

LEGAL SERVICES

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MEMORANDUM

February 19, 2019

SUBJECT: Early funding for education (Work Order No. 31-LS0556\A)

TO: Senator Mia Costello
Attn: Tom Wright

FROM: Meera Caouette 
Legislative Counsel

Attached is the draft bill you requested that requires the legislature to pass a separate appropriation bill for education by March 31 of each year. Note that the draft bill would require future legislatures to act in accordance with a statute passed by a past legislature.¹ The practice of binding a legislature is referred to as "legislative entrenchment"² and is "widely regarded as inconsistent with the basic principles of democracy."³ Under the current constitutions of both the United States and Alaska, if a legislature wishes to bind a future legislature, it may do so only by constitutional amendment. By entrenching legislation, one legislature lessens the power of all future legislatures. Stated another way, if entrenching legislation were permissible, the authority vested by the constitution in one session of a legislature would diminish the authority of the next, thus impairing the subsequent legislature of its ability to exercise full constitutional powers.

The United States Supreme Court has consistently held that entrenchment of ordinary legislation is unconstitutional and has shown a willingness to prevent a state legislature from binding its successors.⁴ The Alaska Supreme Court has also held that a legislative body cannot bind itself to take a future legislative action.⁵

¹ Keep in mind that a current legislature could always repeal the statute.

² See John C. Roberts & Erwin Chemerinsky, *Entrenchment of Ordinary Legislation: A Reply to Professors Posner and Vermeule*, 91 Cal. L. Rev. 1773, 1778 (2003).

³ *Id.* at 1775.

⁴ See *Newton v. Commissioners*, 100 U.S. 548, 563 (1879).

⁵ *Mount Juneau Enterprises, Inc. v. City and Borough of Juneau*, 923 P.2d 768 (Alaska 1996).

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If the legislature does wish to entrench legislation, such as the attached draft bill, it has one option: a constitutional amendment. Both the Constitutions of the United States⁶ and Alaska⁷ already contain entrenchment provisions. Without a constitutional amendment, the March 31 deadline in the draft bill would not be binding on future legislatures.

If I may be of further assistance, please advise.

MBC:boo
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Attachment

⁶ Roberts and Chemerinsky, *supra* note 5, at 1782.

⁷ *See, e.g.*, art. IX, sec. 1 (the power of taxation shall never be surrendered); art. IX, sec. 15 (dedicating a stream of natural resource royalties to the Alaska Permanent Fund); art IX, sec. 17(c) (requiring a three-fourths vote of the legislature to access the constitutional budget reserve).