

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 29, 2002

1:48 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh

MEMBERS ABSENT

Representative Scott Ogan, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 331

"An Act relating to the jurisdiction of district courts."

- MOVED SB 331 OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 38

Proposing amendments to the Constitution of the State of Alaska relating to information regarding proposed expenditures.

- HEARD AND HELD

PREVIOUS ACTION

BILL: SB 331

SHORT TITLE: DISTRICT COURT JURISDICTIONAL AMOUNT

SPONSOR(S): SENATOR(S) THERRIAULT

Jrn-Date	Jrn-Page		Action
02/19/02	2239	(S)	READ THE FIRST TIME - REFERRALS
02/19/02	2239	(S)	JUD
03/04/02		(S)	JUD AT 1:30 PM BELTZ 211
03/04/02		(S)	Moved SB 331 Out of Committee
03/04/02		(S)	MINUTE(JUD)
03/06/02	2386	(S)	JUD RPT 3DP 1NR
03/06/02	2386	(S)	DP: TAYLOR, COWDERY, THERRIAULT;

03/06/02	2386	(S)	NR: ELLIS
03/06/02	2386	(S)	FN1: ZERO(CRT)
03/13/02		(S)	RLS AT 11:00 AM FAHRENKAMP 203
03/13/02		(S)	MINUTE(RLS)
03/18/02	2450	(S)	RULES TO CALENDAR 3/18/02
03/18/02	2452	(S)	READ THE SECOND TIME
03/18/02	2452	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/18/02	2452	(S)	READ THE THIRD TIME SB 331
03/18/02	2452	(S)	PASSED Y18 N- E2
03/18/02	2457	(S)	TRANSMITTED TO (H)
03/18/02	2457	(S)	VERSION: SB 331
03/19/02	2599	(H)	READ THE FIRST TIME - REFERRALS
03/19/02	2599	(H)	JUD
04/29/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SJR 38

SHORT TITLE:CONST AM: PRIORITY OF EXPENDITURES

SPONSOR(S): SENATOR(S) KELLY

Jrn-Date	Jrn-Page		Action
02/19/02	2226	(S)	READ THE FIRST TIME - REFERRALS
02/19/02	2226	(S)	STA, JUD, FIN
02/26/02		(S)	STA AT 3:30 PM BELTZ 211
02/26/02		(S)	Moved SJR 38 Out of Committee
02/26/02		(S)	MINUTE(STA)
02/27/02	2318	(S)	STA RPT 3DP 1NR
02/27/02	2318	(S)	DP: THERRIAULT, HALFORD, PHILLIPS;
02/27/02	2318	(S)	NR: STEVENS
02/27/02	2318	(S)	FN1: (GOV)
03/18/02		(S)	JUD AT 1:30 PM BELTZ 211
03/18/02		(S)	Moved Out of Committee
03/18/02		(S)	MINUTE(JUD)
03/20/02	2472	(S)	JUD RPT 3DP 1NR
03/20/02	2472	(S)	DP: TAYLOR, COWDERY, THERRIAULT;
03/20/02	2472	(S)	NR: ELLIS
03/20/02	2472	(S)	FN1: (GOV)
03/22/02		(S)	FIN AT 9:00 AM SENATE FINANCE 532
03/22/02		(S)	Moved Out of Committee
03/22/02		(S)	MINUTE(FIN)
03/22/02	2501	(S)	COSPONSOR(S): DONLEY, LEMAN

