From:	Alisha
Sent:	Monday, March 28, 2022 5:40 PM
To:	Senate Transportation Committee; Senate Transportation Committee; Sen. Robert Myers; Sen. Mike Shower; Sen. Click Bishop; Sen. Peter Micciche; Sen. Jesse Kiehl
Subject:	SB170 testimony and some concerns I have with the bill

Hello, my name is Alisha , I live in district D8. I found some item in SB 170 concerning. I hope that my public testimony will be added to the record. I have noticed that some of my testimony on other bills has not been added to the record.

All referenced lines and pages are from SB170A 32-LS0528\W which is the one that was available to me when the notice for public testimony was announced.

I cannot support SP170 because like SB224, HB395 and HB322 it seems like just another attempt of the legislature to write a statute that allows them to act outside constitutional limits, by evading Article IX section 7, 13 and 17(d) in order to accomplish their goal. I am not saying that I am against this corporation being formed, I am just saying that it is a state corporation and is subject to all the constitutional limitations that all other state agencies, departments and legislature must act within. I feel that is critical that legislators are allowed to follow the constitutions "annual appropriation model" which was reinforced in Sonneman v. Hickel

> The constitutional clause prohibiting dedicated funds seeks to preserve an annual appropriation model which assumes that not only will the legislature remain free to appropriate all funds for any purpose on an annual basis, but that government departments will not be restricted in requesting funds from all sources. As the debates make clear, all departments were to be "in the same position" as competitors for funds with the need to "sell their viewpoint along with everyone else." 4 PACC 2364-67 (Jan. 17, 1956). We conclude therefore that the limitations on the ability of DOTPF to ask for funds from the Marine Highway System Fund expressed in AS 19.65.080(b) amount to a dedication in violation of article IX, section 7.

I can see why legislators would want to protect the funding for the Alaska Marine Highway System, especially after the 2021 conference committee used funding sources for Mat-su transportations projects as leverage in an attempt to force the passage of the reverse sweep vote. But just because current legislators do not trust future legislators to act honorable and ethically and do what is best for the people as a whole when making the annual appropriations in the annual budget process, does not give these legislators the power to create statutes that allow them, through a state corporation, to act outside constitutional limits inorder to protect their favorite budget items. Current legislators have to trust that future legislators will act in the best interest of all Alaskans and continue to fund critical budget items with the annual money available for appropriations.

The writers of this bill seem to believe that by saying "the corporation has a legal existence independent of and separate from the state" (page 9 line 16), this new corporation will not be required to act within the limits of the constitution. That is not true, as I will show later.

They seem to believe those words will allow the Alaska Marine Highway System not only to compete for state revenue in the "annual appropriation model" that is laid out in the constitution and reinforces in Sonneman v. Hickel (see above) but it should also be "guaranteed funding" through an "assurance agreement" to insure special routes are funded, be able to hold(evade Article IX Section 13) state

revenue in multiple dedicated funds or accounts, and spend or transfer the state revenue held in those funds or accounts without further legislative appropriation(it seems to say the corporation is able to use state revenue in those funds or accounts without the governor needing to put that state revenue in his annual budget, and without it having to going through the legislative process which requires opportunities for public input.

Maybe this is just a very poorly written bill which can be easily fixed by clearly stating these funds and accounts are to be treated as general funds that can be appropriated for any purpose on an annual bases or is an accounting tool used to hold the annual appropriations and any unobligated appropriations will be returned to its source to be available for the next year's annual appropriations and is subject the effects of Article IX Section 17(d) if the legislature owes money to the CBR.

The following lines are where I saw some of these concerning items:

