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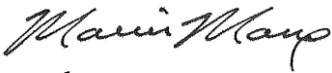
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

May 8, 2021

SUBJECT: Appropriation limit
(CSSJR 5(JUD)); Work Order No. 32-GS1664\B)

TO: Senator Roger Holland
Chair, Senate Judiciary Committee
Attn: Ed King

FROM: Marie Marx 
Legislative Counsel

Attached is the Senate Judiciary committee substitute for SJR 5. This committee substitute incorporates the amendments you provided.

Please note that under *Bess v. Ulmer*,¹ a court may view the combination of changes to the appropriation limit and budget 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, of the Alaska Constitution. The changes to *both* the appropriation limit and the constitutional budget reserve fund are substantial. The attached resolution entirely reshapes the calculation of the appropriation limit in art. IX, sec. 16, and, as a consequence, repeals art. IX, sec. 17(b). It also changes

¹ 985 P.2d 979 (Alaska 1999).

Senator Roger Holland

May 8, 2021

Page 2

the requirements for deposits of money into the constitutional budget reserve fund under art. IX, sec. 17(a).

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

Please let me know if I may be of further assistance.

MYM:mjt
21-289.mjt

Attachment

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