

COMMITTEE REPORT

1/13/70

HOUSE

FILED

Mr. Speaker:

Date 11-5-70

The Committee on FINANCE has had 11-5-70

under consideration. A Majority of the members of the Committee

- recommends it DO PASS
- recommends it DO NOT PASS
- recommends it DO PASS WITH ATTACHED AMENDMENT(S)
- recommends it BE REPLACED WITH CS FOR \_\_\_\_\_ AND THAT  
CS FOR \_\_\_\_\_ DO PASS
- "and" recommends it BE REFERRED TO THE \_\_\_\_\_  
COMMITTEE
- reports it back WITHOUT RECOMMENDATION
- "other"

Members signing the Majority report:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ Chairman

Original sponsor: Rules Committee by  
Request of the Legislative Council

IN THE HOUSE

BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 550

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to legislative administration; and  
providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 24.05.150(a) is repealed and re-enacted to read:

(a) Space occupied in a state building by the Legislature or its agencies is under the control of and subject to assignment by the Legislative Affairs Agency as directed by the Legislature. The Legislative Affairs Agency is responsible for the control and assignment of space occupied by the Legislature and other agencies occupying capital offices.

\* Sec. 2. AS 24.20.140 is amended to read:

Sec. 24.20.140. APPROPRIATIONS. Appropriations for the council shall be set forth in the general appropriation bill or such other bills as may be necessary. The council may direct the executive director to transfer amounts from one appropriation to another if the transfer is considered necessary to carry out the work of the council. The council may not exceed the total amount of the authorized appropriation. All expenditures of the council shall be subject to an independent audit which shall be made annually.

\* Sec. 3. This Act takes effect immediately in accordance with AS 01.05.070(c).

February 19, 1976

The Honorable Jay S. Hammond  
Governor  
State of Alaska  
Pouch A  
Juneau, Alaska 99811

Re: CSHB 550 am S (legislative  
administration of capitol  
space)

Dear Governor Hammond:

At your request, we have reviewed CSHB 550 am S, a bill "relating to legislative administration." Section 1 of the bill amends AS 24.05.190(a) by placing the capitol (except the space within the capitol "now occupied by the Office of the Governor") and the space occupied by the legislature or its agencies in other state buildings under the control of the Legislative Affairs Agency as directed by the legislature. The section also provides the agency with authority to allocate all parking spaces at the capitol. Section 2 of the bill amends AS 24.20.140 to require that the audit of Legislative Council expenditures be made annually by an independent auditor. The final section provides for an immediate effective date.

The Department of Law urges that you veto this bill. We do so for two basic reasons. First, Section 1 of the bill if enacted into law would shatter the tradition of comity between the legislative and executive branches of government, incidentally breaching an existing express agreement concerning the allocation of office space in the capitol worked out after extensive negotiation between the legislative and executive branches prior to the session. That contract, it appears, was only entered into by the legislature with the legislature's unstated premise that once in session it could do as it pleased.

Second, we urge a veto because the bill may well violate the Constitution in several respects. While the title of the bill is limited to "legislative administration",

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February 19, 1976  
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it actually extends to administration of facilities occupied by executive agencies, thereby offending the constitutional requirement that the subject of a bill be expressed in its title. Alaska Constitution, Art. II, §13. More significantly, insofar as the bill attempts to grant a legislative agency administrative control over the activities of all branches of government, it raises serious questions concerning the doctrine of separation of powers.

We shall discuss these points in the order set out.

#### I. FACTUAL BACKGROUND

Until 1976, the allocation of existing office space as between competing needs of the executive, legislative and judicial branches has been done by the administration. AS 44.21.020(6). The governor, acting through the commissioner of administration, has given each branch the space it considered necessary to operate. Conflicts were settled by amicable resolution, and, until the second session of this legislature, all branches cooperated in solving what is admittedly a difficult problem. The legislature, of course, retained ultimate control of the total amount of office space available through its power of appropriation to determine what new buildings would be constructed or leased for government purposes. Once the space was obtained, the administration made the specific allocation.

During the last year there has been an unprecedented expansion of the legislature and its staff. In early 1975 the legislature occupied 47,907 square feet of office space in Juneau. Of that total, 29,600 square feet were in the capitol. By 1976 the total space allocated to the legislature by the commissioner of administration had increased to 67,900 square feet, of which 40,800 square feet were in the capitol. That increase was accomplished through negotiation and eventually was reflected in a contractual agreement signed by your Chief of Staff, Bob Palmer, and the head of the Legislative Affairs Agency. That contract, which is appended to this letter, was supposed to be a good faith effort to reach a resolution of this question, and the agreement was signed under the assumption that it resolved, at least temporarily, legislative requirements for space.