- Page 35 lines 4-8 from special highway fuel tax (state revenue) to Alaska marine highway system operating fund which is to be used "for expenditure by the Alaska Marine Highway Corporation for the Alaska marine highway system" (sounds like state revenue is being places in a fund dedicated to a special purpose)
- Operating Fund (page 24 lines 7-11 lines 15-18) (fund that attempts to restricts access to state revenue by saying that it is available to the corporations without further appropriations, I have heard some legislators say that by adding the words similar to "can be used without further appropriations" the fund can evade Article 17 (d). If legislators were wishing to add these words for that purpose, it would be a direct violation of their oath to support and defend the constitution.)
- Money appropriated to the fund does not lapse. (page 24-17) (If Lapse- is the termination of a right, interest, duty or obligation as a result of the passage of time, or failure of a condition, or a change in circumstance? This seems to say Article IX Sections 13 does not apply and unused funds will not be returned so they can be available for use in the next "annual appropriation model")
- Revenue account fund (page 24 lines 18-24) lapse (this could be interpreted as a general fund but page 29 lines 11-12 seems to say that the corporation has some special control over it "the pledge of assets and revenue of the corporation to the payment of the principal of or interest of bonds of the corporations ..." which seem to contradict the idea of it being a general fund that is freely available for the "annual appropriation model" but instead this state revenue somehow belongs to the corporations and may not be available for the "annual appropriation model"
- Vessel maintenance and replacement account (page 24 lines 25-31 page 25 lines 1-13) (This sounds like a dedicated account that allows the corporation to hold annual appropriations for 10 years or more thus evade the constitution's "annual appropriation model", thus violates Article IX Sections 7, 13 ,17(d))
- Requiring the state to enter an assurance agreement that requires appropriations each year that "guarantees funding" for special routes. (Page 25 lines 17-19) (requires the legislature to guarantee a predetermined appropriation amount set in statute- which removes the ability of the legislature to use the "annual appropriation model" to pass a balanced budget using the current years limited state revenue in the way they believe is for the good of the people as a whole, but must instead appropriate money as past legislators had felt was for the good of the people as a whole during the time the statute passed.)

These and other line of SB170 come together to create the impression that the legislature no longer believes in the importance of living within the limits created by Article IX Section 7, Section 13, and Sections 17(d) of the constitution and that they are more than willing to violate their oath of office in order to accomplish their goal.

This bill also seems to say that legislators can just rewrite Article IX Section 13 to say

15 **Sec. 42.50.580. Dividends to the state.** On the last day of each fiscal year of
16 the corporation, the corporation shall pay as a dividend to the general fund any amount
17 by which the Alaska marine highway operating fund established under AS 42.50.530
18 exceeds the projected costs of operating the corporation through the next fiscal year.

This bill contains many other troubling sections which seem to imply the purpose of this newly created corporation is to be a front/dummy corporation, which the legislature can hid behind as it directly tells the corporation to do what the legislature cannot constitutionally do itself- this includes actions that directly violate the constitution.

- Page 21 lines 14-20 "the corporation shall apply all money, property, other assets, and credit of the corporation towards the activities authorized by this chapter"
    - If the legislature where to do this directly or if the legislature directly tells the corporation to do this the results are the same- state revenue is dedicated to a special purpose. Which violates Article IX Section 7

- Page 25 lines 3-13 is the legislature saying "the corporation shall transfer from the Alaska marine highway system operating fund" (which is only constitutional if the description can be manipulated to mean it is a general fund available for any appropriations) to the vessel maintenance and replacement account (what sounds exactly like a dedicated account that can exist and hold money until the corporation chooses to use that money. The legislature even tells the corporation how much the corporation shall transfer into this dedicated account. The lesser of the following amounts "(1) one tenth of the projected cost of vessel maintenance and replacement listed in the long-term plan required by AS 42.50.270; or an amount necessary to bring the balance of the fund equal to the total amount needed during the next 10 years.
    - If the legislature where to do this directly or if the legislature directly tells the corporation to do this the results are the same- a large amount of state revenue is held beyond the end of the validity of the annual appropriation bill that placed this state revenue in this dedicated account or the operation fund which was then directed by statute into this dedicated account to be held for an undetermined amount of time for the dedicated purpose of the maintenance and replacement of vessels. How is this not a violation of Article IX Section 7, 13, and 17(d) and the "annual appropriation model" reinforced by Sonneman v. Hickel (see quote later in testimony).

After reading and studying SB170 I came across multiple lines which seemed to lead to major contradictions. And much of it centers around whether Page 9 line 16 "the corporation has a legal existence independent of and separate from the state" or not. And what that actually means. After reading the bill there were so many contradictions that the purpose of that line was completely lost – the lines that seemed to support the idea, were later contradicted or overregulated.

Later after reading a few court cases, I found that there was a much easier way to determine that it was a state corporation, but that will be explained later.

Again, I am not saying that I am against this corporation being formed, I am just saying that it is a state corporation and is subject to all the constitutional limitations that all other state agencies and department must act within.

That being said let me share with you some lines that got my attentions and made me think the legislature does not wish to handover the control of the Alaska Marine Highway System to this newly

created The legislature does not seem to trust this corporation to make the critical decisions needed to try and make the Alaska Marine Highway System self-reliant, economically sound part of Alaska's transportation system.

