay, thank you. We're going to have our Legislative Legal come up just for a few minutes and then we are going to break for lunch here in a few minutes. I just have a couple comments that I want to make. Thank you, the Department of Law and Revenue, for your diligence into this topic today. Please come up, Ladies.

Emily Nauman: Hello.

Senator Bishop: Hi. Please put your name and affiliation on the record please.

Emily Nauman: For the record, my name is Emily Nauman and I am deputy director of Legislative Legal Services.

Linda Bruce: For the record, my name is Linda Bruce, and I also work for the Legislative Legal Services.

Emily Nauman: In other words, we are your attorneys. We're happy to be here too. I think just as a, we had a few comments and follow ups, and this is mostly going to be handled by Megan [Wallace, director, Legislative Legal Services]. I'm so sorry, Linda. I'm so used to seeing you up here with Megan in session.

The one part that I can add, I think, is to, I believe, Representative Kreiss-Tomkins question about durational residency requirements, or residency requirements over one-year.

There are a few instances in the United States Supreme Court has upheld residency requirements more than one year. The two types of programs that I'm aware of in which that has happened, are the university reduced tuition rates.

And, also, I believe there's at least one state that requires a residency, or to be a resident of the state for two years, in order to obtain a divorce in that state, and I think that Iowa. I actually did an extensive amount of research about that topic at the beginning of this session. It came up in some other legislation that happened. There was an issue earlier in the session and I am happy to provide you with a summary of that research if you'd like.

Senator Bishop: Thank you. Do you want that research?

Representative Kreiss-Tomkins: That would be...

Emily Nauman: You might want to hear what Linda has to say before you are interested in all that. There's some interesting history there in that two-year type of residency requirement has been considered and actually there has been a statute enacted to set the dividend residency requirements to two years and it was struck down by the superior court.

Senator Bishop: Okay.

Linda Bruce: So, to follow-up what Emily was just discussing. In 1990, there was a Superior Court case called *Lindley vs. Malone*. What the legislature had done, is they increased the residency requirements for the dividend program to 24 months, and in that legislation, the legislature has essentially included contingency language that if the court struck down the 24 months, we would have a 12-month residency requirement.

If they struck down the 12-month, then the court got to come up with what an appropriate residency requirement would be. So, it was the Superior Court Judge, Dana Fabe, who later became a supreme court justice for the state that issued the opinion in *Lindley v. Malone*.

And, she considered a U.S. District Court case for the District of Alaska, which was *Andress v. Baxter*, and there is no written opinion in that case, unfortunately. But that federal case considered a two-year residency requirement for the Alaska student loan program and they found in that case *Andress* that that was appropriate.

Dana Fabe, the supreme court judge, distinguished the 24-month residency requirement for dividends from that 24-month residency requirement that was upheld, and she had a couple of notes when she was issuing the decisions.

One was that the federal court used rational cases review. She was using a very substantial review. She did know that *Andress* was not appealed and ended up being settled. She also noted that the student loan money, once qualified for. And this is a factual, you know, an actual difference between the two cases, that the student loan money, once qualified for, could be used for up to eight years anywhere in the world, and that you did not need to reapply.

Like, whereas, the dividend program you have to reapply year after year. So, there was a difference there in the legislature's, essentially the fairness and substantial relationship between the requirements.

So, she also noted that the *Andress* court found that the student population was the most mobile population in the state, in a state that has a very mobile population. So, that is the one court case in Alaska that I am aware of where a federal court has upheld the two-year residency requirement.

As Emily indicated, there are other jurisdictions that have upheld longer residency requirements.

Emily Nauman: But, to make the point very clear, this is a Superior Court case which our office doesn't always rely on it. For a binding precedent, you consider it persuasive, but that case did strike down a two-year residency requirement.

Linda Bruce: And upheld a one-year.

Emily Nauman: And upheld one-year residency requirement.

Senator Bishop: Follow-up.

Representative Kreiss-Tomkins: Was that to the supreme court?

Linda Bruce: No, I don't believe so.

Emily Nauman: I don't believe so, no. No, I mean, the legislature had already, sort of, built in the reaction to that case and so it could be that no one saw the need to since the laws were going to automatically change. But I can't be certain about why.

Senator Bishop: Any other questions? Senator Hughes.

Senator Hughes: It isn't exactly for you, but I am hoping that she's still listening online with the PFD, the director of the PFD Division, if we were to consider changing the residency requirements to two-years, how many people would become ineligible. In other words, how many people are here collecting for a year and then leave the state within that two-year period. And that was just a question if we consider changing eligibility. So, it's not really for you, but I just want to get it on the record, if we could get that information, Mr. Chair.

Senator Bishop: Thank you. The staff has that taken down. They are both nodding their heads, yes. Even the administration. Any other questions? Representative Kreiss-Tomkins.

Representative Kreiss-Tomkins: Thank you, Mr. Chair, and one other legal question since you're up here. On the subject of exemptions, has there ever been litigation equal protection grounds about certain exemptions being, I guess, substantiated and somebody saying, hey, I don't qualify for these exemptions in law, but I feel the reason I'm not physically in Alaska for the last twelve months is equally meritorious to these exemptions that are listed in law, and filed suit over it.

Emily Nauman: Through the chair to Representative Kreiss-Tomkins, we are going to hit on a few of those in our presentation, the specific allowances or eligibility requirements that have been upheld by our court here. And the Department of Revenue definitely would be the best person to answer your question related to, sort of, analgias absences I'll call them. There are some provisions in statute that may allow the department to consider that kind of thing, and we'll hit on those in our presentation. I don't believe, I don't recall any case where someone says, hey, I have this excuse that's very similar to this one, but I'm excluded. I'm not aware of a case like that.

Senator Bishop: Alright. Seeing no other questions. We are going to take a recess. Do you have a comment?

Linda Bruce: Through the chair, this is Linda Bruce, Legislative Legal Services, I had some comments on the question we got earlier regarding minors. Is it an okay time to discuss that?

Senator Bishop: Fire away.

Linda Bruce: So, while we don't have the Legislative history in front of us, I can say that there is an equal protection issue that was raised in *Zobel v. Williams*, the Alaska Supreme Court case. As Justice Dimond, in his defense, noted that there was an equal protection concern under Article I, Section I of the Alaska Constitution from leading to not allowing persons under 18 to collect a dividend. So, that was in 1980. The law was struck down. The first dividend in 1982 by the U.S. Supreme Court. And, while we don't have the minutes in front of us, there was a discussion, I think it's a reasonable conclusion that they probably were considering that equal protection issue that was raised by the Alaska Supreme Court.

Senator Bishop: Representative Wool.

Representative Wool: Thank you, Mr. Chair. So, are you saying that the law was struck down, the initial one, on the years of residency and it also said people 18 years and older? So, you're saying that when the new law came out, they scratched both those things, based on discussions about the exclusion of minors?

Linda Bruce: Through the chair, Representative Wool, I can't say 100%, since we don't have the minutes in front of us, but I do think the U.S. Supreme Court only struck down the dividends on the, you know, first ... while it's clear that the Alaska Supreme Court raised the issue of the minors, so it's probable that that was pretty close in time, and everyone was aware that that had been raised as an issue by the supreme court.

Senator Bishop: Follow-up?

Representative Wool: Thank you. I just, similar to Representative Kreiss-Tomkins questions about other states using years of residency, are there other states that have age minimums for? I know they restrict you from doing things before you get a certain age but are there benefits that would be available to citizens above 18 or 21, besides being able to purchase certain items. But, are there other states that say, well, we have this benefit, but you have to be 18 to get it?

Linda Bruce: Through the chair, Representative Wool, I am not aware of any off the top of my head. There might be certain restrictions related to public assistance, where minors are considered to have applied through their adult guardian. I don't know if that's strictly in law. I will happily look into it, but that's just a thought.

Representative Wool: Follow-up?

Senator Bishop: Yes, Sir.

Representative Wool: Thank you. Well, and I just maybe this is just for the PFD person, but just out of curiosity, that has come up before. I'm not sure if it was restricted to those over 18, but the financial impacts would be...I mean, I guess, the check could just be bigger to those that are over 18. I don't know. Maybe that's all it would change, but I've heard people say, well, if they only gave it to people over 18+, that would certainly reduce the number of checks that goes out by significant I would think?

Linda Bruce: Through the chair, Representative Wool, I think it's very probable that that sort of distinction, without an extremely robust legislative record supporting why 18, and why not 17 and a half or 17 and three-quarters, I think the legislature would have a hard time getting that through a Court without, like I said, an extremely well-reasoned, you know, legislative history.

Senator Bishop: Seeing no other questions, we are going to recess until 1:05 p.m. Thank you.

Representative Johnston: I'll call the meeting of the Joint [Bicameral] House and Senate Permanent Fund Working Group back to order. The time is 1:10 p.m. And, we are going to continue our agenda, and next on our agenda is the presentation of Alaska statutes by Emily Nauman and Linda Bruce. And, actually, I think Ms. Bruce is going to answer a couple, or make some follow-up as far as the Department of Law.

Emily Nauman: No, she changed her mind.

Representative Johnston: Okay.

Emily Nauman: Good afternoon. For the record, my name is Emily Nauman. I am the deputy director of Legislative Legal Services. I have been with Legislative Legal for about, almost 9 years now. And I currently draft in the areas of permanent fund dividend. I am a little bit familiar with environmental law. I am obviously here because this is a permanent fund dividend issue.

We were asked to give a presentation going through the permanent fund statutes, including the calculation of the dividend and the eligibility requirements, and provide to you, the working group, a history of the statutes.

I will say that most of my presentation will be extremely dry. Reading the statutes out loud, one by one, is mind-numbing and going through the history is almost equally as deadening. But I will attempt to keep it interesting.

One of the great things about being an attorney for the legislature, is that I get to have, sort of, an informal style. And, I hope that you find it engaging. And, I don't mind if you zone out. It's

really very possible with the presentation that I am about to give. But, if you can stay with me, I am enthusiastic and I really am here to help you guys understand the statutes, and I really want you to learn the information that I have to present. So, don't feel bad stopping me and asking me questions, or if you need a recap of what we've gone through before. That is totally good, just let me know. I would also ask you to ask pity on me because I hate public speaking. So, if I stumble or seem nervous, that is just me. But I am excited to be here, and I want to remind you that Legislative Legal Services is your attorneys. We are non-partisan and we don't have any particular political agenda. So, on both sides of the aisle, we serve all parties, all caucuses, every member of the legislature equally.

So, getting started today, this slide will be an outline of what we're going to talk about. We're going to start with where all of you should start when are considering legislation, and that's the constitution. Following that, we are going to go through a summary of the statutory provisions related to the Constitution and Alaska Statute 37.13. We will get a summary of the statutes in that title and a history, in particular, of what I think are the most interesting to you, the working group, statutes and also we have a little bit of a visual guide to see how the statutes flow together. Following that, we are going to go over AS 43.23, and again, have a summary of statutes and a history of some of the more interesting, or some of the statutes that I have seen the working group show particular interest in. And, then, at the end, if you haven't asked all your questions, there will be time for questions.

In preparation for this committee, or sorry, working group meeting, I have produced this document. So, the permanent fund statutes always irritate me, now that I am working in them, because the statutes are two separate statute books. Those are the big blue books that you have on all your shelves. 37 is in one book, and 43 is in another book, and although my arms are strong, I really hate carrying around books everywhere. This booklet that we created has all of the statutes and the constitutional provisions, so I hope that you will find this useful as a resource as you're going forward. And, not only that, it is a handy outline for the presentation that we are going to go through today, because we are going to go through every single one of the statutes in this book, in this order. That's the order they appear in the statutes. It's going to be very exciting.

There are 62 slides in my presentation. The number of slides is on the bottom right hand corner, in case you are wondering how far we are through. I do have planned a little break, so with permission of the co-chairs, we will take a little break, a little over half-way through.

Representative Johnston: And just for people in the audience, we do have some extras of these books over by the coffee pot. Oh, no, we don't, but we will get more printed.

Emily Nauman: Absolutely, yes. We had the legislative print shop print these for you guys and we didn't bring a ton of copies. Again, strong arms but not that strong. I carried them up this morning. So, we are happy to get more printed for you as you need. I think, and I hope that they will be a really great resource for you moving forward. Especially after this presentation, you will all have a handle on all the statutes, and they are all just right there in one place.

So, let's start with what we all really, really care about and that's the constitution. The Department of Law reviewed the constitutional provision a little bit this morning. I think it's more worthwhile on our time to go through the constitutional provisions that are directly reflected in the statutes.

