

Hello, my name is Alisha Asplund. I live in District D8 and am representing myself, today.

I am testifying against HB54. I was unsure which bill version was the most current the one in the full text section or the one in the documents section on the legislatures web site so I cited both.

I wish to thank The Senate Resource Committee for letting me share my public testimony with them. I oppose HB 54. While I think the idea of selling decals in order to gather funds to protect Alaska from invasive species is a good idea. HB 54 is not the way to accomplish it. I wish to thank you for letting me explain why I believe HB 54 cannot legally or constitutionally accomplish that well intended goal.

7 **Sec. 16.20.800. Invasive species management decals.** The department shall
8 annually produce and make available to the public invasive species management
9 decals. The department shall, in conjunction with the Alaska Invasive Species
10 Council, provide for the selection of designs for invasive species management decals
11 and for the production and sale of the decals. The department may produce and sell

(Lines 7-11 page 1 on HB54 32-LS0057\W) or

13 **Sec. 16.20.800. Invasive species management decals.** The department shall
14 annually produce and make available to the public invasive species management

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CSHB 54(FIN)

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32-LS0057\N

1 decals. The department shall, in conjunction with the Alaska Invasive Species
2 Council, provide for the selection of designs for invasive species management decals
3 and for the production and sale of the decals. The department may produce and sell

Lines 13-14 on page 1 and lines 1-3 page 2 on HB54 32-LS0057\N

Legally require the departments to produce decals and make them available to the public.
So, the writers of this bill have guaranteed that state revenue will be spent to produce these decals and make them available to the public.

13 Upon payment of a \$20 fee, a person may purchase an invasive species management
14 decal from the department.

(Lines 13-14 page 1 on HB54 32-LS0057\W)or

5 Upon payment of a \$20 fee, a person may purchase an invasive species management
6 decal from the department. 7

Lines 5-6 page 2 on HB54 32-LS0057\N

The person who pays the \$20 fee in order to purchase an invasive species management decal – They have every reason to believe that their \$20 will be used for the purpose in which they were told that it would. If later their \$20 was used for a different purpose, it could be considered fraud?

14 decal from the department. The legislature may appropriate the annual estimated

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HB 54

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32-LS0057\W

1 balance in the account maintained by the commissioner of administration under
2 AS 37.05.142 to the department to carry out the purposes of this section or to the
3 invasive species response fund established under AS 16.20.820.

(Line 14 page 1 and (lines 1-3 on page 2 on HB54 32-LS0057\W)
or

6 decal from the department. The legislature may appropriate the annual estimated
7 balance in the account maintained by the commissioner of administration under
8 AS 37.05.142 to the department to carry out the purposes of this section or to the
9 invasive species response fund established under AS 16.20.820.

Lines 6-9 on page 2 on HB54 32-LS0057\N

In order for this to not violate the constitution it was written as a suggestion and not a law, because the legal interpretation is that legislators are **not** required to appropriate the state revenue from these decals to:

1. The department to carry out the purpose of this section, or
2. The newly created invasive species response fund

In order to not violate Article IX Section 7 no restrictions can be placed on state revenue.

So, the way that HB54 has been written leads to a direct contradiction.

Which one is the true legal purpose of the \$20 fee?

1. The lines of the bill that leads the public into believing the fee that they pay will be dedicated to the protection of Alaska from invasive species, or
2. The lines of the bill that says the fees paid for the decal can be appropriated for any purpose.

6 **Sec. 16.20.820. Invasive species response fund.** The invasive species
7 response fund is established as an account in the general fund. The fund consists of
8 appropriations made to the fund. Money appropriated to the fund does not lapse. The
9 department may use money appropriated to the fund to manage invasive species,
10 without further appropriation.

(Lines 6-10 on page 5 on HB54 32-LS0057\W)

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15 department may use money appropriated to the fund to manage invasive species,
16 without further appropriation.

Lines 12 -16 on page 5 on HB54 32-LS0057\N

Seem to be the legislators and lawyers who wrote this bill attempting to create a fund dedicated to managing invasive species, since the legislators and lawyers know that the supreme court would not let them directly violate Article IX Section 7 of the constitution.

These legislators and lawyers decided to attempt to indirectly accomplish their goal, by turning words that if they were binding would violate the constitution into words that sound official and legal but have no other purpose than to fool and mislead the public and future legislators in to believe that since these empty meaningless words are in a statute, they have a legally binding meaning.

On the legislature's web site -definitions for statutes and laws are supplied. Statutes are a codified body of laws enacted by the legislature, and laws are rules formally recognized as binding and enforceable by controlling authorities.