03/22/02	2496	(S)	FIN RPT 5DP 4NR
03/22/02	2496	(S)	DP: DONLEY, KELLY, GREEN, WARD, LEMAN;
03/22/02	2496	(S)	NR: AUSTERMAN, HOFFMAN, OLSON, WILKEN
03/22/02	2496	(S)	FN1: (GOV)
03/26/02		(S)	RLS AT 11:00 AM FAHRENKAMP 203
03/26/02		(S)	MINUTE(RLS)
03/28/02	2556	(S)	RULES TO CALENDAR 1OR 3/28/02
03/28/02	2559	(S)	READ THE SECOND TIME
03/28/02	2559	(S)	ADVANCED TO THIRD READING FLD Y14 N3 E3
03/28/02	2560	(S)	ADVANCED TO THIRD READING 4/2 CALENDAR
04/02/02	2592	(S)	READ THE THIRD TIME SJR 38
04/02/02	2592	(S)	HELD IN THIRD READING TO 4/8 CALENDAR
04/08/02	2663	(S)	BEFORE THE SENATE IN THIRD READING
04/08/02	2664	(S)	PASSED Y14 N5 E1
04/08/02	2664	(S)	ELTON NOTICE OF RECONSIDERATION
04/09/02	2692	(S)	RECONSIDERATION NOT TAKEN UP
04/09/02	2693	(S)	TRANSMITTED TO (H)
04/09/02	2693	(S)	VERSION: SJR 38
04/10/02	2861	(H)	READ THE FIRST TIME - REFERRALS
04/10/02	2861	(H)	STA, JUD, FIN
04/16/02		(H)	STA AT 8:00 AM CAPITOL 102
04/16/02		(H)	Scheduled But Not Heard -- Recessed to Thurs. 4/18/02 --
04/18/02		(H)	STA AT 8:00 AM CAPITOL 102
04/18/02		(H)	Heard & Held MINUTE(STA)
04/23/02		(H)	STA AT 8:00 AM CAPITOL 102
04/23/02		(H)	Moved Out of Committee MINUTE(STA)
04/23/02	3094	(H)	STA RPT 2DP 5NR
04/23/02	3094	(H)	DP: STEVENS, FATE; NR: WILSON,
04/23/02	3094	(H)	CRAWFORD, JAMES, HAYES, COGHILL
04/23/02	3094	(H)	FN1: (GOV)
04/29/02		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

ZACH WARWICK, Staff
to Senator Gene Therriault
Alaska State Legislature
Capitol Building, Room 121
Juneau, Alaska 99801

POSITION STATEMENT: Presented SB 331 on behalf of the sponsor,
Senator Therriault.

GWENDOLYN HALL, Staff
to Senator Pete Kelly
Alaska State Legislature
Capitol Building, Room 518
Juneau, Alaska 99801

POSITION STATEMENT: Presented SJR 38 on behalf of the sponsor,
Senator Kelly.

JACK KREINHEDER, Chief Analyst
Office of the Director
Office of Management & Budget (OMB)
Office of the Governor
PO Box 110020
Juneau, Alaska 99811-0020

POSITION STATEMENT: During discussion of SJR 38, provided
comments on behalf of the administration.

ACTION NARRATIVE

TAPE 02-57, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing
Committee meeting to order at 1:48 p.m. Representatives
Rokeberg, James, Coghill, Meyer, and Berkowitz were present at
the call to order. Representative Kookesh arrived as the
meeting was in progress.

SB 331 - DISTRICT COURT JURISDICTIONAL AMOUNT

Number 0030

CHAIR ROKEBERG announced that the first order of business would
be SENATE BILL NO. 331, "An Act relating to the jurisdiction of
district courts."

Number 0049

ZACH WARWICK, Staff to Senator Gene Therriault, Alaska State Legislature, said on behalf of Senator Therriault, sponsor, that SB 331 will clarify the statute relating the civil awards in district court cases. He said that current statute stipulates that the plaintiff in a district court case is limited to an award of \$50,000; it's not clear, however, whether it's \$50,000 per defendant or per case. Senate Bill 331 will add language clarifying that the \$50,000 limit is per defendant. Without this clarification, plaintiffs in civil cases with multiple defendants must decide whether to file multiple suits or combine them into one case. Mr. Warwick added that SB 331 is "especially important to rural areas where there isn't access to superior courts."

REPRESENTATIVE COGHILL indicated that he has a concern regarding the title.