So, if we take the constitutional provision that established the permanent fund, and we break it into three main components. We have that at least twenty-five percent of all mineral revenue receipt funds should be placed in the permanent fund. That the principal of the fund shall be used only for income producing investments, and that all income from the permanent fund shall be deposited into the general fund, unless otherwise provided by law.

With an eye to the task of the permanent fund working group, as we review this statute it will be especially important to come back to and think about the constitution. This really is the working group's framework for what they can do. As the legislature, you control all of the statutes in this book. You can change any of them, I mean, with the exceptions we have like eligibility requirements, that might be, you know, an equal protection challenge or something like that, but everything in here is the legislature purview.

What you guys can't change very easily, is the constitution. So, we have to think about coming back to these principal concepts, and how the statutes execute the constitutional law. So, like I said, the Alaska statutes, which are broken into two sections, AS 37.13 and AS 43.23. We are going to start with AS 37.13.

AS 37.13 statutes have to do with the corporation, that's the Alaska Permanent Fund Corporation, and the fund itself. I guess I will take a deep breath, because this is happening.

This is the first statute in AS 37.13, it's AS 37.13.010. This statute establishes the permanent fund and directs the deposits into it. This is a good time too to give you a little outline of how I envision my presentation going. This slide is the entirety of the statute. It's dense. There is a lot of information in there. It's not really appropriate or practical to go through every single statute and read them word for word. But I did want to show you what this presentation would look like if I had done that. And, this is what it would look like. But while we are on this slide, I do want to point out that I have included in this book, and on most of the slides for most of the statutes, the legislative history. That's the bottom line. This information also appears in your blue statute book. And, like I said, at the end of all the statutes in this turquoise book, but if ever you want to dig into the history of any statute, not just the permanent fund statutes, that history line at the end of the statute. It's going to tell you every single time that statute has been changed. Legislative Legal is happy to do this work. The library is happy to do this work. Just let us know. But, in case you ever want to go and do it yourself, there it is.

In terms of my presentation, I've taken that same statute that we were at before and broken it down to what I think are the principal concepts. Again, it's really important to see what I am doing here, because any time someone is crossing out a variety of the information you are giving, you should pay attention to that. That's why I have provided you the complete statutes, but most of my slides will look like this, where I've just broken out what I think are the core ideas of each statute. So as not to bore you too much, but also so that we can save some time, and just get to the most important topics.

So, we can all take a moment to read 37.13.010(a). Again, I've broken out what I think are the principal concepts. So, leases entered into prior to basically 1980, twenty-five percent of all mineral revenue is deposited into the permanent fund under this statute. For leases entered into

after 1980, 50, 5-0 percent of all mineral revenue is deposited into the permanent fund. And, (a)(3) also provides that any other appropriations can be deposited into the fund.

We can take a moment now to go back to the first constitutional provision where we see that all that's required under the constitution is that at least twenty-five percent of mineral royalties be deposited into the permanent fund. So, this is one case where the statutes have extended the minimum requirements of the constitution. It's also worth noting, I think, the Department of Law discusses today that this statute .010 actually is very similar to the statute as it was enacted in 1980. Do you have a question?

Representative Johnston: Representative Kreiss-Tomkins.

Representative Kreiss-Tomkins: Thank you. And, in looking at the twenty-five versus fifty percent mineral royalty split be marketed by 1980. Are the, sort of, super giant reservoirs in the North Slope, because those leased were issued before 1980, does that mean that twenty-five percent of royalties from those leases go in the permanent fund, whereas these newer, smaller fields are the fields practically speaking, for which the fifty percent applies?

Emily Nauman: That is an excellent question to which I do not know the answer.

Representative Johnston: Representative Wool.

Representative Wool: Thank you, Madam Chair. I was going to ask the following question, but I think you just answered it with the, I don't know, answer. But, my understanding with net aggregate between those two, number one and number two, was about 31%. And, we have nodders in the back, but I don't know if you agree with that?

Emily Nauman: Yes, I have no basis to know either way, so I unfortunately can't provide you that answer. I'm sure the Department of Revenue or the Department of Natural Resources will be able to give you that information rather quickly.

Representative Wool: Okay.

Emily Nauman: Moving on...AS 37.13.020. No questions about how we number these things, right? .020 sets out the findings. Again, the statute is substantially similar to what was enacted in 1980, so it does provide some history about what our additional legislation was trying to accomplish.

The legislature at that time found that the fund should provide a means for conserving a portion of the state's revenue, and that the goal would be to maintain the principal, while maximizing the return. And that the fund should be used as a savings device to allow maximum use of disposable income from the fund for purposes designated by law.

AS 37.13.030 sets out the purpose for the remainder of the chapter, that's 37.13.010 through .190. That's the entire chapter. And it provides a mechanism for the management of the funds and for a fund investment by the permanent fund corporation.

Again, this statute remains substantially the same as it was 1990, or sorry, 1980. This is the remainder of AS 37....well, it's not the remainder, it's a chunk of AS 37.13.040 that I didn't think would be particularly helpful to the working group. It mainly relates to the discretion powers, duties and authorities of the permanent fund corporation. So, I thought, it's in your book. You are welcome to review it. If you have any questions about it afterwards of the history, but I just didn't see the particular relevance of the working group. So, I wanted to keep you guys moving.

Jumping back into the details of the statutes, AS 37.13.120 relates to the investment responsibilities of the permanent fund corporation. We know that the permanent fund corporation basically sets out regulations that govern what investments they may make. But it is worth pointing out that they make their investments according to the prudent investor rule.

The text of which is set out in AS 37.13.120(a). We can connect this back again to the constitution, where that second part of the first sentence says, the principal shall be used only for income producing investments, specifically designed by law as eligible for permanent fund investment. So, this is a provision of the constitution that we can directly connect back to the statute here. .120 continues with (b) the corporation may not borrow money or guarantee from the principal of the fund and that the board shall maintain a reasonable diversification of assets.

It's time to get serious. If I had slides, or if I could, like, fold the corner of my book, I would fold it on AS 37.13.140.

This is really the first statute that affects, I think, the purpose of the working group. And this statute is about the income of the permanent fund. Here's my principle concepts slide for .140. The text of .140 is long and clunky like we've discussed, so here are the highlights. The income of the fund includes income of the earnings reserve. The earnings reserve is an account within the permanent fund. This actually did require a clarification in the law. So, there it is.

We know that the net income of the fund is computed annually as of the last day of the fiscal year and in accordance with GAAP [generally accepted accounting principles] and excluding any unrealized gains or losses.

And the first really, really, really important concept for you guys today is this idea of the amount of income available for distribution. So, income available for distribution is 21% of the net income of the fund for the last five fiscal years, including the fiscal year just ended. There's a small catch here, in that it cannot exceed the net income from the fund for the fiscal year just ended, plus the balance in the ERA. That's a small safety net, if you will, in the statutes to prevent an overdraft.

I was actually assigned the permanent fund statutes this last session. It was my first session drafting in them. And the first thing that I did at the beginning of this session was, I sat down and read all of the statutes from front to back. And, when I did that, I got a little lost and confused about how all of the statutes worked together. And, so I made myself and had post it notes on my desk all session a flowchart of how the money flows through these permanent fund statutes. And I thought that for the visual learners in the room, it might be a good idea to set up that kind of structure for you guys.

So, if we move on and start this visual representation with the permanent fund, and as we know, the ERA is the account in the permanent fund. We just learned that. And, income of the fund goes from the permanent fund and gets deposited into the ERA. So, the first concept we'll add to this slide is this idea of income available for distribution. Which we know is twenty-one percent of the net income of the fund. We'll keep adding onto that chart as we go, but that's the starting point.

Representative Johnston: Senator Olson.

Senator Olson: Can you tell me how we got to the number 21%?

Emily Nauman: I wish I could, but I don't know off the top of my head. I could easily do some research into that number, the legislative history if you'd like and get back to you?

Senator Olson: It's just such an odd number. It's not even an even number. It's just an odd number.

Emily Nauman: It is, that's true. Yes, I'd be happy to get back to you. I'm sure that it's probably in the legislative history somewhere. I didn't have time to dig into the really big ends, all the details of these Statutes. I will go over when that principal was introduced into the statute.

Senator Olson: Thank you.

Representative Johnston: Representative Wool.

Representative Wool: I have a slight inkling, I think, as to how they got 21, instead of 20. But 20% over five years, is basically the average. So, if you want to figure out the average over five years, you add up all five years, take 20%. But, then, someone probably said, wait a minute, five years ago a dollar was worth a little bit less than the dollar in five years. So, they said, we'll just call it 21% to adjust for the difference in value of that dollar over a five-year period. I think it's kind of a ...

Senator Olson: So, that's the inflation-proofing?

Representative Wool: Yah, in a spit-ball kind of way. And, I may be wrong, but I think that's right.

Emily Nauman: Through the chair to Senator Olson. I'm happy to look into that. That is the kind of work that I love to do. So, I will get back to you.

AS 37.13.140 continues with subsection (b). Under (b) the corporation shall determine the amount available for appropriation. This is the second really big key concept for the working group. The amount available for appropriation is 5.25% of the average market value of the funds for the first five of the preceding six fiscal years. It is computed in accordance with GAAP, and includes a balance of the earnings reserve, but does not include the principal attributed to the *Amerada_Hess* decision, which is a fun work of law that we're going to go down here and go through.

The *Amerada Hess* language is a frequent topic question for me and my office and so I have done quite a bit of research on it and I am really excited to share it with you guys in a few minutes.

It is also a good time to note, so the 5.25% draw, if you will, the POMV draw, was put in by SB 26 in 2018, under that same law with a delayed effective date of July 1, 2021, that 5.25% will change to 5%.

And, again, on this slide I have provided you the history line for AS 37.13.140, and we are going to really dive deep into this history because it relates to how the legislature has been indirectly drawing from the ERA.

Representative Johnston: Representative Merrick.

Representative Merrick: Thank you, Madam Chairwoman. Just for the record, can someone explain why the 5.25% will drop down to 5%?

Emily Nauman: Through the chair to Representative Merrick. I bet there are people sitting in this working group that can tell you a lot better than I can. If someone else wants to chip in?

Representative Johnston: Senator Stedman.

Senator Stedman: Thank you, Madam Chair. When we went to percent of market value, there was a discussion over the needs of the financing of the state. So, the numeric defaulted out of that. So, it was basically an extra 25 basis points was to help bridge the finances over the next couple of years after it was enacted. To settle at a long-term rate of 5%.

Emily Nauman: It's my recollection, in those discussions, the 5% was considered a more sustainable draw than the higher 5.25%.

Representative Johnston: Follow-up.

Emily Nauman: And there were some other percentages that we looked at, both higher and lower.

Representative Merrick: Thank you. I'm representing a freshman.

Representative Johnston: Senator Bishop.

Senator Bishop: To the freshman, in words of wisdom often come from mouths of babes.

Representative Johnston: Please continue.

Emily Nauman: Okay, back to my visual guide. So, under 37.13.140(b), we know we have to add a new type of calculation out of the permanent fund that's not available for appropriation, and there it is 5.25% of the average market value of the last five fiscal years. As I promised, a small detour for the *Amerada Hess*.

When I was in college, my nickname was “Tidbit,” because I just walked around like a spouting trivia. This is going to be your deep permanent fund trivia that I am providing you here. If you ever have a permanent fund trivia night, you guys are going to nail it when they ask you about *Amerada Hess*. You can also inform all of your co-legislators so they can stop calling me by that.

The *Amerada Hess* controversy concerned the value of oil for the purposes of the state’s in-value and in-kind royalty shares. And the controversy appeared to be headed for litigation. The litigation, in fact, was started in 1977.

At that time, it was the advice of our office to make a special provision for *Amerada Hess* in the dividend statutes, to cut out the argument that judges and jurors would be disqualified from hearing *Amerada Hess*, because the case could result in a conflict of interest for judges and jurors.

So, what the *Amerada Hess* language does is it sets aside any revenue, or any money that came in from the *Amerada Hess* decision, so that it couldn’t be argued that that money would result in increased dividends for a judge or a juror.

In the opinion of this office, the special statutory accommodation for *Amerada Hess* is no longer needed. The actual controversy was resolved in 2013 through settlement. So, really there was no judge or juror which could be affected by that settlement deposit into the permanent fund. It would be easy to say, okay, Emily in Leg Legal, let’s just take all that language out of there because it’s confusing and no one likes the PFD trivia as much as I do, but there is one small, sort of, political additional consideration, and that is currently the money from the *Amerada Hess* decision is deposited into the Alaska Capital Income Fund.