I thought it might be easier if I put these contradictions in a table: lines that either support the idea that this corporation is independent of and separate from the state. This is just a small sampling of these kind of consociations.

Seem to support the idea of an independent controlling corporation	Directly contradicts or overregulates that independence
• Page 12 line 24 effect general comprehensive increases and decreases in rates • Page 17 lines 16-17set the rates to be charged for services provided by the Alaska marine highway system, which may include reduced rates for residents of the state;	• Page 26 lines 4-5. 9-11Statute tells corporation how to calculate rates
• page 12 line 25 add or remove a port of call; • page 17 line9-10 maintain offices and ferry terminal facilities at places designated by the corporation; • Page 33 line 10-11The board shall designate by regulation the designated base port for each vessel operated by the corporation; • Page 17 lines 18-21 establish the routes, schedules, and types of service to be provided by the Alaska marine highway system, except that each sailing must show anticipated incremental revenues that meet or exceed all projected direct incremental costs of providing the service;	• Page 25 lines 17-31 seems to say the state shall tell corporation which port of call it has to supply routes to and guarantee funding for those routes. • Page 33 lines 11-15 "however, the designated base port for marine vessels of the Alaska marine highway system is Ketchikan for vessels primarily serving the portion of the state east of the longitude of Icy Cape and Seward for vessels primarily serving the remainder of the state." (*This could easily be interpreted as the legislature wishing to use its power to help "friends" in these communities.*)
• Page 12 line 1, 20, 31 mortgage or pledge corporation assets; exchange, donate, sell, or otherwise convey the entire interest in an asset of the corporation; • Page 16-line 26-29 hold, maintain, use, operate, improve, lease, exchange, donate, convey, alienate, encumber, or otherwise grant a security interest in, or authorize use or dispose of, real property or personal property, • Page 17 lines 3 control of all of the property of the corporation	• Page 22 line 16-18 However, the corporation may not convey its entire interest in any of its property, except as provided by AS 42.50.360 and 42.50.370. • Page 22 line 26 the sale is in the best interest of the state. • Page 23 lines 4-5 The legislature may appropriate proceeds of a property sale under this section to the corporation. (*This seems to say this is state revenue that the legislature could appropriate money for any purposes which is the only way to constitutionally think about it*)

	• Page 23 lines 9-11 pubic use of corporation land. *(Is the only constitutional way to think about it.)*
• Page 31 lines 16-21Sec. 42.50.740. Collective bargaining agreement. The corporation may negotiate and enter into collective bargaining agreements	• Page 40 lines 23-31 page 41 lines 1-21. *(This seems to say the state will set up the contract, in the state's best interest and then assign it to the corporation and the corporations has to honor the agreement that it had no control over for the full term of the contract. Thus, setting the base line for which all future contracts will be judged. Not a very independent way to start. And could be interpreted as the legislature trying to help the union to maintain the monopoly that has caused problems for the Alaska Marine Highway System in the past.)*
• Page 21 lines 22- 28 says can choose the maintenance and service options that is more cost-effective • Page 18 lines 21-32 undertake and provide for the acquisition, construction, maintenance, equipping, and operation of vessels, ferry terminal facilities, and related programs; • Page 17 lines 2-5 undertake and provide for the management, operation, maintenance, use, and control of all of the property of the corporation, including all real property and personal property of the Alaska marine highway system transferred under this chapter;	• Page 32 lines 25-26 A vessel owned by the corporation shall be maintained and repaired at a shipyard facility located in the state (*there are exceptions but it is clear that state located facilities are given preferential treatment and this could easily be interpreted as the legislature wishing to use its power to help "friends" with ties to those state located facilities. Even if it was not in the best interest of the economical stability of the corporation.)* • The competitive bid provisions of AS 36.30 do not apply to a contract for the maintenance or repair of a marine vessel owned by the corporation if the contract is awarded to a shipyard facility in the state. *(It seems that state located facilities are given preferential treatment and this could easily be interpreted as the legislature wishing to use its power to help "friends" with ties to those facilities.)*

But now let us look at an easier way to interpret the meaning of Page 9 line 16 "the corporation has a legal existence independent of and separate from the state"

