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From: Alisha [redacted]
Sent: Wednesday, March 23, 2022 9:53 AM
To: Senate Labor and Commerce; Sen. Elvi Gray-Jackson; Sen. Gary Stevens; Sen. Peter Micciche; Sen. Joshua Revak; Sen. Mia Costello
Subject: Public testimony against SB234

Hello my name is Alisha Asplund I live in district D8 and will be representing myself to day as I testify against SB234. The reason I am against SB234 are explained below.

While I have no problem with the idea of broadband parity, I cannot support this bill because I believe the part that deals with the broadband parity adjustment fund is misleading, and contains directly contradicting descriptions which will lead to loss of public trust and undermine the integrity of legislators, the legislative process, the legislative branch of government and the constitution. And is an attempt of legislators to act outside the limitations of the constitution.

I will start on Page 3 Lines 12-17
"The broadband parity adjustment fund is a separate fund in the treasury for the purpose of (1) offsetting the costs of broadband services for consumers under (b) of this section; and (2) making grants to eligible beneficiaries under (c) of this section to improve the performance of and access to broadband across the state." Page 3 Lines 12-17

This fund consists of "Money appropriated by the legislature "page 3 line 26

Mercian -Webster.com Dedicated: given over to a particular purpose

The above description very much sounds like state revenue is being appropriated into a fund dedicated (or given over) to a special purpose.

The legislature seems to feel that this can be fix by simply inserting the words "fund is not a dedicated fund" in to page 4 line 1.

This may be good enough to fool the courts into believing that this designated fund does not give its budget item an unfair advantage in the "annual appropriation model" reinforced in Sonneman v. Hickel,

> The constitutional clause prohibiting dedicated funds seeks to preserve an annual appropriation model which assumes that not only will the legislature remain free to appropriate all funds for any purpose on an annual basis, but that government departments will not be restricted in requesting funds from all sources. As the debates make clear, all departments were to be "in the same position" as competitors for funds with the need to "sell their viewpoint along with everyone else." 4 PACC 2364-67 (Jan. 17, 1956). We conclude therefore that the limitations on the ability of DOTPF to ask for funds from the Marine Highway System Fund expressed in AS 19.65.080(b) amount to a dedication in violation of article IX, section 7.

but I believe it truly only leads to confusion, mistrust and misunderstanding which I will discuss later in my testimony. And also leads to the following questions which I do not have the answers to:

1. Does state revenue money that has been appropriated by the legislature into this fund have a particular purpose as page 3 lines 12-17 clearly states by using the words "for the purpose of" or has no special purpose as page 4 line 1 implies by the words "not a dedicated fund"?
2. Is it the intent of the legislature that broadband get first call on any money in this fund and have more of a right to the money in the fund (named for it and description says is has that purpose) than any other budget item not described in the fund?

a. Thus, giving this annual budget item an undue advantage (in regards to the money in this fund) over all the other annual budget items. This would seem to contradict what the court described in Sonneman v Hickel as the "annual appropriation model". (See quote later in my testimony).

3. Have the Alaskans who support this bill been misled (with intern or through incompetence) to believe that the money in this fund will be used for a special purpose?

Now let's look at this line of SB234
The legislature may appropriate money from the broad band parity adjustment fund to the office of broadband to carry out the purposes of the fund. Page 3 line 30-31
This makes it sound like this money is to be used "to carry out the purpose of the fund" but which lines of the bill should be used to understand what "to carry out the purpose of the fund" means:

Page 3 Lines 12-17 which say the fund was created "for the purpose of (1) offsetting the costs of broadband services for consumers under (b) of this section; and (2) making grants to eligible beneficiaries under (c) of this section to improve the performance of and access to broadband across the state. "

Or page 4 line 1 "fund is not a dedicated fund" so has no special purpose and may be appropriated for any purpose that is within constitutional limits so it must be used "for a public purpose" Article IX Section 6, and this purpose must be "solely for the good of the people as a whole" Article I Section 2.

Which leads us to the following question:

1. How far reaching is the power that the legislature is delegating to the office of broadband with the line "to carry out the purpose of the fund"
    a. if the office of broadband uses the description on page 3 lines 12-17 it is confined to using the money in two very specific purposes, but
    b. if they use the description on page 4 line 1 it would allow the office of broadband to use the money for any public purpose which is solely for the good of the people as a whole?