Until now the relationship between the executive and the legislature in the allocation of office space has been

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one of amicability in which both sides sought to reach a reasonable solution. By attempting to go beyond that, the legislature is raising a basic issue of who in such a confrontation would have the ultimate authority to assign office space within the existing branches of government. 1/ This bill does not require us to reach the most fundamental issue, but we wish to note that there appears little doubt to us at this time who would prevail in an ultimate confrontation as to the basic power to assign existing office space.

As noted, it is not necessary to reach the most basic issue here because the bill is so clearly invalid on its face that we need not speculate as to what would occur were a different type of bill presented to you. Accordingly we shall limit our discussion to the obvious infirmities of this measure rather than attempting to make any broader generalizations about the scope of legislative and executive power, except as conclusions may be required in a discussion of this particular measure.

## II. DISCUSSION

At the outset, the bill apparently violates the rule that the subject of a bill must be expressed in its title. Alaska Constitution, Art. II, §13. This provision, which is common to many constitutions, exists to insure that there is adequate public notice of legislative actions. United States v. Howell, 5 Alaska. 578 (1916). The protection is both for legislators and the public. It applies to instances in which the title of a bill does not fully convey what the act is meant to accomplish. 2/ For instance, a

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1/ This bill appears to be the result of pique by a particular Legislator over his inability to obtain a particular office on the 4th floor. A demand was made by this legislator that a Department of Law office be turned over to legislative control. After the Department of Law refused, the same legislator then sought to obtain the office through simply changing the framework of government. He introduced an amendment on the floor to take away from the executive branch the power to allocate office space, not generally, but simply on the 4th floor of the capitol. If this bill is enacted and followed, we assume the legislator will eventually get his way, receiving an allocation from the Legislative Affairs Agency of the office he unsuccessfully sought from the executive.

2/ The rule is twofold: First, a bill may have only one subject, and second, the subject must be expressed in its title. Compare Gellert v. State, 532 P.2d 1120 (Alaska 1974) with United States v. Howell, supra.

bill which the title says deals with vacancies in "elective offices" cannot be extended to cover "appointive offices," Wiley v. Hillyer, 221 Mich. 537, 191 N.W. 827 (1923); nor can a bill purportedly dealing with "leasehold" estates be extended to "freehold estates." Dorsey's Appeal, 72 Pa. 192 (1872), cited in Sutherland, Statutory Construction, §18.06.

Examples of titles which fail to adequately apprise the legislature or the public of what is occurring are rife. A Washington statute which barred cemeteries from discrimination was recently struck down for not adequately apprising the legislature of the civil rights issue in the title. Price v. Evergreen Cemetery Co. of Seattle, 357 P.2d 702 (Wash. 1960). In Alaska, the Supreme Court has invalidated a legislative act changing court rules in part because the title of the bill did not spell out the fact of change. Leege v. Martin, 379 P.2d 447, 449-450 (Alaska 1963).

The title of CSHB 550 am S is "An Act relating to legislative administration; and providing for an effective date." The title reflects the fact that the bill initially applied to just what the title expresses--administration by the Legislative Affairs Agency of space assigned to the legislature. But when the bill was amended it applied to far more. Now the bill, contrary to the subject expressed in its title, applies not merely to administration of legislative offices, but administration of offices occupied by the executive branch as well. As a consequence, the title does not adequately describe the true subject of the bill. One need only read the bill in its original form and then compare it with the amended version of the bill to recognize that the same title obviously does not refer to both versions.

The defect in this bill insofar as the title is concerned can be remedied. We express no opinion as to what title would be adequate, but we are of the opinion that the present title is not constitutionally sufficient.