While attempting to understand the purpose of Page 9 line 16 "the corporation has a legal existence independent of and separate from the state", I fell down a very interesting rabbit hole. And was

introduced to the following court cases Laverty v. Alaska Railroad corporation, Leron v. National Railroad Passenger Corporation, State v. Alex, and by comparing what I found there to what SB 170A 23-LS0528/W says, I conclude that the line "the corporation has a legal existence independent of and separate from the state" has a limited scope as can be seen by this quote from Laverty v. Alaska Railroad Corporation

> But these provisions grant independence from the state in matters that are within the legislature's control. ARRC does not explain how the legislative intent to confer independence in these matters exempts ARRC from burdens that originate in the constitution and that apply to it as an instrumentality of the state. Because the railroad remains, "by its very nature, what the Constitution considers to be government," [34] we conclude that it must satisfy the constitutional restrictions imposed by the Public Notice Clause.

34 Lebron, 513 U.S. at 392, 115 S.Ct. 961.

so, the legislature cannot exempt this newly formed corporation from the rules of the constitution that deal with state revenue that were interpreted in State v. Alex,

> Section 7 of Article IX of the state Constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words "proceeds of any tax or license" are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues.
>
> Accordingly, it is our conclusion that the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs.

and the annual appropriation model" interpreted in Sonneman v. Hickel

> The constitutional clause prohibiting dedicated funds seeks to preserve an annual appropriation model which assumes that not only will the legislature remain free to appropriate all funds for any purpose on an annual basis, but that government departments will not be restricted in requesting funds from all sources. As the debates make clear, all departments were to be "in the same position" as competitors for funds with the need to "sell their viewpoint along with everyone else." 4 PACC 2364-67 (Jan. 17, 1956). We conclude therefore that the limitations on the ability of DOTPF to ask for funds from the Marine Highway System Fund expressed in AS 19.65.080(b) amount to a dedication in violation of article IX, section 7.

I will show later what lines in SB170 lead me to believe that the Alaska Marine Highway Corporation would be considered a government entity, and by looking ate this quote from Laverty v. Alaska Railroad Corporation we can see -this new corporations must act within the limitations of the

> But these provisions grant independence from the state in matters that are within the legislature's control. ARRC does not explain how the legislative intent to confer independence in these matters exempts ARRC from burdens that originate in the constitution and that apply to it as an instrumentality of the state. Because the railroad remains, "by its very nature, what the Constitution considers to be government," [34] we conclude that it must satisfy the constitutional restrictions imposed by the Public Notice Clause.

constitution.

The following quote from Leron v. national Railroad Passenger Corporation was also very enlightening

That Government created and -controlled corporations are (for many purposes at least) part of the Government itself has a strong basis, not merely in past practice and understanding, but in reason itself. It surely cannot be that government, state or federal, is able to evade the most solemn obligations imposed in the Constitution by simply resorting to the corporate form. On that thesis, *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), can be resurrected by the simple device of having the State of Louisiana operate segregated trains through a state owned Amtrak.
In *Pennsylvania* v. *Board of Directors of City Trusts of Philadelphia*, 353 U.S. 230 (1957) *(per curiam)*, we held that Girard College, which had been built and maintained pursuant to a privately erected trust, was nevertheless a governmental actor for constitutional purposes because it was operated and controlled by a board of state appointees, which was itself a state agency. *Id.*, at 231. Amtrak seems to us an *a fortiori* case.

I will now share the lines from SB0170A 32-LS0528\W that helped me understand that this newly formed corporation would be considered a government corporation subject to constitutional limitations. The court cases said that I should look for following items: who created it, for what purpose it was created, who controls of the corporation, and how are they were placed in their positions.
First, I looked at its creation and purpose. According to this quote form Laverty v. Alaska Railroad Corporation

Like Amtrak, ARRC is not merely in the temporary control of Alaska, "as a private corporation whose stock comes into [state] ownership might be,"[28] but was created by the legislature to carry out the "essential government function" of operating the Alaska Railroad.[29]

28 Lebron, 513 U.S. at 398, 115 S.Ct. 961

29 AS 42.40.010.

First, we see that the legislature is creating this corporation, the legislature intends for this new corporation to control the Alaska Marine Highway System which the legislature deems "an essential part of the state transportation system".

7 (1) the Alaska marine highway system is an essential part of the state

8 transportation system and warrants continued and predictable state support; Page 1

This bill seems to imply this corporation must also

20 (7) meet the obligation to provide for public welfare set out in art. VII, sec. 5,

21 of the Constitution of the State of Alaska. page 2

So, I think we can safely say that this corporation was created by the Alaska state government to carry out the operation of an "essential part of the state transportation system" and the legislature also seems to be delegating its constitutional obligation to "provide for public welfare" to the corporations.