The legislators seem to feel that they can describe a fund to make it sound just like a dedicated fund to be used for a specific designated purpose and then fix this constitutional violation by just stick in the direct contradiction "that it is not a dedicated fund "and therefore has no special purpose. This direct contradiction leads to loss of integrity and trust in the legislature because if legislators follow their constitutional obligation to treat these moneys just like all other general fund moneys these legislators seem to be breaking the law because the public have the reasonable belief that statutes are legally binding and enforceable or that these legislators are breaking the promises directly implied when a fund is clearly described in statute as having a specific purpose. Just sticking the words "not a dedicated fund' may be enough to fool the courts but when legislators have purposely misled the public into believing the fund has a specific purpose this leads to the loss of integrity and trust in legislators and the legislative branch of government. This action by legislators leads to the violating the Ethic Act

Sec. 24.60.010. Legislative findings and purpose.

The legislature finds that

(1) high moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state;

(2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest;

But the question then becomes which legislators are responsible for this loss of integrity and trust?

1. The legislators who made the implied or direct promise to the public, or added the conflicting descriptions that could lead the public to believe that money in the fund would be used for a special purpose which would be unconstitutional if it were binding or

2. the legislators who fulfill their constitutional responsibility by treating the money in these designated funds just like the money in unrestricted general funds?

Now let us look at the words “created as a separate fund in the treasury” on page 3 lines 12-13
I noticed that the legislators and the lawyers used the word “created as a separate fund in the treasury” and not the words “in the general fund” this seems to be an attempt to allows money in this fund to evade Article IX Section 17(d) if I correctly understand comments made in committee meeting this year. And not be used to pay back the legislature’s debt to the CBR. Evading Article IX Section 17(d) seems to be an attempt get around the need for the need for the ¾ vote needed to appropriate money from the CBR back in to this fund so that the fund can evade the effects of Article IX Section 13 which says unused moneys are swept back to be available for the “annual appropriation model”.

Attempting to evade the effects of rules of the constitution is a direct violation of their oath to support and defend the constitution. Article XII Section 5

This bill seems to be legislators attempting to use an indirect method to act outside the limits of the constitution. Which from the quote form KIMOKTOAK v. STATE

> Finally, we note that in *Campbell*, we recognized the well-established rule of statutory construction that courts should if possible construe statutes so as to avoid the danger of unconstitutionality.[6] We have alluded to this rule on many other occasions. *E.g.*, State v. Martin, 532 P.2d 316, 321 (Alaska 1975); *Hoffman v. State*, 404 P.2d 644, 646 (Alaska 1965). It recognizes that the legislature, like the courts, is pledged to support the state and federal constitutions and that the courts, therefore, should presume that the legislature sought to act within constitutional limits. 2 *Sutherland Statutory Construction*, § 4509, at 326 (Horack 3d Ed. 1943).

we can see that the courts would deem this to be inappropriate behavior which would never be attempted by someone who has sworn to support and defend the constitution.

Masons Manual of Legislative Procedure also prohibits this kind of behavior.
Masons Manual of Legislative Procedure 2020 edition Sec. 12 “A legislative body cannot make a rule that evades or avoids the effect of a rule prescribed by the constitution governing it and it cannot do indirectly what it cannot do directly.”

Sec. 12. Rules Must Conform to Constitutional Provisions

1. A legislative body cannot make a rule that evades or avoids the effect of a rule prescribed by the constitution governing it, and it cannot do indirectly what it cannot do directly.

It is also covered in the 1953 edition of the Mason’s Manual of Legislative Procedure which is the editions that the writers of our Alaskan Constitution would have used as a reference. Sec. 73 #3 “the legislature cannot do by indirection that which it cannot do directly.”

3. The legislature cannot do by indirection that which it cannot do directly.

Indirection means -indirectness or lack of straightforwardness in action, speech, or progression
The 1953 version also included

Sec. 26. Fraud Will Invalidate Acts

1. Where there is more than a mere technical violation of the rules of procedure the violation may invalidate the act, and an act will be invalidated where there is fraud or bad faith.

Section 25—Continued
Paragraph 6—
Bennett v. New Bedford (1872), 110 Mass. 433.
Section 26—
Robinson v. Nick (1940), 235 Mo. App. 461, 136 S.W. 2d 374.