And it pays for state facilities for preventative and deferred maintenance. So, that money has this alternate purpose, and if you took out the *Amerada Hess* language, it would no longer go to that purpose.

Representative Johnston: Representative Kreiss-Tomkins.

Representative Kreiss-Tomkins: Thank you. I actually went down the *Amerada Hess* wormhole during session this year, and I like the idea of cleaning up the statutes and was pretty compelled by the argument that because the case was settled, you have all this extra accounting rigmarole that is not needed anymore.

I wanted to ask though about the additional consideration defined in the last bullet, and the Alaska Capital Income Fund. There’s a lot of talk about reverse sweep right now and funds essentially seizing to exist, perhaps within a matter of days, or weeks. And, if that’s the case, if all the funds are swept, because there is no reverse sweep, where would the money received as a result of *Amerada Hess* then be deposited into a brand new fund that is starting at zero because all the current monies were swept? I guess, how does that last bullet interact with the possibility of a reverse sweep not happening?

Emily Nauman: Through the chair, to Representative Kreiss-Tomkins. Just to be extra clear, the settlement money that we got from *Amerada Hess* remains in the corpus of the permanent fund,

and the capital fund collects the income. Much like the ERA collects the income from the permanent fund. I cannot be sure if the capital income fund is sweepable.

There's a set standard, and that's standard is interpreted by the governor and he executes it. Which we might find all about here in a couple of weeks, like you said. We've never, in my recollection, been in a provision, or in a time, where we don't have a reverse sweep provision, so this distinction about sweepable and non-sweepable funds have, sort of, been moot. If the capital income fund is sweepable, yes, that money would go into the budget reserve fund. Does that answer your question?

Representative Kreiss-Tomkins: It does, yes.

Representative Johnston: Representative Wool.

Representative Wool: Thank you. We've heard all about *Amerada Hess*. Is it an oil company?

Emily Nauman: Yes.

Representative Wool: You didn't say what it is.

Emily Nauman: Oh, yes.

Representative Wool: It's a decision, but it's a...

Emily Nauman: Yes, yes, it's an oil company. They might also do pipeline services, but I am not. I can look into that if you're interested?

Representative Wool: It sounds like someone's name.

Emily Nauman: Is everyone ready? We're trudging on. Yes. Okay. Here we go. Good, because there's another very important statute for your consideration. That is AS 37.13.145.

It's another one to add a flag to or fold the corner of on your book. 37.13.145 relates to disposition of income from the permanent fund, and it also establishes the earnings reserve account. 37.13.145(b) says that, at the end of the fiscal year, the corporation shall transfer.

And, I had to stop there to say that it's the opinion of Legislative Legal that this language, the corporation shall transfer, is incongruous with the holding in *Wielechowski v. State*, and that all of the appropriation...all of the things of money in 37.13.145 requiring appropriation. And that's consistent with the action of the legislature for the last several years.

When I was first introduced to these statutes, I had a little bit of trouble distinguishing 37.13.140 from 37.13.145. Just like why were they separate statutes? And in the end, I think it is important to set out that AS 37.13.140, sets out the calculations that are made in terms of amounts in the permanent fund. And AS 37.13.145, sets up a suggested subject to appropriation system for moving money from the fund to other purposes.

So, that said, we've learned something new so we can return back to our visual guide. And, we can see that add, I guess, that 50% of the income available for distribution will go to the dividend fund under AS 37.13.145(b).

Representative Johnston: Representative Wool.

Representative Wool: Thank you, Madam Chair. And, maybe you'll get to this, and if so, you don't have to answer it now. But these are all calculations. And you have one based on rolling average of earnings and one based on percent of market value. Is there in statute, the requirement that these calculations of dividends get paid? Other than that, they are determined what they are? Does it say that they have to be paid?

Emily Nauman: Currently there is no requirement. Excuse me, through the chair to Representative Wool. There is no requirement in statute, or the constitution, that a dividend be paid.

Okay, you guys aren't going to be shocked to find out that .145 goes on to .145(c). So, again, we know this movement of money takes an appropriation, .145(c) is known as the inflation-proofing calculation. It's set out on this slide. Give me a moment to review it. But it does at one more thing that we can add to our visual guide. So, this is going to come up, all the way on the left is a little bit different than these other calculations. So, there we have inflation proofing goes from the ERA back into the corpus of the permanent fund.

.145 continues with (d) we have our *Amerada Hess* quirk that we discussed a few slides ago, and it goes on to (e). The language of (e) is a bit confusing in the way that it's structured. The legislature made not appropriate from the ERA to the general fund a total amount that exceeds the amount of available for appropriation under .140(b) in the fiscal year.

But, in my mind, it's really 37.13.145(e) that authorizes, not that the legislature needs a statutory authorization to make this money transfer. But it authorizes money to go from the ERA to the general fund. So, this is a statute that sets out that the legislature is allowed, if you will, to move money into the general fund from the ERA. That provides a limit on that transfer. The combined total may not exceed the amount available for appropriation under .145(d). And that's the combined total of, excuse me, of the transfer to the dividend Fund, and the transfer to the general fund.

Representative Johnston: Senator Stedman.

Senator Stedman: Thank you, Madam Chair. There's been some discussion, and some concern, that with this language, or (e), using the word general fund, you could circumvent the 5.25% cap by doing an appropriation to the general fund at 5.25%, and then take out whatever you want to the dividend fund above that. And, what I am hearing from you, and I think what I heard from the Department of Law, that is in fact not available. That the cap is 5.25%. And the confusion here is in (e) using the words, ERA to the general fund. So, can you help clarify that issue?

Emily Nauman: Yes. Through the chair to Senator Stedman. We have to start any discussion in this topic realizing that the legislature can appropriate whatever amounts that they want from the ERA to whatever purpose. That's what we learned in *Wielechowski* and that the statute is simply

set up a structure that a previous legislature has advised a future legislature, to make those appropriations under.

It's difficult to really get beyond that point for me as a legislative drafter, because I understand the need and the want of the legislature to follow these statutes as they are set out. It is extremely frustrating to hear, I am sure for all of you, that the legislature is being consistently accused of not following the statutes.

But I have to remind you that the law that the legislature is bound by, is the constitution. And, while this statute suggests draws, and may be extremely frustrating because under the current fiscal climate, you can't accomplish all these draws exactly as their envisioned in statute to fully fund government, and fully fund a PFD. The statutes exist.

I have to keep coming back to this. The statutes exist as a guide. And, the constitution is really what we're looking at, in my office, in terms of the power of the legislature. What you can and can't appropriate.

Representative Johnston: Follow-up.

Senator Stedman: Well, it doesn't really help clarify it, because I have heard the argument that you don't have to follow the 5.25% statute, and we can just breach that, and take whatever we want out of the earnings reserve.

And, say it's \$2.9 billion or \$1.9 billion for the dividend. It could be any number. And everybody is in compliance with the statutes. Also, on the flow diagram, I'd like to have Madam Chairman, some discussion on revenue and to the point of the fund source, accounting, coming out of the permanent fund.

What actually crafts the dollars? What funds the money goes into when they send the money over to get handled? What is or isn't the component parts of the general fund? As there is the discussion that when money comes out for a dividend, it's not general fund money, it's not mixed in with other monies, it's separate, identifiable, different colored money.

We need to clarify that, as far as how the actual accounting structure works, and how the money flows. And, in particular, identifying, Madam Chairman, I'd like an account specification numbers laid out, because it will make it a little clearer. Because you have a specification number, and you have a name. So, we can track the dollars.

Because here in your slides is when you are showing the pictogram, you have two arrows coming out of the income fund, and if you track dollars, there is only one. So, there's a different view when you actually start tracking the money. And, it's very hard, Madam Chairman, to play a financial game when you just track the cashflow. And, that is what I think this committee should do. Is to take a good look at the cashflow also because it is set up. It's very difficult to disguise it or classify it something other than what it is.

Representative Johnston: Thank you, Senator Stedman. Could I add to that, in that discussion, and I think it was when the Attorney General Renkes was the AG, he asked for an opinion from a federal tax lawyer insofar as the permanent fund, and how it is a public fund and why the fund

does not need to pay capital gains or losses. And, that would also maybe track well with what you are asking.

Emily Nauman: Through the chair to Senator Stedman and also to Chair Johnston. I have a few comments.

To Senator Stedman's original point, as envisioned under the statutes, there is a limit to the draw on the ERA at 5.25%. And that is effectuated through subsection (f), saying the combined total of the transfer under (b), that is the....let me go back a slide, or two slides...the dividend transfer, and (e), which we discussed is the general fund transfer, cannot exceed the amount available for appropriation under (b). Which is the 5.25% draw.

So, under the statutes there is a draw limit. My flowchart that I set out, you are absolutely right, does not track the flow of money, as probably the Department of Revenue accounts for it. What it tracks is how the statutes work together and the different paths, the statutory paths, with which money might be drawn from the ERA.

And I am really happy that you brought that up so that could be clarified. And, I think that it would be worth the committee's time to get the answers to the questions you are asking about how money flows from the permanent fund to the earnings reserve and how incoming money gets deposited into the permanent fund. I think those would be valuable things for the committee to know.

Representative Johnston: Follow-up.

Senator Stedman: Yes, just a point of clarification for those listening at home or watching. Several decades ago, we set up the 50% distribution split on the permanent fund. And then, just a couple of years ago, we went to percent of market value. And they are two totally different concepts. Therein lies the problem when you have the percent of market value, and then normally you would do a percentage, or some formula, off of the 5.25%.

Your split for that dividend, or any other source, would not come out of some other derived calculation off of realized gains and losses and dividends. Because the percent of market value takes into account all of that in unrealized gains. So, we have a structural misalignment that we need to correct at some point.

Emily Nauman: Through the chair to Senator Stedman. I found myself in the same place that you were when I tasked with reviewing these statutes for the first time. Which is why I ended up making this flowchart, because it is, there are, sort of, two systems that were developed over time, and we're going to go into detail about how and when these systems, and structures, were set up.

And, I think, it will become very evident that the point that Senator Stedman is making. There are two very different, sort of, types of draws suggested from the ERA. And, they don't always line up.

Although they are conventionally put together in a statute. It is clear when you are reading them that they weren't put in place at the same time. And, if they had been, perhaps the decisions of the legislature were the ways that they would be drafted would be different.

This is an excellent time to go back to the slide of the visual representation. And, you can start to see the, sort of, the spaghetti of these statutes if you will.

So, now we know we take the amount available for appropriation and we subtract the dividend appropriation. That's what we just talked about under .145(e) and (f). And, the result goes to hypothetically subject to appropriation of the legislature goes to the general fund.

That arrow pointing up is how these two, the different historical formulas, are connected in the statutes. And, at a later slide, we have the dates connected with all of these different choices, and you can see how over time these things got stacked as draws, or changes to the structure of the fund. And, how money from the permanent fund can be used.

Representative Johnston: Senator Stedman.

Senator Stedman: Thank you, Madam Chairman. I think Slide 23 is a very good visual depiction for the public to take note of, because it puts it all on one page, insofar as a legal perspective on how the calculations lay out and stuff.

And then, if we can have, through one of these laid out from revenue to cash. And we could put it together. I just think it would be helpful to the general public that doesn't want to sit and read the statute books.

Emily Nauman: Through the chair to Senator Stedman. Thank you for the compliment. I'll take it. Like I said, this was the flowchart that sat behind my desk all session and I was asked to envision changes to the permanent fund. It is a very simple, but I think, very accurate representation of the statutory structures of the potential draws by the legislature, subject to appropriations.

Now is also a good time to point out that this actually the execution of the third concept of the second sentence of the constitution. The provision says all income from the permanent fund shall be deposited in the general fund, unless otherwise provided by law. And, here is that law, right? The legislature has set out how they envision the income from the permanent fund will be used.

Representative Johnston: Representative Wool.

Representative Wool: Thank you, Madam Chair. So, the top box, 50% with the average of the dividend Fund. That's what you are saying is a statute that's, how did you put it? Not a suggestion. What did you say earlier? That's the one we haven't been following.

Emily Nauman: These are all. Through the chair to Representative Wool. After the *Wielechowski* case, we can be confident that all of these movements of money are subject to appropriation and they are all choices of the legislature. Each legislature makes every year about how to use the earnings from the permanent fund. So, all these things that are on this slide. This

is what statutes have set out. But, as we know from prior years and appropriations even, they are not statutes that the legislature has always chosen to comply.

Representative Johnston: Follow-up.