The second question is, assuming the title could be made adequate, whether the legislature may assign to itself or one of its agencies the duties of administering office space in the capitol or any other state building. Initially we note that precedent exists for legislative administration of space assigned to it. Legislative administration of legislative space is incidental to the legislative function of making laws. For instance, the architect

The Honorable Jay S. Hammond  
February 19, 1976  
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of the federal capitol administers legislative office and parking space at the direction of congressional committees. See, 40 U.S.C.A. §§174c, 174d, 175 and 177. That is far different, of course, from the legislature's assuming the over-all administrative function of assigning space for all branches of government--legislative, executive and judicial. Since, as we have noted, this bill violates the rule that the subject of each bill must be expressed in its title, there is no necessity to decide the secondary question here. But we do want to point out that only three weeks ago the United States Supreme Court again reiterated that congressional agencies may "properly perform duties only in aid of those functions that Congress may carry out itself." Buckley v. Valeo, \_\_\_ U.S. \_\_\_ (1976), 44 USLW 4169 (Jan. 27, 1976). Except for the administration of its own activities, the legislative power is one of law-making and not administration. Put succinctly, the legislature may make law but it may not enforce law or appoint agents to enforce law. Springer v. Philippine Islands, 277 U.S. 180, 202 (1927).

The legislative power of appropriation, of course, is at the heart of nearly all government power. In this context, that means that the legislature may control the amount of office space available. Moreover, there is no question but that the legislature, subject to certain basic limitations, may pass laws establishing the criteria under which office space may be assigned. The present statute under which office space is currently assigned could no doubt be made more specific as to how it is to be implemented by administrators. But the power to appropriate or to pass laws does not include the power to administer either the appropriation or the laws. Egan v. Pipeline Impact Committee, No. 74-236, Super. Ct., 1st Jud. Dist. (Alaska 1974), appeal dismissed, Sup. Ct. No. 2424. In other words, under our Constitution an agency of the legislative branch cannot administer the offices of an agency of another branch. It may set the standards for allocation of space, but it may not do the allocation itself. The case is even stronger when you recognize that here the legislature itself is not even doing the allocation--instead it has delegated that function to a legislative agency.

The framers of the Alaska Constitution, we are sure, never dealt with the question of how to settle clashes between branches of government over office space. The

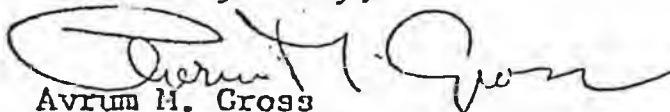
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February 19, 1976  
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constitution's framers undoubtedly assumed that reasonable persons could resolve such questions without the necessity of litigation. I think the framers would have thought it incredible that differences over allocations of offices in the capitol would consume government time and energy, waste public money and create constitutional confrontations. Surely more important matters of state deserve the attention of the legislature and the executive, to say nothing of the judiciary if they are ultimately brought into this confrontation. If this bill were enacted, it would create the third constitutional confrontation between the executive and legislative branches in as many years. In 1974 the legislature sought to achieve authority over the administration of special impact funds even though advised that it possessed no such authority, and took the matter to court, eventually losing and withdrawing its appeal from the Supreme Court in Pipeline Impact Committee v. Egan, Sup. Ct. No. 2424, Order of Nov. 7, 1975. In 1975 the legislature forced a constitutional test over whether it had the power to confirm sub-cabinet officers such as deputy commissioners and division directors. The Superior Court recently struck down that bill and the case is now on appeal to the Supreme Court. Now the legislature is apparently prepared to pass a law which, again, may well be unconstitutional. Accordingly, this bill, if passed over your veto, could precipitate still more litigation.

In all honesty, we are somewhat at a loss to understand why the legislature is unable to deal with the executive branch in any way on this issue except through the passage of unconstitutional acts. After initial confused negotiation over whether or not the executive offices would move from the capitol, all parties spent a good deal of time trying to reach a reasonable solution to the space problem. We thought we had done that. The legislature, however, now appears to seek a confrontation rather than a resolution. If it does so, only the judicial branch, rather than the legislative and executive branches, will have the power to resolve the problem.

We recommend that you veto this bill. We believe you should suggest to the legislature that instead of a confrontation over a veto, they appoint a group to work with the administration in reaching long-range solutions to the space problem. If your veto stands, the matter will end here. With all due respect, I think it has received far too much time as it is.

Yours very truly,

  
Avrum H. Gross  
Attorney General

AMG:as:RWP  
Attachment

Mr. Miller moved and asked unanimous consent that the Journal for the 39th day be approved as certified. There being no objection, it was so ordered.

Mr. Specking announced a Republican caucus upon recess.

Mr. Miller announced a Democratic caucus upon recess.

Mr. Miller moved and asked unanimous consent that the House recess to a call of the Chair. There being no objection, the House recessed at 10:16 a.m.

#### UPON RECESS

The House was called to order at 10:50 a.m.