Which given the behavior of some current legislators, this section needs to be put back in to The Manual.

Now let's see what the direct and indirect effects of continuing to add these designated funds to all the other designated funds already in statute and see how constitutional these effects seem. And is why that I feel that this practice needs to stop. Not only does it violate the constitution and go against parliamentary procedure it is destroying pubic trust in the legislative process.
By giving a budget item its, very own designated fund gives that budget item legislators attempting to give their chosen yearly budget item a distinct advantage over every budget item which does not have its own designated fund.
It seems that many current legislators feel that ever budget item should have its own designated fund and that there should be a standing balance that each fund should not be allowed to fall below? So instead of following the constitutionally described "annual appropriation model" reinforces in Sonneman v Hickel,

> The constitutional clause prohibiting dedicated funds seeks to preserve an annual appropriation model which assumes that not only will the legislature remain free to appropriate all funds for any purpose on an annual basis, but that government departments will not be restricted in requesting funds from all sources. As the debates make clear, all departments were to be "in the same position" as competitors for funds with the need to "sell their viewpoint along with everyone else." 4 PACC 2364-67 (Jan. 17, 1956). We conclude therefore that the limitations on the ability of DOTPF to ask for funds from the Marine Highway System Fund expressed in AS 19.65.080(b) amount to a dedication in violation of article IX, section 7.

current legislators seem to believe that statutes should be used to fill and protect all the different designated funds, thus removing the need for legislators to meet annually to appropriate money to budgetary items. But since this directly contradicts the constitutional model, I guess it will have to be one of the options brought up if the residents of Alaska call for a constitutional convention this year.

I know legislators like the designated fund model because it allows current legislators to have political control over the legislators who come after them because it is much more difficult to appropriate state revenue for any purpose other than the non-binding statutory described purpose of a designated fund, than it is to freely appropriate state revenue for any purpose from the general fund. As I understand it the General Fund was supposed to hold all available money to make it easy for legislators to know what money was equally available for all budget items to be used in the "annual appropriation model" set up by the constitution. These designated funds make it less clear as to what moneys are equally available for all appropriations and leads to loss of public trust when legislators use their constitutional appropriation power to follow the "annual appropriation model". (See Sonneman v Hickel above)
To me SB234 seems to be just another example of legislators attempting to act outside the limitations of the constitution. The excuse some of them seem to use is that this has been done for years which is an excuse that the

constitutional convention delegates seemed to fear about dedicated funds, as seen from a different quote form

> The constitutional convention committee which drafted the prohibition on the dedication of funds commented that the reason for the prohibition is to preserve control of and responsibility for state spending in the legislature and the governor.
>
> Even those persons or interests who seek the dedication of revenues for their own projects will admit that the earmarking of taxes or fees for other interests is a fiscal evil. But if allocation is permitted for one interest the denial of it to another is difficult, and the more special funds are set up the more difficult it becomes to deny other requests until the point is reached where neither the governor nor the legislature has any real control over the finances of the state. In one Rocky Mountain state the legislature is free to appropriate only 17 per cent of the tax collections; the rest are dedicated.

Sonneman v Hickel of:

The fine line that legislators have played with their designated are not dedicated funds may not have been a problem when the state had enough money to pay for all wanted but not constitutionally required item without taxing Alaskans or reducing Alaskans PFDs, but now that there is not enough money to pay for all of these designated fund items and still follow the statutory PFD, legislators should see that having all these designated funds that say the money in them is for a specific purpose has directly lead to a confrontational and unhealthy relationship between the people of Alaska, the special interest groups that elected officials have created by setting up designated funds for them, and legislators. It has leaded to mistrust in legislators and the legislative process, both when legislators treat these designated funds as dedicated funds, and when they spend money from these designated funds for a purpose other than the purpose described in the statute. Legislators seem to have set themselves up for a lose-lose situation now that state revenue no longer exceeds state spending.

