

LEGAL SERVICES

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MEMORANDUM

April 27, 2016

SUBJECT: Single subject and severability
(HCS CSSSSB 91(FIN); Work Order No. 29-LS0541\T)

TO: Representative Steve Thompson
Attn: Jane Pierson

FROM: Doug Gardner
Director

Ms. Pierson asked about how the single subject rule and a severability clause in a bill work.

The Alaska Supreme Court has held that the purpose of the constitutional single subject provision is to guard against legislative log-rolling, "the practice of deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure."¹ In ruling on single-subject challenges, the Alaska Supreme Court balances "the rule's purpose against the need for efficiency in the legislative process."² The court has previously construed statutes broadly in order to prevent statutes from being "restricted unduly in scope and permissible subject matter, thereby multiplying and complicating the number of necessary enactment[s] and their interrelationships."³ The court has applied the following test in considering whether a bill violates the single subject rule:

All that is necessary is that [the] act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.⁴

¹ *Evans ex rel. Kutch v. State*, 56 P.3d 1046, 1069 (Alaska 2002), quoting *State v. First National Bank of Anchorage*, 660 P.2d 406, 415 (Alaska 1982).

² *Croft v. Parnell*, 236 P.3d 369, 372 (Alaska 2010).

³ *Id.* at 372 - 73.

⁴ *Id.* at 373.

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In applying this test, the court disregards "mere verbal inaccuracies," resolves "doubts in favor of validity," and strikes down challenged proposals only when the violation is "substantial and plain."⁵

The single subject of HCS CSSSSB 91(FIN) is crime and criminal procedure. If an amendment does not relate to that single subject, my opinion is that a severability clause will not likely save the entire bill from invalidation by the courts. If a court finds that there is a single subject violation, it is likely that the entire bill may fail because it will be impossible for a court to determine which part of the bill should be saved. Even with the severability clause, a court may still strike down the entire bill on single subject grounds as that constitutional requirement applies to the entire bill. The severability clause may also have the practical effect of acknowledging to the court that the legislature is aware of the constitutional infirmities of the bill. I also note that under *Mason's Manual of Legislative Procedure* secs. 402 and 616(3) (2010 ed.), an amendment must be germane to a measure to be offered. An amendment that violates the single subject rule is not germane and a presiding officer or chair of a committee may rule an amendment that is not germane out of order.

If I may be of further assistance, please advise.

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⁵ *Id.*