REPRESENTATIVE BERKOWITZ said he likes the title, mentioning that he has a conceptual amendment, which he will be offering on the House floor. He noted that he and Representative Meyer have been working on issues pertaining to jurisdictions. Given that the title of SB 331 reads, "An Act relating to the jurisdiction of district courts", he said it seems to him that the [the body] could extend that jurisdiction as far as it rightfully ought to go - "as far as it possibly can."

REPRESENTATIVE COGHILL acknowledged that "the title does lend itself to general applicability."

REPRESENTATIVE BERKOWITZ indicated that what he has in mind is:

The jurisdiction of the district courts would extend to protect Alaskans anywhere they were; if anyone visited harm on them, and assuming that the appropriate authority - if it was either in a different country or different state - if they didn't choose to exercise their jurisdiction, then the Alaskan jurisdiction would exist as a safety net to protect the interests of Alaskans.

CHAIR ROKEBERG suggested that such an [extension of jurisdiction] might be "entering the area of conflict of laws."

REPRESENTATIVE BERKOWITZ said, "No, not if we structure this appropriately; and it's actually visions of law that other states have."

Number 0464

REPRESENTATIVE JAMES moved to report SB 331 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, SB 331 was reported from the House Judiciary Standing Committee.

CHAIR ROKEBERG called an at-ease from 1:55 p.m. to 1:57 p.m.

SJR 38 - CONST AM: PRIORITY OF EXPENDITURES

[Contains mention of HB 349.]

Number 0479

CHAIR ROKEBERG announced that the last order of business would be SENATE JOINT RESOLUTION NO. 38, Proposing amendments to the Constitution of the State of Alaska relating to information regarding proposed expenditures.

Number 0527

GWENDOLYN HALL, Staff to Senator Pete Kelly, Alaska State Legislature, said on behalf of Senator Kelly, sponsor, that SJR 38 will amend the Alaska State Constitution such that the governor will be required to submit a prioritized budget to the legislature. She said of the sponsor that:

He sees this as a "communicative tool" between the ... executive branch and the legislative branch. And in a time of such fiscal crises, ... we feel that the administration would be the best source of information as to what programs or services would be best to cut, since they are the folks that deal with the services and programs every day.

REPRESENTATIVE BERKOWITZ asked: "What does this look like? Practically speaking, what would it look like?"

MS. HALL, in response, said:

We actually got this idea from the governor when he was the mayor of Anchorage. Annalee McConnell submitted her budget in a prioritized fashion to the [Anchorage Assembly], and so I'm sure we could call the governor's office ..., get a copy of that, ... and ... see what that would look like.

REPRESENTATIVE BERKOWITZ said:

I'm curious to know how we would do this. I mean, would [he/she] prioritize item by item through the budget? Would [he/she] prioritize [one] department over other departments?... Would [he/she] prioritize constitutional over, say, moral? I mean, I just don't understand how/what it would look like, physically. Would it become a bound piece of paper? Would it come in the form of a bill? Would failure to comply with it be actionable?... It's just very confusing.

REPRESENTATIVE JAMES said: "It's all statutory language to implement this constitutional amendment."

REPRESENTATIVE MEYER remarked that there were similarities between SJR 38 and a bill sponsored by Representative Fred Dyson - HB 349. He then spoke briefly of the Anchorage Assembly budget process.

MS. HALL pointed out that SJR 38 differs from the aforementioned bill in that it is a constitutional amendment, and, as such, will protect a prioritized budget from constitutional challenges based on separation of powers.

Number 0795

REPRESENTATIVE BERKOWITZ remarked that SJR 38 appears only to focus on the operating budget but does not address the capital budget. Why the distinction?

REPRESENTATIVE MEYER noted that the Anchorage Assembly budget process is similar in that regard, mentioning that in Anchorage, the capital budget is "bonded for."

REPRESENTATIVE BERKOWITZ pointed out, however, that at the state level, "we don't bond." He predicted that if the capital budget is not woven into "this constitutional requirement, it might create some difficulties."