Now we will look further into the easy fix that legislators seem to think can be used to fool the courts into believing legislators are not trying to give this budget item an unfair advantage in the "annual appropriation model' described and reinforced in Sonneman v. Hickel

Are legislators correct when they believe that they can fix the interpretation that this fund is dedicated fund by simply adding "is not a dedicated fund" to line 1 on page 4? I do not believe this fixes the problem – I believe all this does is lead to directly contradicting descriptions of the fund and these conflicting descriptions may be interpreted differently by the courts, the legislature and the public. And since both descriptions use plain language to arrive at their conflicting descriptions, and by reading Sonneman v Hickel

> with its apparent plain meaning. *See* *Alex*, 646 P.2d at 208-09 n. 4 ("the plainer the language, the more convincing contrary legislative history must be").

it seems that this would require the court to look at legislative history and current actions to clear up which one of these plain language contradictions legislators are following. This probe into the actions of legislators is needed to determine how legislators are enacting these conflicting descriptions, and how that can and has resulted in the loss of public trust when legislators and the public interpret these contradictory descriptions differently. The debate on the house floor about the 2021 reverse sweep vote seem to say that legislators are also confused by this contradictory language. The court cases that followed the 2021 reverse sweep vote also indicate how easily these contradicting descriptions lead to conflicts.

I really wish that I felt that I could trust the legislators and legislative process but that it very hard when after reading SB234, I cannot have any confidence as to which category of bills it would fit into. Is it a category #1 bill which would be the only kind that I could support or would it fit into categories #2 #3, or #4, #5 which I feel are damaging to the integrity of the "rule of law", the legislative process, and the legislative branch of government?

See descriptions of bill categories below.

A disheartened Alaskan, who is trying very hard to regain her trust in the legislative process and the integrity of legislative branch of government,

Alisha Asplund

District D8

***Information on the categories of bills**

For nearly a year I have been trying to figure out why legislators keep making cryptic and vague comments about these kinds of bills not being binding and stating that these kinds of bills can be ignored, but I wish to make it clear that I do not believe it to be the intent of the constitution for legislators to purposely create bills that will mislead the people of Alaska into believing that they are creating a bill that will (insert designated fund description or unconstitutional language) then the legislators insert somewhere else in the bill a direct contradiction (insert constitutionally sound language) so a court could give the legislators the benefit of the doubt and say the legislators and the lawyers who write the bills are so incompetent that they are unable to write a constitutional sound bill that does not contain non-binding, or unconstitutional language that would create an unconstitutional law if it was binding or if it was not directly contradicted somewhere else in the bill.

It all started when I watched the April 29th 2021 House Ways and Means Committee, and during that meeting a legislator made the following statements:

- "It is true that the legislature can ignore statutes. That is constitutionally allowed."
- "Because we ultimately make the laws and therefore, we have the ability to disregard law"

She gave these statements to justify why the bill she wished to pass could and should be ignored.

In the February 4, 2022 House Education meeting the same legislator made comments that explained why the bill she wrote would create a statute that could be ignore- the reason it can be ignored is because it had been purposely written to be a nonbinding suggestion. She also seemed to be saying that there were many examples of these nonbinding suggestions already in statute and that made it ok to make another one.

From further information that I collected by watching nearly all committee meetings and floor sessions, during the 2021 legislative season and multiple committee meeting in 2022, and reading bill and court cases, I found what seems to be the following categories for the bills that current legislators feel it is ok to try to pass: (This is a work in progress and may change as I continue to watch and ask questions. I wish to make it very clear that category #1 is the only bill category that I feel legislators can make without violating constitutional intent, undermining the integrity of the legislative branch of government, eroding the rule of law, violating the Ethics Act AS 24.60.010, and/or violate their oath of office.)

1) Bills that will result in statutes/laws that current legislators understand to be binding and enforceable and believe to be constitutionally sound.
    a) By constitutionally sound, I mean legislators and legislative lawyers do not believe the Supreme Court would rule that the binding law would conflict with the constitution.
    b) A binding law that legislators are not allowed to ignore, but would be allowed to change through the legislative process, for passing a bill into law.
    c) Does not contain contradicting descriptions and language, easily misunderstood legal language, misleading plain language that can be interpreted differently by the courts, legislators, and the general public.
2) Bills that will result in statutes/laws that legislators believe can be ignored, because legislators think the constitution allows it, because they believe the binding law violates the constitution.
    a) I do not believe the constitution intended legislators to purposely create a statute/law that legislators feel can be ignored because legislators believe it will contradict or violate the constitution or they feel the Supreme Court has allowed them to ignore similar statutes/laws.
    b) I feel that knowingly creating laws that legislators believe will conflict with the constitution, does not "assure the trust, respect, and confidence of the people of this state", which is covered in the Ethics Act AS 24.60.010. It is also behavior that does not "preserve the integrity of the legislative process" which is another item mentioned in AS 24.60.010
    c) I believe that knowingly creating bills that they believe would violate the constitution if there were binding, is a violation of Article XII Section 5 of the constitution.
3) Bills that will result in statutes/laws that legislators purposely create to be non-binding so that they can be ignored.
    a) I do not believe it is the intent of the constitution for the legislator to purposely make a statue/law that is not intended to be binding or enforceable.
    b) I do not believe that it is the intent of the constitution for legislators to change the definition of law to a mere suggestion that is non-binding and not enforceable, thus undermine the idea that the definition of law as - a rule