Now let's look at who is in control and how they were places into their position. And use what we learn from this quote from Lebron v. National Railroad Passenger Corporation:

> 22, 24, was soon followed in creating other corporations. But some of these new "private" corporations, though said by their charters not to be agencies or instrumentalities of the Government, see, *e.g.*, 47 U.S.C. § 396(b) (Corporation for Public Broadcasting (CPB)); 42 U.S.C. § 2996d(e)(1) (Legal Services Corporation (LSC)), and though not subjected to the restrictions of the GCCA, were (unlike Comsat) managed by boards of directors on which Government appointees had not just a few votes but voting control. See Public Broadcasting Act of 1967, §201, 81 Stat. 369 (CPB's entire board appointed by President); Legal Services Corporation Act of 1974, §2, 88 Stat. 379 (same for LSC).

So first we see that yes, a board is responsible for the management of the corporation:

14 **Sec. 42.50.100. Management by the board.** (a) The board is responsible for

15 the management of the corporation.

17 **Sec. 42.50.020. Board of directors.** (a) The board of directors shall exercise

18 the powers of the corporation.

page11 page
9

Then we see all of the voting members of the board are tied to the governement - 2 government commissioners (appointed by the governor) and 5 more members apointed by the governor:

19 (b) The board consists of

20 (1) the commissioner of commerce, community, and economic

21 development; the commissioner may not designate another person to serve in this

22 position;

23 (2) the commissioner of transportation and public facilities; the

24 commissioner may designate the deputy commissioner to serve in this position; and

25 (3) five members appointed by the governor and confirmed by a

26 majority of the members of the legislature sitting in joint session.

So, from this we can see since all are government appointees, government appointees have voting control and therefore this corporation would not be considered independent of and separate from the State.

If we look at another quote from Laverty v. Alaska Railroad Corporation

> In short, the superior court correctly ruled that, "[w]hile ARRC enjoys a considerable degree of autonomy in running the railroad and managing its assets, its substantial and intimate connections to the state ultimately make ARRC lands 'state lands' for the purposes of [the Public Notice Clause]."

That seems to say that by using this criterion this new corporation can also be thought of as dependent on and part of the state,

And then from reading State v. Alex

> Section 7 of Article IX of the state Constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words "proceeds of any tax or license" are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues.
>
> Accordingly, it is our conclusion that the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs.

this new corporation assets are state assets, its revenue is state revenue.

And according to the following quote in Lebron v. National Railroad Passenger Corporation

> That Government created and -controlled corporations are (for many purposes at least) part of the Government itself has a strong basis, not merely in past practice and understanding, but in reason itself. It surely cannot be that government, state or federal, is able to evade the most solemn obligations imposed in the Constitution by simply resorting to the corporate form. On that thesis, *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), can be resurrected by the simple device of having the State of Louisiana operate segregated trains through a state owned Amtrak.
> In *Pennsylvania* v. *Board of Directors of City Trusts of Philadelphia*, 353 U.S. 230 (1957) *(per curiam)*, we held that Girard College, which had been built and maintained pursuant to a privately erected trust, was nevertheless a governmental actor for constitutional purposes because it was operated and controlled by a board of state appointees, which was itself a state agency. *Id.*, at 231. Amtrak seems to us an *a fortiori* case.

This newly formed corporation must act within the limitations of the constitution.

If legislators wanted to change the status of the Alaska Marine Highway Systems from a state entity to a non-state entity as a large part SB170 seems to try to do, would it not be more clear and easier to understand if they just sold or rented those state assets to a private commercial corporation controlled by private shareholders with no ties to the state, so there was no confusion.

But as it stands this corporation is a state corporation and therefor, must act within the limitation of the constitution and "the annual appropriation model" laid out in the constitution and reinforced in Sonneman v. Hickel (see quote earlier in testimony). So just like SB224, HB395 and HB322 it all comes down to the legislature trying to use creative legal language, and contradicting plain language to fool the general public into believing one thing, future legislators into believing something else, and the court into believing something completely different. All so that the legislature can act outside constitutional limits.

