

LEGAL SERVICES

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MEMORANDUM

March 11, 2018

SUBJECT: Proposed Constitutional Amendments to the Permanent Fund
(CSHJR 23(FIN); Work Order No. 30-LS0838\T)

TO: Representative Paul Seaton

FROM: Doug Gardner
Director

Summary of CSHJR 23(FIN); (Work Order No. 30-LS0838\T)

Attached is the committee substitute for House Joint Resolution 23 that you requested. This committee substitute provides for amendments to art. IX, sec. 15 of the Constitution of the State of Alaska -- Alaska Permanent Fund. In brief summary, the CS(FIN) you requested provides that: (1) the earnings reserve account is established in the constitution; (2) the legislature shall appropriate 4.75 percent of the percentage of market value ("POMV") of the permanent fund with a five year look-back, from the earnings reserve account to the general fund; (3) the legislature may appropriate from the 4.75 percent POMV transfer from the general fund 33% of the POMV draw for the payment of permanent fund dividends to Alaskans; (4) further appropriations from the earnings reserve account above and beyond the 4.75 percent POMV appropriation require a 3/4 vote of the full membership of each house; and (5) the legislature may appropriate with a majority vote from the earnings reserve account to the principal of the permanent fund at any time (this would allow for inflation proofing by a majority vote).

Discussion

It is the practice of this office when preparing a draft of a joint resolution proposing a constitutional amendment, to evaluate the proposed constitutional amendment under the holding of the Alaska Supreme Court in *Bess v. Ulmer*, 985 P.2d 979 (Alaska 1999). CSHJR 23(FIN) appears likely, if challenged under the test established by the Alaska Supreme Court in *Bess*, to meet the four factors identified by the court: (1) the proposal is simple to express and understand; (2) is complete within itself; (3) relates to only one subject; and (4) substantially affects only one section of the constitution. The court also suggested in *Bess* that if a fundamental power of one of the branches of state government is significantly altered, this could result in the type of "sweeping change" that is not permitted to be accomplished in an amendment to the state constitution.

Evaluating how the Alaska Supreme Court might decide a complex constitutional matter where the court has only one previous case regarding the amendment/revision analysis is, respectfully, not a science. However, in my opinion the attached draft resolution likely

meets the four part test in *Bess*. In addition, the draft preserves the legislative power to appropriate, and accordingly the governor's power to veto an appropriation from the general fund, either to fund state government operations, or to pay the dividends. In other words, under the *Bess* analysis, this proposed draft constitutional amendment is unlikely to be found to significantly alter the fundamental power of the legislative branch (power of appropriation) and the executive branch (veto power).

The original amendment to the Constitution of the State of Alaska that established the permanent fund was a much greater restriction on legislative power of appropriation than the currently proposed amendment, if adopted. In that context, the Alaska Supreme Court is more likely to conclude that CSHJR 23(FIN), if challenged, is an amendment and not a revision to the constitution which would require a constitutional convention.

Conclusion

The attached proposed draft constitutional amendment likely satisfies the four-part test in *Bess*. It is unlikely that the draft amendment would be found to significantly alter the fundamental power of the legislative branch (power of appropriation) and the executive branch (veto power). *If* the legislative power of appropriation and the shared power of the chief executive to veto an appropriation bill passed by the legislature were not both preserved under art. II, secs. 15 and 16, Constitution of the State of Alaska, my opinion regarding application of the analysis in *Bess* would be circumspect and guarded.

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