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From: Rep. Max Gruenberg
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To: Mark Gnadt
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From: Carolyn Kuckertz
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Subject: Transcript of Senator French Speech this morning on the Senate Floor 4-26-2011

Good Afternoon Everyone!

Here is a transcript of the speech Senator French made this morning on the Senate Floor about contingency language:

To listen instead: http://aksenate.org/french/042611_french.wav.

Thank you Mr. President. A lot of us are here in a Special Session making contingency plans. Some folks in the Senate would like to be off to Norway. Others would like to be bear hunting. We have family obligations. They've all been put on hold because we are here trying to sort out a difficult matter of important public policy. This is the ninth day of the special session.

At the heart of it, really what's keeping us here is some contingency language inside the Capital Budget that's causing many people concern. I haven't seen a lot of public debate about it. There's been different remarks made in different press conferences and so forth. But I thought I would go ahead and start one here and see what responses it might provoke and of what thoughts other people may have. At the heart of this matter in my belief is the law and the politics of contingencies. Now the law in this area is about the relevant power between two co-equal branches of government and how we share power between the governor's branch and the legislative branch. It's subtle. I'll discuss that a little more at length in a few minutes.

The politics, on the other hands, are not so subtle. The politics started with the governor's proposed oil tax bill and his threat to veto capital projects if the reduction in oil taxes did not pass. Now let's put aside the inverted logic of this assertion of his power. Once that idea was set loose, what happened? Our Finance Co-

Chair from Sitka began to think about how to react to it. First, he had to ask himself which projects in the Capital Budget are the most important. Two-- and having decided they were energy projects in conjunction with legislation we'd passed last year and in conjunction with our own caucus' emphasis on certain subjects, fixing the energy problem being the number one problem. Two, how can fund those energy projects around the state fairly if the governor is going to be swinging his veto axe?

The answer is in section seven of the Capital Budget. There are energy projects in that section. \$400 million worth of energy projects. Basic infrastructure like power line upgrades. There's \$100 million worth of power line upgrades in that Capital Budget. Stuff that AEA has been asking for years. Meat and potato type projects. This is not fancy, it's just what you do to build a strong state. \$100 million dollars worth of power line upgrades. There's energy projects for Soldotna, for Kotzebue, for Snettisham, for Lime Village, for Metlakatla, for Homer and for Fairbanks. In Fairbanks, there's \$3 million for wood stove conversions there. They've got a serious air problem. This helps fund a fix to that. There's money for the Susitna Hydro Project in there-for folks who are listening at home. There's home weatherization funding. There's energy rebate funding. This is an excellent package designed to move the state forward.

You know there's been some talk that these projects have not been vetted. Let me give you just one example of a project that has been. The Whitman Lake project in Ketchikan has a final project from FERC. I think that is about as vetted as you can get. So the co-chair from Sitka thinks, how do I protect these necessary projects? How do I protect them? And he thought up an excellent response to the problem. You weld all those projects into one, into one statewide energy package that does something for every single region in this state. E Pluribus Unum, Mr. President. Out of many, one. Out of many, one. That's what he did. The nation's motto. It's interesting, isn't it?

And he used contingency language in the Capital Budget that said if one is vetoed, they're all vetoed. It's the first time in the state's history this has been done exactly this way. First time ever in fifty years. The senator from Sitka, I think he thought up a better mousetrap. An interesting twist on an old device. I say a better mousetrap because it's a new and improved twist on something that we've tried to do on occasion in the past. We've tried in the past to use contingencies to constrain executive power.

The most well known instance comes from 1997. That year the Legislature, indeed the Senate Finance Committee, wrote a Capital Budget that had several very interesting contingencies. Then Senator Sean Parnell was a member of that Finance Committee. He voted for the bill. Indeed two years later when he was Co-Chair of the Senate Finance Committee, he said "I would never waive the Legislature's rights to include conditional language in an appropriations bill." He was sitting in the exact same seat that the Senator from Sitka is sitting in today when he said that. Remarkable, isn't it? But I do digress a bit.

The 1997 appropriations wound up in court. They wound up in a case and the case is great reading if you are a lawyer. It's 17 pages long and I have a copy of it here. I've read it three times. It's very subtle. It is subtle. It revolves around two constitutional provisions. They're both in Article 2, Section 13 and Section 15. And I brought my constitution with me today. Section 13 is simple: Every bill should be confined to one subject. We know that's called the Confinement Clause unless it is an appropriations bill or one codifying, revising, or rearranging existing laws. So we have an appropriations bill before us. That's section 13. Section 15

discusses vetoes. It says the governor may veto bills passed by the Legislature. He may, by veto, strike or reduce items in appropriation bills. Strike or reduce items. That's what he does in appropriation bills.

In this case, in the '97 case, there was a bunch of language in there and he tried to veto the language and it turned out that language is not an item. Language is not an item. You cannot veto language in an appropriations bill. It took Justice Eastaugh four pages to define what an item is. It's a subtle decision and it takes a while to get through it. But you can't veto language in the appropriations bill. That's as clear as clear can be.

So what we do now is-- The Department of Law has looked at this I'm sure. I'm sure they've looked at this case. I'm sure they've looked at it carefully. I'm sure they've told the governor he can't veto this language. I'm sure the Department of Law is concerned very deeply about what we're doing here. I'm thinking they know we are on to something.

Now, it's interesting that in these contests with the governor, the kind of contest we are engaged in now, we start out with the presumption of constitutionality. The things we do here on this Floor, the bills we pass are all presumed to be constitutional. It's presumed that we think hard, that we work hard and the acts we do are right and true to the constitution. The courts, when they review what we do in this body, will try to uphold our acts. The governor knows this as well.

Don't get me wrong, there are subtleties in the case from '97. It's titled Leg. Council versus Knowles. Both sides, as they read this case, will seize on little languages and sentences and try to support their own case. And though the budget passed in '97, this '97 case, the case was not decided for four years. It tells you that these things can drag out. And we shouldn't have to go there. We, this now, knowing this, knowing that these can be tangled issues shouldn't go there.

I've always been told that if you invent a better mousetrap, the world will beat a path to your door. The governor should be beating a path up to his old offices in the Senate Finance Committee. He should be talking to the co-chairs about which energy projects he supports and which he doesn't. Because it all comes back to those energy projects. It all comes back to building a statewide solution to the crisis the state is facing with respect to energy. He should be talking to them. We should be talking to the other body and the governor as well. I should parenthetically sort of ask, I'm curious about why some legislators are opposing this approach. Legislators should be looking to strengthen our body and not give up power to the governor. The only ones who should be opposing this are ones who might someday want to be governor. I can't imagine who that would be.

The way out of this, in my view, is through logic and through reason. I think that we, this body, the other body and the governor are all up to the task. Thank you, Mr. President.

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