CHAIR ROKEBERG surmised that SJR 38 was introduced in reaction to the "administration's failure to act on legislative requests." He noted that the Department of Education and Early Development already prioritizes its capital expenditures.

REPRESENTATIVE BERKOWITZ argued, however, that "that's prioritization within the capital [budget], and it doesn't integrate the capital requests in with the operating requests." He elaborated:

For example, you might say, "I would rather fund [Alaska State] Troopers than build the road here," but if you segregate the two, you don't have the opportunity under this constitutional amendment to make that decision, because the capital budget is separate from the operating budget.

REPRESENTATIVE KOOKESH returned to the issue of the Department of Education and Early Development's capital budget priorities, and recalled that a few years ago, he'd stood up on the House floor and asked why the legislature was jumping from number [32] to number 59 in order to fund carpets in the Matanuska-Susitna valley. "The prioritization didn't work there," he pointed out, so "why should it work here."

CHAIR ROKEBERG said he recalled that incident.

REPRESENTATIVE BERKOWITZ suggested, "What if we were to constitutionally require the legislature to follow the 'executively generated' lists?"

CHAIR ROKEBERG suggested to Representative Berkowitz that he offer an amendment to that effect.

REPRESENTATIVE JAMES, on Representative Kookesh's point, surmised that sometimes items on a priority list are passed over because they are too big, and by passing such items over, several smaller projects can be funded instead. Therefore, she opined, any kind of prioritization is never going to work perfectly and will be subjective, although this does not mean that prioritization shouldn't be done. She indicated that she is in favor of SJR 38 because currently, the administration does not always spend funds according to the [legislature's allocations]. She posited that SJR 38 would provide for better communication between the administration and the legislature.

Number 1214

JACK KREINHEDER, Chief Analyst, Office of the Director, Office of Management & Budget (OMB), Office of the Governor, said:

The administration's main concern with SJR 38 is not with the priority budgeting issue per se, but with the fact that we view this amendment as completely unnecessary, and do not see any separation of powers issue here.... Our viewpoint is that the legislature does have complete authority to direct the administration to provide or request information in the Executive Budget Act; we've had an Executive Budget Act on the books now for, I'm not sure how long, but it goes into some detail, [and] it's been modified in recent years to require the performance measures - mission and measures information - that I think we've been working on fairly cooperatively with the legislature.

So the legislature does have clear legal authority to say more than what the constitution says, which is one line that the governor shall prepare a budget every year. And the legislature's done that in the Executive Budget Act. So, HB 349 would modify the Executive Budget Act, as was mentioned, to do just what this requires, and we would have no intention of challenging that in court, and the lawyers tell me that we wouldn't have any basis to. So, again, ... our concern with this resolution is not so much with the priority budgeting per se, it's just that it's completely unnecessary [and] would clutter up the [Alaska State] Constitution....

MR. KREINHEDER, on the issue of the Anchorage Assembly budget process, relayed that Ms. Frasca, "the budget director of Anchorage," has testified that attempting to mirror Anchorage at the state level would be a major change and be quite expensive. Should HB 349 pass, he remarked, although the administration would attempt to be responsive, there will be limits to what can be done without additional funds.

Number 1409

MR. KREINHEDER offered the following as an example of the administration's concern regarding a prioritized budget:

It's kind of an abstract concept, but ..., for example, is it more important for Alaska State Troopers to investigate homicides or write parking tickets? Well, that's an easy one. But what about the Department of Revenue? How would all of you

prioritize these functions: collecting oil and other taxes, managing the state's investments, paying permanent fund dividends, or, the administrative functions that run the department? Well, most people probably put the administrative functions at the bottom, but if there's nobody there to write the paychecks, then [who does] the other work? And in the first three, frankly, we'd have a very difficult time trying to rank any those key functions of the department. So, it just comes down to a philosophy, and our viewpoint is that trying to do this sort of priority budgeting at the state level is a simplistic approach that is better directed at really looking at specific functions, if that's what we're talking about eliminating or reducing.

