

LEGAL SERVICES

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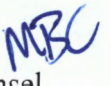
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 24, 2019

SUBJECT: Forward funding education
(CSSJR 9(JUD); Work Order No. 31-LS0561\K)

TO: Senator Shelley Hughes
Attn: Regina Largent

FROM: Meera Caouette 
Legislative Counsel

You have asked whether there are potential constitutional issues raised by amending the Alaska Constitution to require forward funding of education by one year. I do not believe that such an amendment would raise any significant constitutional issues.

As with most resolutions that amend the state constitution, the resolution may invite scrutiny under *Bess v. Ulmer*, 985 P.2d 979 (Alaska 1999). *Bess* established that:

In deciding whether the proposal is an amendment or revision, we must consider both the quantity and quality of the proposed constitutional changes . . . an enactment which is so extensive in its provisions as to change directly the "substantial entirety" of the constitution by the deletion or alteration of numerous existing provisions may well constitute a revision thereof [while] even a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision also.

The process of amendment, on the other hand, is proper for those changes which are "few, simple, independent, and of comparatively small importance." The core determination is always the same: whether the changes are so significant as to create a need to consider the constitution as an organic whole.¹

Bess, 985 P.2d at 987 (notes omitted).

¹ *Id.* at 987. The Alaska Supreme Court, in *Bess v. Ulmer*, adopted a hybrid of approaches used in Florida and California to determine whether the three constitutional amendments in that case were constitutional revisions or amendments. *Id.* ("We take a hybrid approach."); *id.* at 988 ("Under our hybrid analysis . . .").

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The changes made by this resolution are relatively "few, simple, [and] independent." Qualitatively, the resolution you are considering would make changes that touch on the powers of the governor and the legislature by requiring forward funding of education. Thus, an argument could be made that the resolution makes the type of "sweeping change" that is not permitted to be accomplished in an amendment to the state constitution proposed by the legislature. However, in my opinion, the resolution that you are considering is not significant enough to be considered a revision under the *Bess* standard and can likely be achieved through a constitutional amendment. Because the legislature may currently forward fund education, as has been done at least three times in the relatively recent past, a requirement to do so rather than provide for an annual appropriation seems to avoid the kinds of sweeping change that would necessitate a revision. The appropriation would continue to be subject to veto and to reappropriation or amendment.

If I may be of further assistance, please advise.

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MBC:kwg

Attachment