Representative Wool: Thank you. So, where is says dividend appropriation, which is taken in your diagram here out of the 5.25%. That's diverted up, and then over to the dividend Fund, right? And then the remainder, sort of, goes to the general fund. I mean, according to this graphic. And, I guess, this is the first year we've used this slide for 5.25%, so we don't know.

Emily Nauman: Through the chair to Representative Wool. I think there's a confusion on my graphic representation here.

The arrow is only meant to indicate that that's the same number. In other words, the lower calculation here, the amount available for appropriation. In order to get, under the statute, to the amount that you can transfer to the general fund.

You have to take out that amount that you transferred, or the legislature appropriates for the dividend. Does that make sense? So, you have the 5.25% draw, and from that we take out the amount that we appropriate to the dividend for the purposes of a dividend. Which that amount is 50% of the 21%, and that what we have is the remainder, is the amount that is available for the legislature to appropriate to the general fund, as envisioned by the statutory structure.

Representative Johnston: Follow-up.

Representative Wool: So, and that's really the reason we're here is to discuss that or those arrows there really. Because if we fund it to the 21% box, what's left over for the general fund is less than the budget bill that we recently passed, available, combined with other revenues.

Emily Nauman: Through the chair to Representative Wool. Yes, I am sure that the Department of Revenue could easily fill in this spreadsheet for numbers for you for this year and you could see how it all fits together, but that's not information that I have access to.

Representative Johnston: Senator Stedman.

Senator Stedman: Thank you, Madam Chairman. Just to the earlier comment about the previous legislatures setting out basic guidelines.

If it's 5.25% for the dividend calculation itself, but then what I am hearing you say is that we, the current legislature, can take action that alters those numbers, or whatever the action is, on the dollar amounts, and collectively the two bodies make that decision, thereby agreeing to override or ignore the current statutes and then when it's signed by the governor, in this example, then the governor then would not agree with that, and that is in effect a legislative directional change from what's in statute and that is frankly not breaking the law because we make the law, the legislature. Especially when the administration signs it.

Emily Nauman: Through the chair to Senator Stedman. I fundamentally agree with you. To go back to the point we talked about at the very beginning. The restriction in this instance on the

legislature is the constitution. And, that provides the limit for that and there's, I guess, monetary considerations, for whether or not the legislature executes this statutory structure each year.

Representative Johnston: Follow-up.

Senator Stedman: Just as a quick follow-up. So, what you're telling me is that as long as we follow the constitution, that's the guiding principal, we collectively can set our own rules, or statute alternations, and legislatures that come after us can do the same? And they're not breaking the law? They're just collectively changing the law for a given year or a given several years? Am I correct?

Emily Nauman: Through the chair to Senator Stedman. I can see what you're saying, and part of what I am hearing, and it might be a very Leg Legal technical consideration, is that the appropriations of the legislature made every year are law as well.

And, you know, that issue is relevant in other areas that the legislature is looking into right now. To the extent that the legislature passes an appropriation bill every year, yes, that movement of money whether it conforms to the statute or not, is another law that is considered and executed by the executive branch.

Senator Stedman: I just want to clarify so many emails. I think there's a lot of misinformation out there that's entertained people.

Emily Nauman: Through the chair to Senator Stedman. I think that as a working group, move through the issues, the very typical issues that it's tackling in a very short period of time. It should be considered as a lifelong rule follower, if the legislature decides to consistently appropriate in a manner that's inconsistent with this statutory structure that's set out, for me personally, I would love to see the statutes changed so they conform the legislature's action, and that might provide some civility for the public in being able to go and look at these statutes and say, okay, this is what the legislature is going to do. But, as your legal advisor, I didn't tell you the constitution is what you're bound to on this particular issue.

Representative Johnston: And just a follow-up to that. As the Department of Law said, in the constitution it seems to speak volumes as far as the flexibility that they wanted to give to the legislature going forward. Except that all income would go to the general fund. Is that correct?

Emily Nauman: Chair Johnston, I have heard the comments of the Department of Law and I didn't do that research into the history of the constitutional amendment. They are very capable, diligent attorneys and I am sure they presented to you what they accurately found.

Okay. If you guys are ready, we are going to go really deep. We're going to go into the history of, um, oops.

Representative Johnston: Senator Hughes.

Senator Hughes: I'm going back to the constitution, the phrase, "unless otherwise provided by law." So, this reference perhaps, you know, we're breaking the law and we've got two conflicting laws. That phrase, "unless provided by law," means that we need to be doing what is

on the books, based on that constitutional amendment, is it not? In other words, it would seem to me, based on that constitutional amendment, that we cannot, from year to year, change it. That we need to be, unless provided by law, following that. Am I missing something?

Emily Nauman: Through the chair to Senator Hughes. I can see that interpretation. It's a very believable, you know, it's a rational conclusion to come to, I think, from reading this. But, very recently in the *Wielechowski* case we learned, or it was definitively clarified, that these amounts out of the ERA are subject to appropriation every year by the present legislature. And, that leaves me to believe that consistent with the last several years, including the year that the Court upheld the Governor's veto, that in fact the legislature isn't required to comply with this statutory structure.

Senator Hughes: Just a follow-up.

Representative Johnston: Follow-up.

Senator Hughes: So, if that phrase weren't there, but I'm not going to go reargue the *Wielechowski* case, but if that phrase were not there, then it would be, oh yes, the appropriation power, as granted to the legislature, trumps what that money looks like. But because that phrase is actually in the constitution related to that, it really makes me question the ruling in that case.

Emily Nauman: Through the chair to Senator Hughes. I mean, I take your point, and I understand it. But any court case, and Linda might have some comment, there's always issues that remain unresolved. And, that could be an issue that is litigated more on point than it is in *Wielechowski* in some manner. But we don't have that ruling yet and so we stand on what we have and provide you the best advice given, the current legal framework.

Representative Johnston: Representative Wool.

Representative Wool: Thank you, Madam Chair. Well this brings to mind a bill that came before one of our committees from the governor about constitutionalizing the PFD, and the language in that simply stated that it didn't produce a formula, it just said you would follow the statutory formula for the PFD, whatever it happens to be, whether it's the current one or the new one. Would that be the same as your interpretation of what's in the constitution now? And, the bill hasn't passed, it hasn't been challenged, so I just didn't know. And, the Department of Law is sitting behind you and they presented the bill, so I don't know if they have the same interpretation as you?

Emily Nauman: Right. Through the chair to Representative Wool. One of the major issues that we haven't tackled and talked about in this presentation yet is the idea of amending the constitution. Which would restrict future legislatures, and fundamentally potentially change the way that the laws are executed the legislature every year.

If the constitution were amended to add restrictive provisions, the legislature would be required to follow those provisions. The constitutional amendment introduced by the governor at the beginning of the session essentially, by my recollection, said that this framework that we've set out in this slide, would be followed, and that they could not be amended except, or unless ratified by a vote of the people. And, that was a new structure and a new idea that does not exist in the

current constitution, but I believe that's what the constitutional amendment was attempting to do was to constitutionalize this existing statutory structure.

The comment also from Chair Johnston did make me remember that you had made a comment about an AG requesting federal income tax advice about the taxability of the permanent fund. And, you are correct.

On two different occasions, I believe, the AG has requested advice on that topic. And, the conclusion was, at this time, the permanent fund is now not constitutional. There's a number two or three, depending on how you look at the possibilities, reasons why that could be under federal income tax law.

And we actually don't know what exclusion we're operating under. It could be that the fund is an integral part of the state, or another, of course, now I can't remember the two other types of federal exclusions. At some point, it would probably be nice to have that clarified, especially if you consider whether or not to put in a constitutional dividend, because that has the potential to change the tax analysis.

But certainly, is an issue for a tax professional or perhaps the IRS [Internal Revenue Service] even to answer before the committee would consider that and it's definitely worth looking into.

Representative Johnston: Thank you.

Emily Nauman: Alright. Here we go. We're going to dive into the history of 37.13.140, and at the same time, into 37.13.145(d). These statutes have my visual representation and as Senator Stedman pointed out, really work together, I think, this is also going to, maybe, answer some questions about the timing and how the statutes ended up the way that they are today. As I said, at the end of every statute, there's a history line in your blue book and also in your turquoise book. So, what we're going to do is work through each of these session laws one by one and see how we've built the house that we're living in today.

AS 37.13.140, as we know it today, was adopted as the two Department of Law attorneys noted for you in 1980. This is the year text of the original 37.13.140 statute. What are the major differences, they are many, but we talked about the income available for disbursement, to be determined on an averaging basis? So, the structure was very similar, but it has a slightly different name.

Now, from our work that we did this morning, we know that the statutory structures of the permanent fund were substantially changed in 1982, as a result of the *Zobel* decision. And, 37.13.140 was not immune from that. It also was rewritten in 1982, and one of the principal differences is we begin to talk about the income available for distribution, which, of course, is the language that we use today. That same year, in 1982, 37.13.145(d) was also amended, oh sorry, was added. The text there said it was added. So, in 1982, we see an addition of inflation proofing, and also, we have in the statute a separate account for the money, the income of the permanent fund, to be deposited into.

More changes to 37.13.140 came in 1986. So, here we move to the income available for distribution. The amount that we have today. That's the 21%. So, again, that was 1986, that that

idea was introduced. And, also, the undistributed income account was return to the earnings reserve account.

The 1986 legislation also made changes to AS 37.13.145. Again, now is a good time to remember that the statutory structure is .140 sets out the calculations and .145 talks about actually moving the money. It's really easy to get them conflated. It's actually, not necessary, but a committee's work to translate it and it's sometimes helpful since now we're working on them both together. So, this is the 1986 revision, the 37.13.145. I think, in my mind, these are mostly changes to accommodate to the new name for the earnings reserve account.

After 1986, there was a period of relative inactivity until 1992. In 1992, it was added that the income of the ERA would be included as income of the permanent fund in 37.13.140. More interesting were the changes made to 37.13.145, which was actually repealed and reenacted. So, I will give you a second to read it. And be aware that this slide continues 37.13.145 didn't end with the time.

The changes in 1992, I think, the most important change we see on this slide is the introduction of the 50% of income available for distribution calculation. So, again, that concept was added in 1992. The major changes in 1992 were really just a restructure of the existing statutory provisions related to inflation proofing and the *Amerada Hess* litigation.

How are you all doing? We are mostly there. I promise. After another quiet period, 37.13.140 and 37.13.145 went through a substantial rewrite in 2018. Many of the legislators on the working group will remember SB 26, and therefore you might be more of an expert on that than I would. Excuse me, in 2018, we had the addition of the 5.25% draw. There it is. So, .140(b) was added in its entirety, as previously we only had the language of .140(a).

Representative Johnston: Representative Kreiss-Tomkins.

Representative Kreiss-Tomkins: Going back to Slide 31, and the 1992 session law. I know it's a repeal and reenact, not immediately comparing this slide with what was repealed, but on the first sentence of the reenacted 37.13.145, the ERA is established as a separate, kind of, in the fund. Was the ERA previously not a separate account? Or what was the law prior to 1992 of the ERA or the ERA by its previous name?

Emily Nauman: Through the chair to Representative Kreiss-Tomkins. I don't know the answer to that off the top of my head. I would happily look into it. My guess would be that it was still part of the permanent fund, but I can't be certain.

Representative Johnston: Follow-up.

Representative Kreiss-Tomkins: One other, well a comment on a question. I mean, I noted in 1986 it went from the average of the previous five fiscal years to 21%. So, clearly, there was some proactive thought about number 21, and its oddness. So, like Senator Olson, I'm curious about to origin of that.

And, then, my question was, thinking about *Amerada_Hess* a little bit more and, I guess, just maybe starting at basics. All the *Amerada_Hess* monies, they are in the permanent fund, they are

in the principal of the permanent fund, and I'm just going to stop there and think a little bit more. Perhaps I'll develop that question and I'll circle back.

Representative Johnston: Anybody else? Go ahead.

Emily Nauman: Okay, we went backwards, didn't we? We will catch back up. And, here we are back in 2018.

It's important to remember that this statute will change in 2021, July first, so I just wanted to point out that there is your statutory language, that was passed at the same time, SB 26, this provision has a delayed effective date of July 1, 2021, and it changed to 5% under the statute.

SB 26 also made changes to later in 37.13.145 to accommodate the POMV draw. This is (e) and (f) as we just reviewed them. That's the draw to the general fund and the limit on the draw. So, we have a little bit of new information so we can take a second and to add this stuff to our visual guide.