REPRESENTATIVE JAMES noted that in the private sector, budgets start at zero and all expenditures have to be justified and reevaluated periodically, because corporations want to be sure that they are "mean and lean" and not wasting money on anything that would reduce their profit level. Unfortunately, she remarked, government doesn't have that ability, noting that usually a review of the budget is based on what was spent the prior year. She opined that even if SJR 38 did result in the budget process taking more time, it would be good to take that time in order to determine specifically what would be best for each department. She asked Mr. Kreinheder which he prefers, a prioritized budget or a zero-based budget.

MR. KREINHEDER surmised that a zero-based budget at the state level would be too cumbersome and not an efficient use of resources, as was found to be the case by most states that attempted that type of budget process. Budgeting resources, he opined, would be better spent "looking at ... the guts of the programs" to determine which should get more money and which should get less.

REPRESENTATIVE JAMES acknowledged that government cannot be run like the private sector because they have different jobs to do. She noted, however, that government tends to grow its budget by spending all its money so that it can ask for the same amount the following year. She offered that SJR 38 will provide a way in which to determine how such practice can be restricted or eliminated, and surmised that the executive branch is in the best position to make that determination.

Number 1674

MR. KREINHEDER said that he understood Representative James's concern, noting that even "a flat budget" is a difficult place to start from and requires budget reductions in some areas in order to absorb increases in fixed costs. He reiterated [the OMB's] position that instituting a priority budget is not the best approach at the state level, noting Annalee McConnell is very familiar with that type of budgeting process. He acknowledged that government growth is one of the public's major concerns, but pointed out that growth in the government of a growing state is not necessarily a bad thing: "you've got more kids, you need more teachers; you've got more population, you need more roads, you need more Troopers, and so on, just to keep the same level of service." He remarked that even though some are hoping to hold government spending at the same level for the next 20 years, it is going to come down to a choice between running the state into the ground and providing an adequate level of public service.

REPRESENTATIVE JAMES opined that there should be a priority for spending which includes growing the economy.

MR. KREINHEDER, in response to questions, agreed that the administration's position is that SJR 38 will be redundant if HB 349 passes; he remarked, however, that he could not comment on whether the governor intends to veto HB 349, reiterating that the administration would not challenge HB 349 on a separation of powers issue. He noted that although the administration does not feel that mirroring Anchorage's budget process is realistic, it would make a good faith effort to comply. He said that the current state budget process does involve priorities, but not to the point of ranking, for example, whether collecting more oil taxes is more important than managing the "billions of dollars we have in the bank."

REPRESENTATIVE BERKOWITZ asked, "What happens when the legislative branch doesn't like the executive branch's priorities?"

REPRESENTATIVE MEYER replied, "Then we adjust it."

REPRESENTATIVE BERKOWITZ said, "So, ... what's different than what we do now?"

REPRESENTATIVE MEYER indicated that at least [the legislature] would know what [the administration's] priorities are before any adjustments are made.

REPRESENTATIVE BERKOWITZ opined that the fact that items are included in the governor's budget should indicate to the legislature that those items are a priority. "And when we modify those budgetary amounts or delete them entirely, we're indicating legislative priority, aren't we?" he asked.

Number 2013

CHAIR ROKEBERG closed public testimony on SJR 38.

REPRESENTATIVE MEYER said he supports SJR 38, noting that in Anchorage, the prioritized budget process forced communication between the mayor and assembly. He opined that a similar system would do the same at the state level between the legislature and the administration.

REPRESENTATIVE KOOKESH referred to subsection (b) in Section 2 of SJR 38. He said:

If people are so supportive of this kind of documentation, why are we leaving it ... [discretionary]? On the end of (b), [it says] "if the legislature requests the information by concurrent resolution". Is it in case somebody other than the party that's currently in there gets elected? I mean, if you're going to do this, then let's do it. Why do you have the "out" on there? Why do you have "if the legislature requests [the] information"? Why don't you just say, "the governor shall submit ... under this section", period?