formally recognized as binding and enforceable. I believe that by suggesting that a law can be a mere non-binding suggestion, these legislators are undermining the very idea of the "rule of law"

c) I feel that purposely creating laws that can be ignored does not assure the trust, respect, and confidence of the people of this state, and is not a representation of the moral and ethical standard mentioned in AS24.60.010 (1)

d) It is also behavior that does not preserve the integrity of the legislative process or the integrity of the legislative process, which are also items mentioned in AS 24.60.010 (2)

e) I believe creating a "law" which is only a suggestion and a way that current legislators can place political pressure on future legislators to continue to fund these past legislators special interest project, is a not only a disservice to future Alaskans who many have other special interest they wish to fund but also, a disservice to current Alaskans because working on these non-binding suggestions wastes limited time and resources and is often the reason legislators choose to work past the 90-day regular session. This requires state revenue to be used for keeping the legislative session up and running for an additional 30 or more days and then that state revenue cannot be used for critical services or capital project.

4) Bills that will result in statutes/laws that current legislators believe they can disregard because they believe in the acceptability of Representative Spohnholz's statement from the April 29th 2021 House Ways and Means Committee, "Because we ultimately make the laws and therefore, we have the ability to disregard law"

a) This seems to imply that legislators believe they are above all laws which I do not believe is the intent of the constitution and is a horrendously bad belief for legislators to have.

b) I feel that this statement undermines the integrity of the legislative branch of government. How are the people in this state supposed to trust, respect, and have confidence in the branch of government that makes the laws, if that very branch shows no respect for the laws that it makes.

c) There is a difference between disregarding a law or going through the legislative process to change a law. The end result may be the same but only one of those ways upholds the integrity of the legislative process.

d) After hearing Spohnholz's comments in the February 4, 2022 Education meeting it seems one reason why current unethical and immoral legislators might wrongly believe this statement is true, legislators no longer believes that a law is – A rule formally recognized as binding and enforced by controlling authorities, but instead current legislators and the lawyers who advise them believe a "law" is – merely a suggestion that can be disregarded. That is a terrifying belief for the law enacting branch of the government to hold.

5) Bills that will result in statutes/laws that legislators have purposely written with contracting language so that legislators will be able to work outside the limitations of the constitutions but if any one brings the statute before the courts it contains language that will the fool the courts into believing legislators did not intentionally mean to make a statute that allowed them to act outside the limitations of the constitution. These kinds of bills often contain direct contradictions: one part of the bill will contain language that allows legislator to easily accomplish their goal but would be interpreted as being unconstitutional, and a different part of the bill will contain language that is constitutional but would not allow legislators to easily accomplish their goal.

a) I do not believe it is the intent of the constitution for the legislator to purposely make a law that contain contradicting and misleading language so that they can act outside the limits of the constitution.

b) I feel that purposely creating laws which they will use to act outside the limitations of the constitutions is a violation of their oath of office to support and defend the constitution. Article XII Section 5.

c) I feel that to purposely write a bill in the intent of fooling the courts and the people of Alaska into believing that legislators were not intentionally creating a law that would allow them to act outside the limitation of the constitution does not assure the trust, respect, and confidence of the people of this state, and is not a representation of the moral and ethical standard mentioned in AS24.60.010 (1)

d) It is also behavior that does not preserve the integrity of the legislative process or the integrity of the legislative process, which are also items mentioned in AS 24.60.010 (2)

Sec. 24.60.010. Legislative findings and purpose.

The legislature finds that

(1) high moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state;

(2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest;

Section 5. Oath of Office

All public officers, before entering upon the duties of their offices shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as . . . to the best of my ability." The legislature may prescribe further oaths or affirmations.