So, we will work with the oldest thing first. In terms of what exists in the statute today, the inflation-proofing is really the first thing on this spreadsheet, or, you know, flowchart that was enacted into law in 1982.

I guess you could also say that in 1982 there was the concept of income available for distribution added to the law, but it didn't look like it did today. The 21%, as we just discussed, was added in 1986. In 1992, we added the 50% dividend fund draw calculation. And, in 2018, in SB 26, we added the entire bottom bracket, and that's the amount available for appropriation and the POMV [percent of market value] draw.

Representative Johnston: Representative Wool.

Representative Wool: Thank you, Madam Chair. Prior to 1992, what was the, they were still using the 50% of the rolling five-year average, right?

Emily Nauman: I don't know what those appropriations look like, but that's something that we can get back to you on, if you are curious about that?

Representative Wool: Okay.

Emily Nauman: I can tell you that in 1992, that's when that amount was added to the statute.

Representative Johnston: Senator Stedman.

Senator Stedman: Thank you, Madam Chairman. You might as well add to that if there's ever been public votes along the way in all these changes.

Emily Nauman: Through the chair to Senator Stedman. Like a referendum or something like that on the statutory changes?

Senator Stedman: For clarification, I don't think there has been.

Emily Nauman: Through the chair to Senator Stedman. To my knowledge, there hasn't been either. I believe in the late 1990s there was an advisory vote on whether or not the public was interested in supporting this type of structure, but it had no effect on the statute.

How are we all doing? Okay, I have some good news. The remainder of 37.13 largely relates to the permanent fund corporation and its management and administration. I didn't really see where that would necessarily be helpful for the work of the working group. If you're interested in these statutes they are in your turquoise book, but I didn't see it necessary to go through them. So, with the permission of the co-chairs and it's definitely in my capacity as your legal advisor, at this time I'd really suggest that we take a short break.

Representative Johnston: Okay, we will take a short break. Convene back here at 2:30 p.m.

Representative Johnston: Okay, we went 15 minutes. Are we all set? Let's continue.

Emily Nauman: The small break there made me, um, a number of questions came up and I just wanted to clarify one thing about this putting it together slide with the dates on it. The dates on this slide are when the statutes appeared in 37.13, that title. But, just to be extra clear, the 50% dividend calculation was in the 1982 statute related to the calculation. It was moved to 37.13 in 1992. So, that 50% calculation was in there from the beginning, but it was just not in 37.13.

Senator Hughes: Madam Chair.

Representative Johnston: Yes, Senator Hughes.

Senator Hughes: And, actually, that was the one during the break that, um, we talked to Emily about that because I was looking down at some of my notes and I have a note here that in the 1982 House Finance Committee letter of intent, Chair Al Adams, that it says, "the Committee intends that the payment of dividends shall have first call on 50% of the income of the permanent fund available for distribution regardless of whatever uses the income if put to." And, so, I thought, gee, there's just, you know, doing that for ten years and she said no, it was in a different section, and so, thank you for that clarification.

Representative Johnston: Thank you.

Emily Nauman: I'd also like to point out that the statutes are silent as to what happens to the other 50%. They were for many years.

Senator Stedman: Madam Chair?

Representative Johnston: Senator Stedman.

Senator Stedman: Just a point of clarification, we use letters, our intent language quite a bit. It doesn't carry the weight of law, clearly. It's just an intent language. And, intent for that particular committee or that particular legislature at that time. So, there's a big difference between intent language and an actual statute and the constitution. I'm ranking them in that order.

Representative Johnston: Thank you. Continue.

Emily Nauman: Okay, we're moving on to the second half of the presentation, which is the 43.23 provisions related to the constitution. We are in a new title. So, my revisor will really enjoy that I'm about to explain why there is permanent fund sections in two different sets of statutes. It might also help guide you as you make decisions about how to make changes and will help you work through this book and why we carry two of those giant blue statute books around, instead of one. So, we got them all on one spot.

37.13 again was about the permanent fund, the money, and the permanent fund corporation. And, I guess, this is also for the people at home. Maybe the people at the Department of Revenue or the permanent fund corporation, excuse me, will really love me because I am about to say, 43.23 is about the Department of Revenue's role in executing the permanent fund dividend program.

So, the permanent fund corporation has nothing to do with executing the program, or if you get your dividend, or how much your check is for, or if someone takes it.

All of those statutes are housed in 43.23. Title 43 is where all the Department of Revenue statutes are, which is why we find the permanent fund statutes related to the Department of Revenue in Title 43.

The first statute is another one to really flag as you work on, in your turquoise book, as you work on these issues. This is the eligibility statute. I'll give you a second to read it. And the eligibility concepts were reviewed by the Department of Law earlier today, so we can probably buzz through them relatively quickly. 43.23.005 continues so we know under (a) you have to be a state resident, or in the qualifying year, you have to be present at least 72 hours. You must be a U.S. citizen or a lawful alien, etc.

(c) pertains to the provisions related to a guardian claiming a dividend on behalf of a minor, or on behalf of a disabled individual, and these relate to the, sort of, felon misdemeanor ineligibility statutes. And, again, we'll go over to the history of the statute and see when these various provisions were put into place. .005...what did I leave out here?

(f) relates to, this is the, um, military exemption that we discussed earlier today, and the exemption from the 72-hour requirement.

(h) relates to claiming a dividend, or an individual who has died. And, there is various provisions based on the timing of the death, and the timing of the application, and the timing of the eligible year, so this statute is actually quite lengthy and so I will summarize it here for you in this slide.

One thing that I was alarmed by when I was working through this was, this history lies. When I was tasked to summarize the history of the changes, this statute has been changed many times and I'm going to go through each and every time.

I'm really excited for the next two hours. I wouldn't do that to you. I've summarized most of the changes on one slide, but I think it is important to go back to the beginning. Back to 1980. As Senator Stedman points out, legislative intent is not binding, but it is worth noting that that

original 1980 statute as the Department of Law set out this morning, did have some purposes for the initial dividend program provide a mechanism for equitable distribution of the state's share of energy wealth to encourage people to maintain their residency in Alaska.

And, we know that this particular provision ran into some issue with *Zobel*, but the last stated purpose was to encourage awareness and involvement by the residents of the state and the management and expenditure of the permanent fund.

Representative Johnston: Representative Wool.

Representative Wool: Thank you, Madam Chair. So, the statement that it encourages people to maintain their residence in Alaska. That was really pertaining to the, sort of, additive quality of the first statute that says each year you get an extra unit, and since now everyone...it's just a flat rate, and initially it was around \$300. We can conclude that wasn't enough to keep people living here. And, was that language removed? That wasn't in the ...?

Emily Nauman: Through the chair to Representative Wool. This was in the original 1980 legislation. So, yes, this legislation was all repealed. But I do think that it's indicative of the original intent of the permanent fund dividend payouts. The *Zobel* case definitely, sort of, prevented the consideration of larger dividends based on the duration you have lived in Alaska, which might negate number two.

Representative Johnston: Senator Hughes.

Senator Hughes: Thank you. I want to back up a little bit. When we were talking about that 1982 – 1992, and that clarification. And, I read from the letter of intent by Chair Al Adams, and I know what appropriation bills, what you're saying, Senator Stedman, is correct. Intent language doesn't carry the weight of law. But, do the courts not look at intent and listen to committee hearings, etc. when they're trying to interpret the meaning of statute? So, this would be statute, so the letter of intent would it not carry some weight?

Emily Nauman: Through the chair to Senator Hughes. The first thing that a court will do when it's interpreting the statute is look at whether or not, on its own, in its plain meaning, whether or not its interpretable to the court. If the court sees some ambiguity, it might dig into the legislative intent and certainly it will look to committee records, and intent letters when it does that.

Senator Hughes: Follow-up?

Representative Johnston: Follow-up.

Senator Hughes: And so, if they were to find that, then it would weigh or influence the meaning of the statute. Is that correct? And, different then than if it were intent language in an appropriation bill.

Emily Nauman: Through the chair to Senator Hughes. I think legislative intent and as executed through the record, and legislative intent letters, gets persuasive. I do think that courts, they will look at it, absolutely. I do think courts are aware though that legislation changes, even down to the minute before its passed. So, while the things might be indicative of what the legislature

thought of that particular piece of legislation at that particular time. It's not going to be absolutely binding for a court.

Senator Hughes: Thank you.

Representative Johnston: Continue. Oh, Representative Merrick.

Representative Merrick: Thank you, Madam Chairwoman. I just wanted to note that this number 2, to encourage persons to maintain the residence in Alaska and to reduce population Turnover in the state. I think that's an interesting point when we talk about eligibility requirements. And, you know, to reduce population turnover and to keep people in the state. It is not to attract people to our state. And, so, I think that's an important way to look at it. Are people eligible for this that are actually Alaskans, and not that we're attracting people here just to collect the permanent fund dividend check. Thank you.

Emily Nauman: Through the chair to Representative Merrick. I don't know why anyone would want to live any place other than Alaska, dividends or none.

Representative Johnston: Senator Bishop.

Senator Bishop: This is a good conversation. We have never not paid a dividend.

Emily Nauman: I didn't mean that for it to be a political statement. I just, I really like it here. I feel lucky to live here.

As we continue, we see this is the original eligibility requirement for the dividend as it was introduced in 1980. As we had a discussion previously with the Department of Law's presentation. We see that it was, sort of, a unit of dividend for every year that you lived here, and we also discussed that 18-year-old requirement at the bottom of the page. We had some discussions about that too, so I think, or feel that the working group, unless you have particular questions, we can, kind of, move on from that.

So, as post *Zobel*, 43.23 was rewritten and ineligibility requirement was added that you just be a resident for the six months preceding the date of application.

Representative Johnston: Representative Wool.

Representative Wool: Thank you, Madam Chair. So, basically, the 1980 statute, which was \$50 for unit, dividend unit, or whatever they called it. The calculation to determine how much is paid out would depend on how many people are living in Alaska, and how many years they've lived here.

So, if a bunch of people that have lived here a long time moved out and a bunch of new people moved in, the amount would be less. So, in that situation, the amount to be appropriated would be less.

Whereas now, the amount appropriated is, sort of, set by formula, and the number of people receiving a check would just change the amount of the check. It doesn't change the amount of

the appropriation. That's a pretty significant difference. In other words, then there was a finite amount of money, or not a finite, but a determined amount, based on that number of people and how many years they've been here.

Now, I mean, for example, when we talk about eligibility with military or something, let's say we said, well, if you're in the military and you're gone for four years, you don't get any more checks? So, we reduce the number of checks going out, but it wouldn't change the amount of the appropriation. It would just change the amount that everyone gets. And, that's pretty different than the original, sort of, intent if you want to call it, of the 1980 statute, because that would, the amount of money appropriated is determined by the makeup of the population, right?

Emily Nauman: Through the chair to Representative Wool. You are absolutely correct. The way the statutes are currently structured, the amount that is appropriated from the ERA is not dependent at all on the number of the people.

With the exception of the last couple of years when the legislature has set the amount per person. And that structure is more akin to what was happening in 1980, where the dollar per person was set and the draw was based on that amount. You make an excellent point. It's a point that I reaffirm in a few slides from now, because it's a common point of confusion. That if you decrease the number of eligible people, you'll decrease the amount of the permanent fund appropriation, as its envisioned by statute. And, that's not true. If you decrease the number of people that are eligible, you'll just simply increase the amount per person.

Representative Johnston: Follow-up.

Representative Wool: And, I guess, that goes to the amount of effort, or expense, rather is put in to finding a fraud. That if you spend so much to reduce the number of checks going out, it doesn't save you any money. And, in fact, you spend money to do that. However, I guess that expense is born out of the fund itself. It pays for the fraud investigation and finance I understand?

Emily Nauman: Through the chair to Representative Wool. I wouldn't speculate on the motivation of the Department of Revenue related to those things. I'm sure that they pursue fraud equally, and, any appropriation format. But that is an interesting point.

Representative Johnston: And just a follow-up to Representative Wool. I would say the other large shift from the original dividend to the one in 1982, is that the intent to encourage state residency urged people to stay because at that time, parts of Alaska were very transient. And, secondly, it was to honor the people that had actually put a lot of their own blood, sweat and tears into the development of Alaska. So, it was to build a community, seemed to be more of an intent than what we ended up having to do with the court ruling.

Emily Nauman: I also wanted to clarify, I believe that I said 6 years instead of six months, but clearly, it's six months. I think when I read that line, I maybe said it wrong. I think also the printed-out version of your presentation has the statute session law wrong at the bottom. So, if you look on your presentation and it says 1980 for this slide, which now should be, well actually be slide 44 in your packet, it should be section 1, chapter 1 of 2, SLA [Session Laws of Alaska] 1982. I'm sorry that mistake. It's corrected on the presentation.