MS. HALL said she has not yet had a chance to ask the sponsor why that language was included.

CHAIR ROKEBERG said that Representative Kookesh has a valid point.

REPRESENTATIVE COGHILL relayed that in the House State Affairs Standing Committee, the sponsor had indicated that there may be "some executive and legislative branches that might work a little closer together, and there might be a time when the legislature may have to request it, and this is a tool to make sure that the request is fulfilled."

REPRESENTATIVE BERKOWITZ indicated that the inclusion of such language signals to him that, clearly, this is a political bill, because it cuts the minority out.

REPRESENTATIVE KOOKESH said that regardless of which party is in the majority or which party the governor is from, requiring information by concurrent resolution "puts politics into it." If that language is removed and a period is placed after "section" on line 15, he opined, then, regardless of who the governor is, he/she will be required to submit a priority list.

Number 2180

REPRESENTATIVE COGHILL observed that much of the constitution has been drafted to "protect the inclusion of the minority." He posited that SJR 38 was crafted with the idea that there would be tension between the two branches of government, regardless of politics.

REPRESENTATIVE KOOKESH reiterated his point: "If we thought we needed this, then why are we giving an out? If we think this legislation is so important, why are giving an out by saying unless a concurrent resolution is adopted ... there's no requirement here?"

CHAIR ROKEBERG said that although he agrees with Representative Kookesh's point, almost everything they do involves some degree of politics. He agreed that SJR 38, as currently worded, would more often come into play in a "more hostile type of relationship" between the administration and the legislature.

REPRESENTATIVE COGHILL, referring to the concurrent resolution requirement, said that it is important to ensure that the minority has significant input. He recalled that only a simple majority is needed to pass a concurrent resolution; thus, conceivably, the minority would not be completely disenfranchised.

REPRESENTATIVE JAMES opined that SJR 38 would simply be providing the legislature with a way to require this information should the administration not come forward with it voluntarily. With a concurrent resolution requirement, it would mean that at least half of the legislature wants the information.

REPRESENTATIVE COGHILL noted that with the language requiring a concurrent resolution, there would at least be further discussion during the legislative process, whereas if that

requirement was removed, there would be no discussion, and the administration would simply be required to provide the information regardless of whether the legislature felt they needed it.

TAPE 02-57, SIDE B
Number 2373

REPRESENTATIVE BERKOWITZ pointed out that since the governor doesn't submit the budget until around December 15 and the legislature doesn't convene until approximately mid-January, even if a concurrent resolution moves through the process in an expeditious manner, time could become an issue because the normal effective date of a concurrent resolution is 90 days after adoption. He also pointed out that a concurrent resolution with an immediate effective date requires a two-thirds vote, which, conceivably, could enable a minority party to block the concurrent resolution. He acknowledged that his concerns about the concurrent resolution requirement differ depending on which parties might be in control of the different branches of government. He asked why SJR 38 is even being considered, given that there are "these practical problems."

REPRESENTATIVE JAMES said that she would like to see the administration prepare a priority list to begin with, and opined that SJR 38 would ensure that this happens.

REPRESENTATIVE BERKOWITZ pointed out, however, that the language in SJR 38 does not mandate that this information be provided to begin with, instead a concurrent resolution is required first.

REPRESENTATIVE KOOKESH indicated that he might be able to support SJR 38 if it would ensure that once the governor puts an item high up on his/her priority list, the legislature wouldn't be able to strip those funds away.

REPRESENTATIVE BERKOWITZ mentioned that he has not yet heard any compelling arguments that would justify amending the [Alaska State] Constitution as proposed by SJR 38. He questioned how those who assert "defend, don't amend" rhetoric with regard to subsistence can assert just the opposite with regard to SJR 38.

CHAIR ROKEBERG announced that SJR 38 would be held over in order to allow Ms. Hall an opportunity to further address Representative Kookesh's concern regarding the concurrent resolution requirement.

ADJOURNMENT

Number 2120

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:45 p.m.