

LEGAL SERVICES

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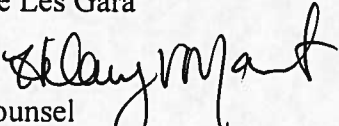
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 22, 2013

SUBJECT: Constitutional amendment to include permanent fund dividend
(Work Order No. 28-LS0691\A)

TO: Representative Les Gara

FROM: Hilary Martin 
Legislative Counsel

Enclosed is the resolution your requested, proposing an amendment to the Alaska constitution that moves the formula for the calculation of the dividend to the constitution.

In order to put the dividend calculation from AS 43.23.025 into the constitution, it was also necessary to establish the earning reserve account in the constitution. This language comes from AS 37.13.145.

Although the resolution would likely be considered an amendment to the constitution, out of an abundance of caution, I wanted to warn you that the proposed changes to the constitution could be viewed as a revision instead of an amendment, and therefore require a constitutional convention.

In *Bess v. Ulmer*, the Alaska Supreme Court analyzed three proposed amendments to the Constitution of the State of Alaska to determine whether the proposed amendments were actually revisions to the constitution, requiring a constitutional convention.¹ The *Bess* court laid out guidelines to follow in order to determine whether a change to the constitution is an amendment or a revision. A court will analyze the quantity and quality of the proposed changes, and whether the proposed changes are "few, simple, independent, and of comparatively small importance" or "whether the changes are so significant as to create a need to consider the constitution as an organic whole."²

The proposed changes in the resolution amend and add two new subsections to an existing section, and add an additional section to the constitution. This is not a large

¹ 985 P.2d 979, 981 (Alaska 1999).

² *Id.* at 987 (quoting Judge John A. Jameson, *A Treatise on Constitutional Conventions; Their History, Powers, and Modes of Proceeding*, § 540 (Chicago, Callaghan and Company, 4th ed. 1887)).

Representative Les Gara

March 22, 2013

Page 2

number of changes, and the changes are discrete, establishing an earnings reserve account and specifying how exactly a dividend is to be calculated.

It is difficult to predict how a court might determine the issue, as there have not been any other Alaska cases on this issue post-*Bess*, however, I suspect the changes proposed in this resolution would be found to constitute an amendment rather than a revision.

HVM:ljw

13-191.ljw

Enclosure