Something also that is interesting that I didn't put in here is that you might be curious to know given the current discussions is that this 1982 legislation also had a provision that the dividend would be paid over twelve months, or annually, as the election of the individual. I thought that was interesting given that there's some current discussions on that topic.

I promise, here is the summary of the other changes in 1987.

Representative Johnston: Representative Kreiss-Tomkins, sorry.

Representative Kreiss-Tomkins: Rewind. Can you say what you said before?

Emily Nauman: Yah, let's.

Representative Kreiss-Tomkins: In the 1980 statute there was an option for monthly disbursement versus an annual disbursement?

Emily Nauman: Yah, if you give me just a second here. I bet I can find it. I think I probably won't be able to find it in a sufficient manner, but Linda will look for it.

Representative Kreiss-Tomkins: And if I may, Madam Chair? While they're ...

Representative Johnston: Yes.

Representative Kreiss-Tomkins: While they're shifting through the paper. I find that particularly interesting because many of us have had conversations with Clem Tillion about his interest in quarterly disbursement and that being one of his regrets in setting up the dividend program. But, presumably, the part of those 1980 authorizing statutes and that intent was realized, albeit that initial version of setting up the dividend program never was actually executed.

Representative Johnston: Representative Wool.

Representative Wool: Thank you, Madam Chair. So, the 1980 statute possibly suggested that it allowed for monthly payouts. And the initial amount was around \$300. So, that's a \$25 check every month? And, also, everyone would be getting a different amount of check, depending on how many years they've been here. It sounds like a pretty heavy calculation and execution. Especially considering it's like pre-internet and I don't know what the computers were like back then, but it sounds particularly burdensome.

Emily Nauman: Through the chair to Representative Wool. I have in my notes this happened in 1982. It was a last-minute addition to my presentation this morning, which is why it doesn't have a slide for itself. Linda is still looking through, but 1982 would have been post-Zobel so it would have been after the structure was made. I think I will be able to get back to you in the exact session law maybe in a few minutes, or we'll just show it to the committee if they would like?

Representative Johnston: Representative Merrick.

Representative Merrick: Thank you, Madam Chairwoman. I know that Representative Kreiss-Tomkins and I have had this conversation. And, on, it looks like Slide 60, it talks about eligibility for public assistance. And I know in the conversations I've had about having to pay quarterly payouts that was one of the objections was that people then may not qualify for different assistance programs. So, I'm interested to see when we get to 43.23.240 and .250, how that plays in. Thank you.

Representative Johnston: Thank you.

Emily Nauman: Through the chair to Representative Kreiss-Tomkins and Representative Wool. I think what's of interest to both of you, and my apologies, it was in the original 1980 legislation. 43.23 at the time .010(f). It says an individual, oh I'm sorry. I'm sorry.

The individual may receive payments of a permanent fund dividend in a single payment or in twelve-month equal installments paid and executed by the Department. So, Representative Wool is right, perhaps a lot of math for someone. There's a lot of talented accountants in the Department of Revenue, I am sure. So, they could handle it.

So, let's quickly buzz through then the remainder of the history of 43.23.005. We had the April 1 deadline for eligibility added in 1987. We have felon ineligibility added in 1988. We had the physical presence in the state requirement added in 1988 as well. In 1989, the two-year residency requirement was added and then reverted back to one-year under *Lindley v. Malone*, as we discussed earlier. In 1990, we had provisions added so that others could apply for disabled individuals. In 1991, in the revisor's bill, we did the statutory cleanup related to the holding in *Lindley v. Malone*.

Also, in 1991, a physical presence waiver was added for individuals serving in the armed forces.

In 1992, we made technical changes to the language and timing of the residency requirement and added the US Citizenship and unlawful alien status requirement.

In 1996, we had an expansion of the provisions related to the felony, misdemeanor ineligibility.

In 1998, the 72-hour physical presence requirement was added. Also, in 1998, we had the deceased individual provisions added.

In 2001, there were technical changes to the felony, misdemeanor ineligibility.

In 2002, we had a new eligibility requirement that's compliant with the federal Military Selective Service Act, which was basically like the modern version of the draft.

In 2005, we had the physical presence exemption for those who are out of state because they were in the custody of the Department of Health & Social Services.

And, in 2010, we had a small provision, a small change of the provisions related to the deceased individuals.

We made it guys. One more down.

Representative Johnston: Representative Kreiss-Tomkins.

Representative Kreiss-Tomkins: Thank you, Madam Chair. The 1998, 72-hour physical presence requirement. Does that specifically refer to the military exemption?

Emily Nauman: Let me look for you. Is it okay if we answer your question and get back to you?

Representative Kreiss-Tomkins: Yah.

Emily Nauman: Okay. We'll look it up and either Linda will get back to you in a few minutes or we'll hit you up after the presentation.

Representative Johnston: Representative Wool.

Representative Wool: Thank you, Madam Chair. There might be, I believe it was Representative Merrick mentioning people flying back here, and she said 24-hours, but maybe it was the 72-hour. And it sounded like from previous testifiers that it was 72-hours every so many years to maintain military eligibility. But I may have got that wrong.

Emily Nauman: I remember under (a)(4) there was an exemption from this requirement for military serving in active duty. And, I'm not quite sure. You know, it's interesting to listen to the Department of Revenue's perception on how they interpret that. I didn't see it all connecting exactly with the statutes as they are in the books, but, of course, the department can promulgate regulations to help effectuate the statutes and there might be clarification there. I didn't have a chance to get to that before this presentation.

Senator Hughes: Madam Chair?

Representative Johnston: Yes. Senator Hughes.

Senator Hughes: Thank you. In 1989, in *Lindley v. Malone* we talked about that earlier. The Department of Law mentioned it. And, if I am remembering correctly, it only went as far as Superior Court.

Do you know the history of why it wasn't appealed and moved up? And they just settled with the one? Especially since we've heard that other states have had, or used, two-year residency requirements for certain things. I'm just wondering if that might be something we should still pursue.

Emily Nauman: Through the chair to Senator Hughes. I think it's really important to put on the record that the reason that the two-year residency requirement was of note is because it's uncommon for the United States Supreme Court to uphold a residency requirement longer than one-year.

That makes those two or three cases that we discussed earlier really stand out. The ... of the two-year residency requirement added in 1989, had contingent language that automatically reversed that two-year residency requirement back to one-year.

In the event that any court found the two-year residency requirement unconstitutional, the *Lindley v. Malone*, although it was a Superior Court case, had the effect of triggering that reversion in the statutes.

So, it's possible that no one saw fit, or perhaps the issue was moot, because the two-year residency requirement was automatically unwound. So, there was no more harm. I can't say specifically why it wasn't appealed, but that's my best guess is that, sort of, that case triggered a series of events that made an appeal, sort of, not worth it.

Senator Hughes: Follow-up.

Representative Johnston: Follow-up.

Senator Hughes: I'm just wondering because there have been subsequent other cases in other states, whether it is something we should look at pursuing. What do you think?

Emily Nauman: Through the chair to Senator Hughes. As I discussed earlier, it's a topic that I have done a lot research on. And, you know, most of the cases in this area relate to public assistance. There is no other state program that's analogist to the permanent fund dividend. So, it's really difficult to see how these issues might come out. But I will say that fairly consistently the United States Supreme Court has struck down residency requirements longer than one-year. And, especially in the most recent history.

Representative Kreiss-Tomkins: Madam Chair?

Representative Johnston: Yes, Representative Kreiss-Tomkins.

Representative Kreiss-Tomkins: Just two notes as relating to this slide. Questions that have come up for which answers have been proffered in the last hour or two in between us being on the record. The first is that I was made aware that there is a state program, the state of Alaska administers right now, it's a two-year residency requirement, which is WWAMI [Washington, Wyoming, Alaska, Montana, and Idaho medical school program].

So, there's data that's never been challenged in court. The second point is, as Representative Merrick and her very capable staff divined the origin of the 21%. Numeric and the PFD calculation relates to the contingency language that was ultimately adjudicated in *Lindley v. Malone* and they were trying to differentiate two different dividend calculations for the 20% for one and 21% for the other. So, this clearly differentiated, but, kind of, mathematically inconsequential. So, just for the committee's reference I thought those points were relevant.

Emily Nauman: Through the chair to Representative Kreiss-Tomkins. I guess then Representative Wool's math about the 20% was correct. And, just the 1% was sort of a hanger-oner. The consequences of...the statutes are littered with these interesting little trivia treasures. It's really fun.

Representative Johnston: Representative Wool.

Representative Wool: Thank you, Madam Chair. The pioneer homes used to have a residency requirement as well. I don't know if it was twenty-years or what. It was more than one, I am sure. So, I don't know if that still stands or if that was challenged or what?

Representative Johnston: I think you'll find that was challenged.

Representative Wool: It was challenged?

Emily Nauman: We can look. Through the chair to Representative Wool. If you'd like, we can look into the residency requirements of pioneer homes. It's not something that I know about off the top of my head.

And, through the Chair to Representative Kreiss-Tomkins. I think Linda has an answer for you on your 72-hour rule question.

Linda Bruce: For the record, this is Linda Bruce, with Legislative Legal Services. So, the 72-consecutive-hour requirement applies to everyone in the state that received the dividend. The allowable absences is a different issue that Emily will head into next. But, as far as the 72-consecutive-hours during the past two years. That applies to everyone.

Emily Nauman: For the record, this is Emily. I'm back. Okay, so I spoke a little too soon before we didn't actually move on, but now we are actually going to move on to the next statute, which is 43.23.008. Issues related to 43.23.008 have been discussing them. Again, these are another two statutes that are, sort of, read together .005 and .008. .008 is about allowable absences, and there is a long list of them. They were also discussed by the Department of Revenue earlier today. So, I don't see it necessarily necessary to go through them. They are set out on this slide summarized again. Please be aware of that. And, they continue on the next slide.

43.23.008(a), like I said, is just purely a list of all the things that are allowable absences for the purposes of eligibility.

43.23.008(b) states that you have to be a state resident for at least six consecutive months before claiming one of these absences or claiming residency. And I want to say that, excuse me, that (b) the six-month requirement was upheld in the Alaska Supreme Court case of *Heller v. State*.

43.23.008 states that after an individual has been absent from the state for more than 180-days in each of the five preceding qualifying years, the department will presume that the individual is no longer a resident. This is recently, as of two weeks ago, upheld in the Alaska Supreme Court case *Jones v. State*.

Would it be any fun if 43.23.008 didn't continue?

So, of course, it does. (e) sets out a discussion of factors that the Department of Revenue would review in order to determine your intent to remain in the state. Excuse me. Give me a second to review those. And, again, on this slide, we see another semi-lengthy history line, not as long as the eligibility history line and a lot of these changes can be easily summarized in a slide, so I didn't find it necessary to go through the detailed history. There's a typo. I can see that. That

should say 1988. Hold on. Let me look at this real quick. Can I get back to you? Now that I am actually thinking about it. It might be 1998.

In 1998, the allowable absence statutes were added. Oh no, it is the right date. Excuse me. It's 1998 for sure. Okay. In 1998, the allowable absence statute was added and I have to take a guess that the reason that this statute was broken out was because 43.23.005 was getting, sort of unwieldly, so at some point I'm going to guess, a drafter, just like me, said, holy cow, we can't keep putting this all in the same statute. We have to break these out. And, so 43.23.008 was probably developed to talk about a list of reasons why you couldn't be in the state. Again, we're seeing how these two statutes work in tandem. So, of course, once you make a statute that does something, it's very easy to keep adding things to the list.

In 1999, we had the merchant marine allowable absence. In 2003, that was the development of military spouse and dependent allowable absence. So that's a relatively recent, in the history of the dividend, allowable absence. Also, in 2003, there was a small change to the terminally ill family member allowable absence. The terminally ill family member allowable absence was in the original 1998. In 2006, we added an exemption for the Peace Corps and Olympic team training. In 2008, we added an educational fellowship allowable absence. In 2013, we added the presumption the individual was no longer a state resident if they are absent for more than 180-days.

We made it through another statute. So, here's a new one. 43.23.011 is the application period. Most people are familiar with this statute because they actually interact with it, right? We all conform with the application deadline if we decide to apply for a permanent fund dividend. There is a very limited exemption that was discussed by the Department of Revenue this morning, I believe. We can ask the Department of Law about extensions, in terms of applying, but they are mainly for military people, serving in the hostile fire or imminent danger pay. So that one is pretty straight forward.

