

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 23, 2019

SUBJECT: Appropriation limit
(SJR 6; Work Order No. 31-GS1068\A)

TO: Senator Mike Shower
Chair, Senate State Affairs Committee
Attn: Jake Almeida

FROM: Megan A. Wallace *MAW*
Director

You have asked about any constitutional issues with the above-referenced resolution proposing a constitutional amendment to the appropriation limit and savings reserve fund.

Under *Bess v. Ulmer*,¹ a court may view 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*, 985 P.2d 979 (Alaska 1999), established four factors to evaluate whether a proposed amendment to the constitution is an amendment, or rather a proposed revision which requires a constitutional convention. These four *Bess* factors are whether: (1) the proposal is simple to express and understand; (2) 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.

The combination of the appropriation limit and changes to the budget reserve fund in one amendment would likely violate the last two prongs of the *Bess* test because the amendment does not relate to only one subject and substantially affects more than one section of the constitution. More specifically, the attached constitutional amendment not only amends the existing appropriation limit, it also drastically changes the composition of the constitutional budget reserve fund in art. IX, sec. 17, Constitution of the State of Alaska. The changes to *both* the appropriation limit and the constitutional budget reserve fund are substantial. The attached resolution entirely reshapes the calculation of the

¹ 985 P.2d 979 (Alaska 1999).

Senator Mike Shower

March 23, 2019

Page 2

appropriation limit in art. IX, sec. 16, and renames the budget reserve fund, changes the requirements for deposits of settlement proceeds, changes withdraw requirements, repeals and eliminates the withdraw for any purpose with a three-fourths vote of each house of the legislature, and repeals and eliminates the constitutional sweep.

For the above reasons, I do not recommend combining the appropriation limit and changes to the budget reserve fund in one amendment, so you may wish to consider breaking these changes into separate amendments.

Furthermore, aside from the concern as to the combination of the appropriation limit and changes to the budget reserve fund in one amendment, depending on the level of the restriction the proposed appropriation limit places on the legislature's power of appropriation, the changes to the appropriation limit could also result in the type of "sweeping change" that is not permitted to be accomplished in an amendment to the state constitution proposed by the legislature.²

If you have any questions, please advise.

MAW:kwg

19-106.kwg

² You may wish to contact Legislative Finance to provide a fiscal analysis on the restriction on appropriation proposed in the attached appropriation limit.