

LEGAL SERVICES

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MEMORANDUM

May 1, 2019

SUBJECT: Constitutional issues (HJR 7; Work Order No. 31-GH1068\A.1)

TO: Representative Sarah Vance
Attn: Janet Ogan

FROM: Megan A. Wallace
Director



Attached please find the amendment you requested to the above-referenced resolution. Please note that, in my opinion, a court would likely construe that the combination of changes to the appropriation limit and budget reserve fund, along with the establishment of the savings reserve fund, in the same constitutional amendment as a revision rather than an amendment.

The Alaska Supreme Court in *Bess v. Ulmer* 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

¹ 985 P.2d 979, 987 (Alaska 1999). 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 . . .").

The amendment you have requested proposes that the balance of the general fund at the end of each fiscal year shall be deposited in the savings reserve fund, the state retirement system funds, and the Alaska permanent fund. This mandatory deposit is especially restrictive of the legislature's foundational appropriation power² since the legislature may not appropriate from the principal of the Alaska permanent fund and HJR 7 provides limited access to the savings reserve fund. HJR 7 authorizes withdrawal from the savings reserve fund if the amount in the general fund is less than the appropriation limit and only in an amount necessary to provide for total appropriations equal to the proposed appropriate limit.

In sum, the proposed amendment restricts the legislature's power of appropriation. If challenged, these changes may be deemed to be so significant as to create a need to consider the constitution as an organic whole and may be the "sweeping change" that is not permitted to be accomplished in an amendment to the state constitution proposed by the legislature.

If you have any questions, please advise.

MAW:amt
19-073.amt

Attachment

² See *id.* (holding that a proposed change to the constitution was a permissible amendment, because "[i]t does not, however, deprive the executive branch of a 'foundational power,' and as a result does not constitute a revision.)"