43.23.015 is related to the application itself. Basically, a list of requirements for the application.

43.23.011 is related to the delayed payment for a certain individual and the next slide, which is proudly another one that I would flag as an important slide in my blue book. Is the set out of the dividend payments.

Under 43.23.025, the commissioner determines the value of each permanent fund dividend by taking the dividend transfer, making adjustments that are listed there, and then determining the number of eligible individuals and dividing the number that's transferred, excuse me, appropriated by the legislature, by the number of eligible individuals.

This gives us an opportunity to go back to my favorite slide. We've got to make some room. So, we'll take out this stuff here. So, we have this appropriation hypothetical plan statutory appropriation of the 50% of the income available for distribution. We have the adjustments that we went through on the last page and we get that, and we divide that by the number of eligible individuals to get your dividend amount for individual.

Again, as Representative Wool excellently highlighted. I'm going to say it again because it's a point of such confusion. Under the statutory calculation, decreasing the number of eligible

individuals increases the amount per individual. It does not reduce the amount appropriated, or potentially appropriated, for the dividend. As we discussed, if the legislature was interested in the number of eligible individuals changing the amount appropriated for the dividend, they would have to do something to tie the amount appropriated to the number of people that applied. Currently, that connection doesn't exist in statute.

Representative Johnston: Representative Wool.

Representative Wool: Thank you, Madam Chair. But as you pointed out, the last year or two, the last two years that has been the case. That we've set the dollar amount and then multiplied that times the number of individuals. So, if we did reduce eligibility, or change the eligibility requirements, then that would change the bottom line in as far as how much we are appropriating for that?

Emily Nauman: Through the chair to Representative Wool. That's correct. And when the legislature has done that, as we had a discussion earlier today, they've made an appropriation that didn't conform with this statute. So, it's a discussion of choice. Again, going back to the constitution, that's the choice that the legislature has the privilege of making every year.

Hopefully, we'll be able to buzz through the remainder of the dividend statutes pretty quickly. Just hitting the highlights here.

43.23.028 says that by October 1 of each year the commissioner shall give the public notice of the permanent fund and it also has some requirements related to information that the commissioner must make public and that the commissioner must include with your dividend check.

43.23.045 is the establishment of the dividend fund. It is administered by the commissioner. This is kind of interesting since, you know, the ERA and the permanent fund are under the purview of both the corporation, but it is invested in the same manner as the permanent fund.

43.23.048 is the restorative justice account. This was enacted in 2018, with SB 26. But for those committee members that aren't aware, and I am sure that you all are, that the money for dividends that would have gone to felons or people with multiple misdemeanors, is not just returned to the fund. This provision allows the commissioner to take that portion of dividends that would have gone to those ineligible individuals and deposit them into the restorative justice reform account. The restorative justice account, again these are suggestions for legislative appropriations, but set out in order for the account, for an amount to come out of the account and go to various purposes are listed on this slide. I think you guys can read them.

Representative Johnston: Representative Wool.

Representative Wool: Thank you, Madam Chair. I'm sorry for so many persnickety questions, but the Department of Corrections costs. If a prisoner is shipped out of state, the Department of Corrections incurs a cost, but the person is not residing in Alaska. Presumably not for the less than 180 days? Not that this is your area, but would the department still be reimbursed even though they are not....they aren't eligible because they are convicted felon as well, but are they not eligible because they are not a resident?

Emily Nauman: Through the chair to Representative Wool. I can't definitively give you an answer to your question, but I can tell you there's not an allowable absence for a person out of state because they are incarcerated. So, perhaps that is the answer.

43.23.055 relates to the duties of the Department of Revenue related to the dividend. And these are all, they are shortened on this slide, but they are all set out in your blue book. And as you'll find out, we're close to the last pages of this book. It's pretty exciting for me.

43.23.101 relates to voter registration. Basically, the commissioner can provide the director of elections records, or permanent fund dividend applications for the purposes of voter registration.

43.23.110 keeps applicant information for permanent fund dividends applicants confidential.

43.23.130 relates to the contributions from the permanent fund dividends. Senator Bishop is very aware of this statute, sorry, excuse me, that's a later statute. You know that one is coming.

43.23.130 is the Pick.Click.Give. provisions. Again, that's something that has been discussed quite a bit this year. But it's a relatively straight forward concept. The highlight is there's not a pick, click, give for state government currently. I think that's about it.

43.23.140 relates to exemptions and levy on permanent fund dividends as the department spoke about before. Certain individuals can make claims on your dividend, and these statutes are what permits that to happen.

43.23.140-.190 set out specific types of claims that be made on a person's dividend.

43.23.200 prevents the assignment of a dividend, except to a government.

43.23.210 relates to fees for processing claims and assignments.

43.23.220 - .230 – this is where Senator Bishop is the expert, which relates to the dividend raffle and the education endowment fund.

43.23.240 - .250 is eligibility for public assistance. The principle concepts here are that they can't consider the dividend for purposes of state public assistance. And the state can hold harmless, in other words, they can reimburse people that lose federal assistance because of that, maybe push, that the dividend puts them above an income threshold for the purposes of federal public assistance. The state will go back and pay that amount. That amount is one of the adjustments of the dividend that we see in the calculation that we are talking about. So, it's not like this money comes out of a separate account with the funds. The amount actually gets subtracted before the dividend is calculated.

43.23.260 - .270 are the penalties, enforcement, subpoena and investigatory power of the commissioner and the Department of Revenue related to enforcement. There are other criminal statutes related to enforcement, but I couldn't put them in here because it's not my expert area. And, also, I really wanted to end this presentation at some point. So here we are. It's the end. We've made it.

Representative Johnston: Representative Merrick.

Representative Merrick: Thank you, Madam Chairwoman. I had, again, just a history question here. On 43.23.140, it says 20% of the annual permanent fund dividend is exempt from levy of the law. Why is that 20% exempt?

Emily Nauman: Through the chair to Representative Merrick. Again, I don't know where that specific number came from. I'm happy to look into the legislative history of that statute and find out for you why that number is there. I presume that at some point, the legislature just had to pick some number that seemed fair, but that's all I can speculate.

Representative Johnston: Any other questions? Representative Wool.

Representative Wool: Thank you, Madam Chair. And, to understand her question. Is she saying that if a dividend check is garnished, only 80% can be garnished? Is that what that means? That 20% can't be levied.

Emily Nauman: Through the chair to Representative Wool. This is a more complicated issue that I boiled it down to in this slide. Certain of the types of claims that are in the small print there can take your entire dividend, but that's the principle concept, is that 20% of your dividend remains to you.

Representative Wool: Follow-up.

Representative Johnston: Follow-up.

Representative Wool: I'm guessing that maybe so that people continue to apply so they at least get something, and then the debt, the person they owe, gets something too.

Representative Johnston: Representative Kreiss-Tomkins.

Representative Kreiss-Tomkins: Thank you, Madam Chair. On slide 57, the restorative justice account, how is it determined what percentage within these percentage ranges, is appropriated? Or is that a part of the legislature's budget process?

Emily Nauman: Through the chair to Representative Kreiss-Tomkins. These stands of percentages are exactly as they appear in the statute, I just spaced them out. So, I would guess that you are right, and of course, you are fundamentally right that the legislature can appropriate and move the money however they would like in whatever proportions.

Representative Kreiss-Tomkins: Thank you.

Representative Johnston: Representative Wool.

Representative Wool: Thank you, Madam Chair. So, the part where people become illegible for programs, let's say food stamps. So, what you're saying is they get, say six checks, at \$2,000, which is \$12,000 for a family. And that puts them over the eligibility for federal food stamps, that the state will then reimburse?

Because I have heard people say that they're not eligible for certain programs, whether it's, you know, transportation or day care assistance and things like that due to their added income of a permanent fund check. But you're saying, and maybe they are not aware of the reimbursement potential, but you're saying that there is no case that someone is ineligible due to the permanent fund, state or federal, because they will get reimbursed on a Federal program like food stamps?

Emily Nauman: Through the chair to Representative Wool. I'm just reading the statute and we can all do that. It's difficult to answer your question without knowing, I don't know the Department of Revenue's regulations related to how they interpret this statute and the programs they might, or may not, include. I could definitely do some research and get back to you. I'm not sure how this is executed, you know, down to the details. The Department of Law might have an answer for you, but it's not an area of law that I am familiar with off the top of my head.

Representative Wool: Yah, it was several years ago, but I had people come to my office saying that the added income made them ineligible for certain day care assistance and stuff like that. And, the amount of assistance they would have gotten would have exceeded the amount, in some cases, of the PFD.

Emily Nauman: I'm just looking at this statute through the chair to Representative Wool. I'm looking at 43.23.240(d). The specific type of federal assistance. So, it could be that the assistance your constituent was concerned about, falls outside of the permissible reimbursement.

Representative Wool: Thank you.

Representative Johnston: Any other questions? Yes.

Representative Kreiss-Tomkins: Thank you. Related to Representative Wool's question, if 43.23.240 - .250 notable and I was interested as a work product for Leg Legal, or Finance, or whomever, could be possible to, sort of, inventory the different asset threshold the state has for different programs. And, I'm, sort of, interested in the symmetry or asymmetry across to the different assets' thresholds. And, then, I'm particularly interested in this because it was brought to my attention by a constituent from Petersburg that there's an asset threshold per Medicaid that's been unchanged since 1989. And, this individual, basically related, the hoops and contortion he has to go through every year to stay under the threshold, particularly around the permanent fund dividend. So, that's, sort of, the origin of my curiosity was to have a full landscape of this asset threshold.

Emily Nauman: Through the chair to Representative Kreiss-Tomkins. That would be an excellent question for Legislative Research.

Representative Johnston: And, I might say that this also could be a question to the Division of Revenue too, because I think that this is a cost of the dividend, and concluded in the calculations of the dividend, and when I have looked in the past, as far as having a quarterly dividend, or a monthly dividend, this cost becomes quite expensive. Any other questions?

Senator Bishop: Thank you, Madam Co-Chair. Good job today on the presentation guys. I just wanted to bring another tidbit that hasn't been talked about. And, it's the genesis to this whole fund.

And it's going back to the original lease sale while a \$900 million lease sale that blew everybody's wildest expectations out the window when we received \$900 million in what 1968, 1969. And, the genesis for the fund because some people say the money was squandered. That's open for debate. Alaska needed a lot of assets because we were a relatively new state.

But, with that being said, I'd like for the people at home to know that the legislature paid that \$900 million back to the fund in 1981, as a symbolic gesture, of the original money spent.

I'd also like to go on the record that we get tagged from time to time, different analogies, but I'd also like to put on the record that the legislature has put \$7.1 billion above the law into the corpus. This year the legislature, and I'll let Senator Stedman get to that because he does a lot better job saying it than I do. But, I just ... so notwithstanding what he's going to say here in a second, but above and beyond up to what we just did. Senator Stedman, I'd like you to take it from there.

Senator Stedman: Mr. Chairman, I think the legislature as a whole this year has given the governor and the rest of the people in the state an opportunity to tuck away in excess of \$10.5 billion into the corpus. We are going to find out here pretty shortly if that's finalized or come back and we'll work on it some more. Either way, I think there's a clear intent ensuring that the corpus grows regardless of what we do in this process in the next couple of months with the dividend.

Representative Johnston: And, follow-up on both of the comments. I think this is the first time we have more funds in the earnings reserve account than we actually do from the deposits of the mineral wealth, which is, kind of, a flip that we have never seen before. Representative Merrick.

Representative Merrick: Thank you, Madam Chairwoman. To Senator Bishop, that's those additional funds that are deposited above and beyond what is required. Are those monies calculated the same when you're talking interest for the permanent fund dividend? Is that all calculated as one lumpsum in the corpus, or are those divided out?

Senator Bishop: Not to my knowledge, but if you want 100%, then you'd have to ask David Teal.

Senator Stedman: Mr. Chairman? If I can help with that, we can have permanent fund income in and talk about it, but it's all comingled. And it's just basically an accounting entry in the corpus and the non-corpus, to keep track of it. It's a homebuilt portfolio.

Representative Johnston: And, to that point also, the legislature did put additional funds that were not, that were outside the corpus and outside the earnings reserve into the fund. Yes.