What other purpose than fooling and misleading Alaskans could lines 12-16 on page 5 on HB54 32-LS0057\N or (Lines 6-10 on page 5 on HB54 32-LS0057\W) have. If they were not meant to fool and mislead the writer of this bill would have just used their legally binding interpretation which I believe is

- A account is formed in the general fund.
- It is given the name "Invasive species response fund".
- there are no restrictions attached to the moneys in this fund, these moneys are treated exactly like all the other money in the general fund and can be appropriated for any purpose.

- And since they are just general funds any unused appropriation lapses back into the general fund, that is they just lapse back into itself.

So technically there are no lies in the words in line 12-16 on page 5 on HB54 32-LS0057\N or (Lines 6-10 on page 5 on HB54 32-LS0057\W) they are just very misleading and are nonbinding and lack any significant meaning.

So, even if the legislators choose to follow the suggestion given on line 6-9 on page 2 on HB54 32-LS0057\N or (Line 14 page 1 and lines 1-3 on page 2 on HB54 32-LS0057\W) and the money from the decal fee is appropriated into the Invasive Species Response Fund, there can be no guarantee that it will be use as for what the purchaser of the decal rightfully believes that it will be used for. This is because, in order to not violate the constitution, this bill was purposely written so it does not prohibit the legislature from using money in the account or fund for any purpose- just like any other general fund money.

But these legislators who know they cannot accomplish their goal directly without violating the constitution do not seem to have a problem with violating Article XII section 5

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.

By attempting to indirectly evading the effects of the constitution.

After watching the legislators fight over the reverse sweep vote in 2021- if this bill were to pass and become a statute, there are legislators who would have no problem using the threat of public outrage, the loss of public trust, or loss of funding to a legislator's districts to pressure/coerce their fellow legislators into treating these funds as if they were dedicated to the purpose HB54 bill suggests.

Line 14 page 5 on HB54 32-LS0057\N or (Lines 8 on page 5 on HB54 32-LS0057\W) Which says "Money appropriated to the fund does not lapse" would be a direct attempt to evade Article IX Section 13 of the constitution if the bills had not been written to say that the money was already in the general fund so technically it would just lapse back into the general fund which is where it already is.

Section 13. Expenditures

No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.

But since legislators still owe the CBR it seems to be a direct attempt to evade Article IX Section 17(d) of the constitution if the writers of this bill are saying the money in this general fund account or fund will not be directed into the CPR to repay that debt

(d) If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law.

So, after reading through the HB54, I believe that Legislators cannot legally or constitutionally guarantee that the money that Alaskans rightfully would believe they are giving to go toward the noble cause of protecting Alaska from invasive species will be used for that purpose, because such a guarantee put on state revenue would directly violate Article IX Section 7 of the constitution because it would be a fund dedicated for a special purpose.

While I agree with the idea of selling decals to fund the removal of invasive species that are damaging Alaska. HB54 is not the way to do it.

The only way that this will work so that Alaskans can be sure that the funds they are giving to protect Alaska from invasive species are guaranteed to be used for that purpose is if the revenue made from the decals is not considered state revenue.

If the department of fish and game sells the decals the money from the fees would be considered state revenue and would be subject to Article IX section 7 which prohibits dedicated funds. Which would mean all money from the decals could be used just as all other general fund money is used, with no restrictions on what it could be used for- that is it would not have to be used for the purpose stated in HB54.

If the people of Alaska want any kind of legal guarantee that their money be used for a giving purpose, without violating the constitution they have to remove the collection and distribution of the money from government control and put it into the control of the people, volunteers, nonprofits, or local community groups.

The legislators who wrote this bill either:

1. They do not know the only binding effect seems to be requiring the department to produce decals and make them available and set up another government council. The rest of the bill does not seem to have any binding effects. The account established in the general fund can be treated just like all other general fund money- no restriction attached to it, and the rest seems to inform future legislators that if they want to appropriate money as HB54 suggests, they can, but it still has to compete against all the other annual budget items,
2. or they are purposely misleading Alaskans into believing the money they spend on these decals will be dedicated to the purpose stated in HB54

I cannot support this bill because I believe that parts of this bill have been written to create a bill that fit into categories #2, #3, #4. * See below

***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) when the legislators have purposely written it so a court would interpret it to say the statute does not restrict the ability of legislators to appropriate any or all of the money in the funds for purposes not stated in (insert designated fund description)

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 create a Statute that was a nonbinding suggestion.

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, 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, and eroding the rule of law, and violating the Ethics Act AS 24.60.010)

- 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.
- 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 statute/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.
 - 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)
- 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 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.

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;