By attempting to use these indirect methods to act outside the limits of the constitution, legislators are directly violation of their oath to support and defend the constitution. Article XII Section 5. Which from

this quote form KIMOKTOAK v. STATE

> Finally, we note that in *Campbell*, we recognized the well-established rule of statutory construction that courts should if possible construe statutes so as to avoid the danger of unconstitutionality.[6] We have alluded to this rule on many other occasions. *E.g.*, *State v. Martin*, 532 P.2d 316, 321 (Alaska 1975); *Hoffman v. State*, 404 P.2d 644, 646 (Alaska 1965). It recognizes that the legislature, like the courts, is pledged to support the state and federal constitutions and that the courts, therefore, should presume that the legislature sought to act within constitutional limits. 2 *Sutherland Statutory Construction*, § 4509, at 326 (Horack 3d Ed. 1943).

we can see that the courts would deem this to be inappropriate behavior, which would never be attempted by someone who has sworn to support and defend the constitution.

Masons Manual of Legislative Procedure also prohibits this kind of behavior.
Masons Manual of Legislative Procedure 2020 edition Sec. 12 "A legislative body cannot make a rule that evades or avoids the effect of a rule prescribed by the constitution governing it and it cannot do indirectly what it cannot do directly."

Sec. 12. Rules Must Conform to Constitutional Provisions

1. A legislative body cannot make a rule that evades or avoids the effect of a rule prescribed by the constitution governing it, and it cannot do indirectly what it cannot do directly.

It was also covered in the 1953 edition of the Mason's Manual of Legislative Procedure which is the editions that the writers of our Alaskan Constitution would have used as a reference. Sec. 73 #3 "the legislature cannot do by indirection that which it cannot do directly."

3. The legislature cannot do by indirection that which it cannot do directly.

Indirection means -indirectness or lack of straightforwardness in action, speech, or progression
The 1953 version also included

Sec. 26. Fraud Will Invalidate Acts

1. Where there is more than a mere technical violation of the rules of procedure the violation may invalidate the act, and an act will be invalidated where there is fraud or bad faith.

Section 25—Continued
Paragraph 6—
Bennett v. New Bedford (1872), 110 Mass. 433.
Section 26—
Robinson v. Nick (1940), 235 Mo. App. 461, 136 S.W. 2d 374.

Which given the behavior of and comments made by some current legislators, this section needs to be put back in to The Manual.

It seems that many legislators feel that ever budget item should have its own permanent dedicated fund or capital project its own permanent maintenance and replacement dedicated fun and that these funds should have a standing balance which is held in them. So instead of following the constitutionally

described "annual appropriation model" reinforces in Sonneman v Hickel,

> The constitutional clause prohibiting dedicated funds seeks to preserve an annual appropriation model which assumes that not only will the legislature remain free to appropriate all funds for any purpose on an annual basis, but that government departments will not be restricted in requesting funds from all sources. As the debates make clear, all departments were to be "in the same position" as competitors for funds with the need to "sell their viewpoint along with everyone else." 4 PACC 2364-67 (Jan. 17, 1956). We conclude therefore that the limitations on the ability of DOTPF to ask for funds from the Marine Highway System Fund expressed in AS 19.65.080(b) amount to a dedication in violation of article IX, section 7.

current legislators seem to believe they should appropriate through statutes, thus removing the need for legislators to meet annually to appropriate money to budgetary items. This could all be taken care of with dedicated funds that are filled by constitutional decree. But since this directly contradicts with the constitutional model, I guess it will have to be one of the options brought up if the residents of Alaska call for a constitutional convention this year.

I know legislators like the designated fund model because it allows current legislators to have political control over the legislators who come after them because it is much more difficult to appropriate state revenue for any purpose other than the non-binding statutory described purpose of a designated fund, than it is to freely appropriate state revenue for any purpose from the general fund. As I understand it the General Fund was supposed to hold all available money to make it easy for legislators to know what money was equally available for all budget items to be used in the "annual appropriation model" set up by the constitution. These designated funds make it less clear as to what moneys are equally available for all appropriations and leads to loss of public trust when legislators use their constitutional appropriation power to follow the "annual appropriation model". (See Sonneman v Hickel)

The fine line that legislators have played with their designated are not dedicated funds may not have been a problem when the state had enough money to pay for all wanted but not constitutionally required item without taxing Alaskans or reducing Alaskans PFDs, but now that there is not enough money to pay for all of these designated fund items and still follow the statutory PFD, legislators should see that having all these designated funds that say the money in them is for a specific purpose has directly lead to a confrontational and unhealthy relationship between the people of Alaska, the special interest groups that elected officials have created by setting up designated funds for them, and legislators themselves. It has leaded to public mistrust in legislators and the legislative process, both when legislators treat these designated funds as dedicated funds, and when they spend money from these designated funds for a purpose other than the purpose described in the statute. Legislators seem to have set themselves up for a lose-lose situation now that state revenue no longer exceeds state spending, which has led to the loss of public trust.