Emily Nauman: One, short closing comment. One thing that may seem extremely evident working for Legislative Legal Services is that the work of the legislature is extremely difficult. My friends frequently ask me, oh, isn't it terrible to work in a job where someone just sends you

over to the things to draft, and you don't get to chose anything. I say, no, it's the best thing ever. I don't have to make these big huge, difficult decisions, and I don't envy what you guys do and the decisions that you guys have to make in the next couple of weeks and years. My only wish is that I could help inform your decisions better. Our office is always available as a resource to you and we look forward to hearing from the Working Group from each of you individually, and from the legislature as a whole. And, I wish you good luck as you continue.

Representative Johnston: Seeing no further questions. Thank you very much. It was a great presentation. And, I know it took a lot of work. If I could, I would like to ask the Department of Law to come back up if they have any additional thoughts on what was just presented to us. And, also, the Department of Revenue. There were questions that were asked earlier and throughout the day and if they have any answers to the questions that were asked, that would be helpful too. Thank you.

Cori Mills: I'm just going to make sure the Department of Revenue is on. I know she's been watching. Cori Mills, again for the record.

Bill Milks: Bill Milks.

Cori Mills: I know Bill had jotted down a few notes and I'll add on.

Bill Milks: I jotted down a few housekeeping things to follow-up. There was a, after that very thorough presentation, I am sure if you were tracking along and reviewing it as it went through, it's a very thorough review of the statutes that Legislative Legal Services just provided.

A couple of questions. There was a question about the Earnings Reserve Account, sort of like, I think maybe Representative Kreiss-Tomkins had a question about how long has that been, you know, when did that start. And, you know, the earnings reserve account was, 1986, it was established, but prior to that, well from the beginning of the permanent fund until 1982, the income went into the general fund.

Pursuant to that final sentence. And, then from 1982 – 1986, there was the creation of an income fund, then a permanent fund. It was known as the undistributed income account.

In 1986, it'd renamed the earnings reserve account, and that's where it's at.

So, I believe there was a question, I think, that related to constitutional amendment on the dividend. The governor had presented with those discussions. Representative Kreiss-Tomkins, or maybe Representative Wool, Senator Hughes. And, all we were going to point out is that proposed amendment explicitly provides that no appropriation is required for the payment of the dividend. So, that's a follow-up from a *Wielechowski* decision.

Senator Bishop: Can you repeat that again?

Bill Milks: Yes, the proposed Amendment SJR 5, and um ...

Cori Mills: HJR 6.

Bill Milks: It couldn't be the same number, so we always have to try to keep track of them. But, the amendment proposed, that proposes a permanent fund dividend, placed in the constitution, the language provides that there would be no appropriation required to move the money out of the earnings reserve account and be paid to the dividends.

Cori Mills: Cori Mills, for the record. I think it was referred to but, just to be clear, the Amendment does not set an amount allotted. The constitutional amendment on the permanent fund either constitutionalized the statute, like put the statute in the constitution or did some sort of split, but the governor's proposed constitutional amendment just established that, you know, the legislature and the governor could establish that amount by law. And, then what Mr. Milks was referring to is then there is a specific sentence to say no appropriation is necessary. And, that was specifically to address the *Wielechowski* case and how the supreme court interpreted unless otherwise provided by law and the current permanent fund provision. I'm not sure there was anything else.

Bill Milks: There was the reference to do with the leases, I think.

Bill Milks: Which leases. Certainly, the Department of Revenue would be the definitive source for that. But our standing is that the pre-1980 leases are the most valued leases as far as production and quantities.

Cori Mills: And, my understanding is it's about the 31...I have heard anywhere between 31 and 35%, you know, it can depend on what comes in each year, but it hovers around that amount if you take all of the royalties as set forth in the statute.

Senator Hughes: I have a question.

Representative Johnston: Yes, Senator Hughes.

Senator Hughes: And this, that's just your understanding of legislative intent, but my understanding is with statutes, that legislative history is very important and that the meaning is derived actually from that when it's a statute and not an appropriation bill. And, is that your understanding?

Bill Milks: Through the chair to Senator Hughes. Yes, I mean, the Alaska Supreme Court developed guidelines on how to interpret statutes. And, certainly the language is the most important.

Well, the objective is always to understand the intent of the legislature. So, the words are most important, but other evidence of legislative intent, in writing, in statements on the floor when the matter is up for a vote, committee hearings.

Yes, legislative intent is....the plainer the language of a statute, there is less necessity for the court to go searching for legislative intent. But we'll look at the legislative intent and that's a common tool for how Alaska courts interpret Alaska statutes.

So, it is, I think, as I understood you, Senator, before would we also get into the world of intent language in appropriation bills. Those processes are not really identical, because the bills become statutes.

You look at what was the intent of this statute and there you're looking for evidence of legislative intent from how the bill. Well, I've already explained what you look for there. In appropriation bills, it's common that the legislature will put some things that we call intent language and in general the courts have said that that's not binding on the executive. There will be some kind of direction, or intent, to the executive branch and that's, sort of, a different kind of use of that term, intent.

Senator Hughes: Follow-up?

Representative Johnston: Yes.

Senator Hughes: So, when Chair Al Adams sent the letter of intent from the House Finance Committee, which would have been the last committee of referral, well before Rules and going to the floor. And, he stated that the, basically, that 50% of the PFD would be the priority. And the House then votes on it. That would then become the legislative intent of the House at that point. I mean, is that how you would interpret that?

Bill Milks: Through the chair, Senator, we are talking about a statutory dividend formula. So, I think that, now I am going to explain, I sort of have to work our way through this process as far as how we look at it legally, which is what the supreme court in the *Wielechowski* case did, to reach a ruling that the appropriation will ultimately govern. So, then, will govern, if it's on this specific issue, dealing with the permanent fund dividend statutory formula.

But the appropriation will govern the decision. If you're looking at intent, try to understand what should be the guide to consider policy questions like, what was meant by the 1982 dividend statute. And that is certainly useful material to consider.

But, sort of, on two different planes. It's useful for the legislature now, of course, to be aware of their intent and consider it. But the court has to stand in its role and decide between an appropriation and a statute, and when they are dealing with money, they will have to follow that decision.

Representative Johnston: Any other questions? We can have the Department of Revenue call in if we have any other questions for the Department of Revenue. Is anybody interested, or are we? I think there were a couple of things that were asked and our staff has made notes, and so, we'll get back with each of you with whatever the answers were.

Cori Mills: Co-Chair, in case you want the Department of Revenue, I did get a note that they are actually on hold. They are waiting to get put through.

Representative Johnston: Oh, okay.

Cori Mills: But if there is no need. I think she was going to follow-up on specifically the changing the residency requirements to two-years and what that would do for eligibility. How

many less people, or how that would change the numbers, in particular, she was going to respond to.

Representative Johnston: Would you like an answer to that or are we fine in writing?

Representative Kreiss-Tomkins: I think that might have been Senator Hughes' question? I'm certainly good.

Senator Hughes: I would like to know.

Representative Johnston: Okay.

Senator Hughes: If she's got it figured out.

Representative Johnston: Yes, if she can call in, that would be great.

Cori Mills: Okay.

Anne Weske: For the record, this is Director Weske with the permanent fund dividend Division. Yes, I did it through the phone line. So, in regards to that question, I just wanted to, I am happy to get exact numbers for you all.

I did want to just clarify that a large portion of the change that you would see, if the residency requirement was changed from one-year to two-years, really would be just that first year would push off what we would estimate at this point to be roughly maybe 20,000 individuals.

To not be eligible until the next year. But the actual realized savings would only be affecting an individual who only qualified for one-year, which is the number I'm going to dig up for you guys.

That's going to be a really small number, because most individuals who are qualified for a dividend are in the program for more than two years. And, so I will get that, just so that you have number, but I just wanted to make that point that it's probably going to be a fairly change and again, that first year we will see a large savings until the second year comes along and everybody is able to join yet again. So, I am happy to do that research.

Representative Johnston: Thank you. Any other questions? Yes, Representative Merrick.

Representative Merrick: Thank you, Madam Chairwoman. For the Department of Law, the governor's administration has made it clear that any changes to the calculation of the permanent fund dividend, needs to come before a vote of the people. I know, we've heard about previous advisory votes. Can you explain what that is and the difference, you know, what is the other option and what is it that the administration is looking for when we put something for the Alaska voters.

Cori Mills: Cori Mills, again for the record. So, there's two things there. First of all, the governor did come out with a constitutional amendment, which would go before the voters. And, that's one process in which those people get to weigh in.

An advisory vote is basically passed as a bill, as legislation, and it sets forth a ballot question.

In 1999, there was a ballot question put forward that dealt with the permanent fund and it had an entire preamble explaining a whole, you know, budget proposal, but that particular legislature had. And then it had a specific question on, do you want the earnings of the permanent fund to be used for government services, or something like that.

There are different ways you can phrase that could be drafted. And then it gets put on, either it can be set as a special election, that's put for a specific date that the Division of Election would then have to run and you'd get a fiscal note accompanying that bill that would say how much putting on that special election would cost.

Or it could be, you know, put on whenever the next statewide election would be. So, those are the two, kind of, avenues that we see for putting things directly before the people, or passing, you know, like I said the constitutional amendment that actually requires the vote of the people on certain questions. That was in all of the governor's constitutional amendment proposals as well.

Representative Merrick: Follow-up?

Representative Johnston: Yes.

Representative Merrick: So, the outcome of the advisory vote, is that binding?

Cori Mills: Through the chair to Representative Merrick. No, it is not. I think both Legislative Legal Services and the Department of Law in the past have advised that it is likely unconstitutional to have a binding vote, because you have an initiative and referendum process. You have a legislative process. And, never the two shall meet.

Representative Merrick: So, it's sort of like a poll?

Cori Mills: Representative Merrick, correct. It's a poll informing the legislature of the sense of the people so that then the legislature can determine what it would like to do.

Representative Merrick: Thank you.

Representative Johnston: Are there any? Do committee members want to make any wrap-up comments before we close out business? Okay. Representative Wool?

Representative Wool: Thank you, Madam Chair. It's a lot that we've heard today. I guess, I want to touch back on one comment that I made earlier at the very beginning, which was about the votes on the constitutional amendment in 1976, of which there was a 2-1 majority to support it.

The permanent fund, the structure of the permanent fund, the inception of the permanent fund, and that last line in that constitutional amendment should be, not donated, but to the general fund. What's the word? Um, transferred?

Representative Johnston: Deposited?

Representative Wool: Deposited, thank you. Deposited into the general fund, unless otherwise specified by law.

And, I said, well, so the majority of the people voting, I mean, the voting public thought that they were creating a fund that the remainder of which goes to, or the earnings of which, goes to the general fund.

And, well, there was some discussion going around in the legislature and other places, about this dividend, which I am sure there was. But the average voter may not have been privy to that and, knowing what I know now, about how voters stay on top of all of these issues, I am even me coming down here today, I was talking to some friends last night, who are, you know, follow the issues somewhat, but they didn't know any of this stuff about POMV money. And, POMV versus statutory formula for the dividend. They didn't know what the big hub up.

So, even though we think about it as, man, this is a big issue and everyone should know about, I say that maybe the average voting public doesn't know and when they voted on the constitutional amendment, they just said, yes, let's set up a fund so that when we run out of oil, we will still have some long-lasting revenue.

Other than the non-renewable resource. So, whether we talk about it in a room like this or in Juneau, I think sometimes doesn't stay on top of every little issue and maybe the dividend was talked about, but I'm not sure that everyone was aware, and I guess it goes back to the legislative intent and all these things, but when we are talking about putting something to the vote of the people, I think it's really important that they really know what's on the ink. What they are voting for, and not something that may be implied in a meeting or in a discussion. So, when it says the earnings go into the general fund. I take that, kind of, at face value.

Representative Johnston: Thank you. So, Co-Chair Bishop and I would like to remind all members that their assignments are due on Wednesday, June 27th and at our next meeting we will have our teams present their papers.

The next meeting will be held on June 28th. The location is still to be determined. We will try to get that out to you as soon as possible. We're just looking at costs of different locations. And, please plan for another all-day long meeting. Is there anything else to come up before the working group before we adjourn?

Senator Hughes: Madam Chair.

Representative Johnston: Yes, Senator Hughes.

Senator Hughes: Is the 27th a Thursday? I think it's a Thursday and you may have said Wednesday.

Representative Johnston: So, it's a Thursday.

Senator Hughes: Is it due Thursday the 27th?

Representative Johnston: Right.

Senator Hughes: Okay.

Representative Johnston: We'd just like to see them before our meeting on the 28th. That's so staff can have them prepared for the general public and each of the committee members. Okay. Not seeing any other comments.

The time is almost 3:50 p.m. and this meeting is adjourned.