But the question then becomes which legislators are responsible for this loss of public trust?

1. The legislators who made the implied or direct promise to the public, or added the conflicting descriptions that could lead the public to believe that money in the fund would be used for a special purpose which would be unconstitutional if it were binding, or
2. the legislators who fulfill their constitutional responsibility by treating the money in these designated funds just like the money in the general fund with no restrictions and available for any public purpose which is for the good of the people as a whole in accordance with the "annual appropriation model"?

I really wish that I felt that I could trust the legislators and legislative process but that it very hard when after reading SB170, I cannot have any confidence as to which category of bills it would fit into. Is it a category #1 bill which would be the only kind that I could support or would it fit into categories #2 #3,

or #4, #5 which I feel are damaging to the integrity of the "rule of law", the legislative process, and the legislative branch of government?
See descriptions of bill categories below.

A disheartened Alaskan, who is trying very hard to regain her trust in the legislative process and the integrity of legislative branch of government,
Alisha Asplund
District D8

*Information on the categories of bills

For nearly a year I have been trying to figure out why legislators keep making cryptic and vague comments about these kinds of bills not being binding and stating that these kinds of bills can be ignored, but I wish to make it clear that I do not believe it to be the intent of the constitution for legislators to purposely create bills that will mislead the people of Alaska into believing that they are creating a bill that will (insert designated fund description or unconstitutional language) then the legislators insert somewhere else in the bill a direct contradiction (insert constitutionally sound language) so a court could give the legislators the benefit of the doubt and say the legislators and the lawyers who write the bills are so incompetent that they are unable to write a constitutional sound bill that does not contain non-binding, or unconstitutional language that would create an unconstitutional law if it was binding or if it was not directly contradicted somewhere else in the bill.

It all started when I watched the April 29th 2021 House Ways and Means Committee, and during that meeting a legislator made the following statements:

- "It is true that the legislature can ignore statutes. That is constitutionally allowed."
- "Because we ultimately make the laws and therefore, we have the ability to disregard law"

She gave these statements to justify why the bill she wished to pass could and should be ignored.
In the February 4, 2022 House Education meeting the same legislator made comments that explained why the bill she wrote would create a statute that could be ignore- the reason it can be ignored is because it had been purposely written to be a nonbinding suggestion. She also seemed to be saying that there were many examples of these nonbinding suggestions already in statute and that made it ok to make another one.

From further information that I collected by watching nearly all committee meetings and floor sessions, during the 2021 legislative season and multiple committee meeting in 2022, and reading bill and court cases, I found what seems to be the following categories for the bills that current legislators feel it is ok to try to pass: (This is a work in progress and may change as I continue to watch and ask questions. I wish to make it very clear that category #1 is the only bill category that I feel legislators can make without violating constitutional intent, undermining the integrity of the legislative branch of government, eroding the rule of law, violating the Ethics Act AS 24.60.010, and/or violate their oath of office.)

1) Bills that will result in statutes/laws that current legislators understand to be binding and enforceable and believe to be constitutionally sound.
   a) By constitutionally sound, I mean legislators and legislative lawyers do not believe the Supreme Court would rule that the binding law would conflict with the constitution.
   b) A binding law that legislators are not allowed to ignore, but would be allowed to change through the legislative process, for passing a bill into law.
   c) Does not contain contradicting descriptions and language, easily misunderstood legal language, misleading plain language that can be interpreted differently by the courts, legislators, and the general public.
2) Bills that will result in statutes/laws that legislators believe can be ignored, because legislators think the constitution allows it, because they believe the binding law violates the constitution.

a) I do not believe the constitution intended legislators to purposely create a statute/law that legislators feel can be ignored because legislators believe it will contradict or violate the constitution or they feel the Supreme Court has allowed them to ignore similar statutes/laws.
b) I feel that knowingly creating laws that legislators believe will conflict with the constitution, does not "assure the trust, respect, and confidence of the people of this state", which is covered in the Ethics Act AS 24.60.010. It is also behavior that does not "preserve the integrity of the legislative process" which is another item mentioned in AS 24.60.010
c) I believe that knowingly creating bills that they believe would violate the constitution if they were binding, enforceable laws, is a violation of Article XII Section 5 of the constitution.

3) Bills that will result in statutes/laws that legislators purposely create to be non-binding so that they can be ignored.
   a) I do not believe it is the intent of the constitution for the legislator to purposely make a statue/law that is not intended to be binding or enforceable.
   b) I do not believe that it is the intent of the constitution for legislators to change the definition of law to a mere suggestion that is non-binding and not enforceable, thus undermine the idea that the definition of law as - a rule formally recognized as binding and enforceable. I believe that by suggesting that a law can be a mere non-binding suggestion, these legislators are undermining the very idea of the "rule of law"
   c) I feel that purposely creating laws that can be ignored does not assure the trust, respect, and confidence of the people of this state, and is not a representation of the moral and ethical standard mentioned in AS24.60.010 (1)
   d) It is also behavior that does not preserve the integrity of the legislative process or the integrity of the legislative process, which are also items mentioned in AS 24.60.010 (2)
   e) I believe creating a "law" which is only a suggestion and a way that current legislators can place political pressure on future legislators to continue to fund these past legislators special interest project, is a not only a disservice to future Alaskans who many have other special interest they wish to fund but also, a disservice to current Alaskans because working on these non-binding suggestions wastes limited time and resources and is often the reason legislators choose to work past the 90-day regular session. This requires state revenue to be used for keeping the legislative session up and running for an additional 30 or more days and then that state revenue cannot be used for critical services or capital project.
4) Bills that will result in statutes/laws that current legislators believe they can disregard because they believe in the acceptability of Representative Spohnholz's statement from the April 29th 2021 House Ways and Means Committee, "Because we ultimately make the laws and therefore, we have the ability to disregard law"
   a) This seems to imply that legislators believe they are above all laws which I do not believe is the intent of the constitution and is a horrendously bad belief for legislators to have.
   b) I feel that this statement undermines the integrity of the legislative branch of government. How are the people in this state supposed to trust, respect, and have confidence in the branch of government that makes the laws, if that very branch shows no respect for the laws that it makes.
   c) There is a difference between disregarding a law or going through the legislative process to change a law. The end result may be the same but only one of those ways upholds the integrity of the legislative process.
   d) After hearing Spohnholz's comments in the February 4, 2022 Education meeting it seems one reason why current unethical and immoral legislators might wrongly believe this statement is true, legislators no longer believes that a law is – A rule formally recognized as binding and enforced by controlling authorities, but instead current legislators and the lawyers who advise them believe a "law" is – merely a suggestion that can be disregarded. That is a terrifying belief for the law enacting branch of the government to hold.
5) Bills that will result in statutes/laws that legislators have purposely written with contracting language so that legislators will be able to work outside the limitations of the constitutions but if any one brings the statute before the courts it contains language that will the fool the courts into believing

legislators did not intentionally mean to make a statute that allowed them to act outside the limitations of the constitution. These kinds of bills often contain direct contradictions: one part of the bill will contain language that allows legislator to easily accomplish their goal but would be interpreted as being unconstitutional, and a different part of the bill will contain language that is constitutional but would not allow legislators to easily accomplish their goal.

a) I do not believe it is the intent of the constitution for the legislator to purposely make a law that contain contradicting and misleading language so that they can act outside the limits of the constitution.
b) I feel that purposely creating laws which they will use to act outside the limitations of the constitutions is a violation of their oath of office to support and defend the constitution. Article XII Section 5.
c) I feel that to purposely write a bill with the intent of fooling the courts and the people of Alaska into believing different and contradicting interpretations, while legislators use it to act outside the limitation of the constitution does not assure the trust, respect, and confidence of the people of this state, and is not a representation of the moral and ethical standard mentioned in AS24.60.010 (1)
d) It is also behavior that does not preserve the integrity of the legislative process, which is mentioned in AS 24.60.010 (2)

Section 5. Oath of Office

> **All public officers, before entering upon the duties of their offices shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as . . . to the best of my ability." The legislature may prescribe further oaths or affirmations.**

Sec. 24.60.010. Legislative findings and purpose.

The legislature finds that

(1) high moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state;

(2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest;

Thank you

Sent from Mail for Windows