#### MESSAGES FROM THE GOVERNOR

CSHB  
550  
am S

"February 19, 1976

The Honorable Mike Bradner  
Speaker of the House  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. Speaker:

I have this day vetoed Committee Substitute for House Bill no. 550 amended Senate. The portion of the bill which required the veto is that which attempts to give to the Legislative Affairs Agency the power to allocate office space in the capitol building except for that occupied by the Governor's Office. Since all floors of the capitol building but the third and fourth are already occupied by the legislature, the reason for the bill appears to be to give the Legislative Affairs Agency control over the fourth floor.

Initially this bill would have given the Legislative Council administrative control over space assigned to the legislature. In the Senate the bill was amended to grant the Legislative Affairs Agency control over the physical space in the capitol building regardless of which branch of government occupied that space. In doing that, the legislature went beyond a specific contractual agreement reached with the executive branch for the allocation of office space prior to the beginning of the session. More significantly, the legislature has attempted to establish a scheme whereby it may now engage in the administrative function of allocating office space. I am advised by the Department of Law that insofar as the bill attempts to do that, it apparently violates the doctrine of separation of powers.

# HOUSE JOURNAL

## ALASKA STATE LEGISLATURE

NINTH LEGISLATURE - SECOND SESSION

JUNEAU, ALASKA

Friday

February 20, 1976

### Fortieth Day

Pursuant to adjournment, the House was called to order by Mr. Bradner at 10:12 a.m.

Roll call showed all members present except Representatives Brown, Buchholdt, Guy, Itta and Naughton. Representatives H. Beirne (from 10:30 a.m.), Buchholdt, Guy, Itta, Kelley (from plane time) and Naughton had been previously excused from a call of the House today. Mr. Miller moved and asked unanimous consent that Mr. Brown be excused on official state business. There being no objection, it was so ordered.

Mr. Miller moved and asked unanimous consent that Mr. Rhode be excused from a call of the House on February 24 through plane time on February 25, 1976. There being no objection, it was so ordered.

Mr. Urion moved and asked unanimous consent that he be excused from a call of the House on February 23, 1976. There being no objection, it was so ordered.

The prayer was offered by the Chaplain, Pastor Milton S. Hunt of the Resurrection Lutheran Church. Mr. Swanson moved and asked unanimous consent that today's prayer be spread on the Journal. There being no objection, the prayer appears as follows:

"Heavenly Father, we are thankful that today is Friday, signifying the end of another week of work. Help us to work diligently that we arrive at the end of each week with contentment as to the extent of our accomplishments. Thanks be to Thee for the gifts of energy and talents and the opportunities of time and service.

Direct us, O Lord, in all our doings, with Thy most gracious favor, and further us with Thy continual help; that in all our works begun, continued, and ended in Thee, we may glorify Thy holy Name; and finally, by Thy mercy, obtain everlasting life through Jesus Christ, Thy Son, our Lord. Amen."

Rather than engage in any extended legal discussion in this message, I am making available the opinion I received from the Department of Law on the subject. You will note that the Department finds two basic legal defects with the bill. First the Department feels that the amendment on the floor of the Senate changed the subject of the bill, which resulted in the original title of the bill not adequately expressing its subject matter. The Department also raises the strong possibility that the bill violates the separation-of-powers principle.

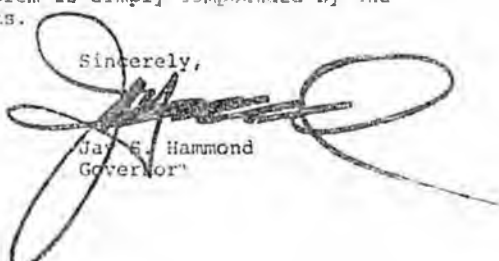
I sincerely hope that my veto does not result in another legal confrontation between the legislative and the executive branches of government. During the last three years, two suits have already been brought by the legislature against the administration in an effort to expand legislative powers. The legislature has lost both of those suits. In Egan v. Pipeline Impact Committee, C. A. No. 74-236, Super. Ct., 1st Jud. Dist. (Alaska 1974), appeal dismissed, Sup. Ct. No. 2424, Order of Nov. 7, 1975, the Superior Court held that while the legislature might impose conditions for allocation on impact funds, it could not administer the allocation of those funds. In Bradner v. Hammond, C. A. No. 75-383 (1st Jud. Dist. (Alaska 1976)), the Superior Court in Ketchikan recently held that the legislature could not expand its confirmation powers beyond that permitted in the Constitution. That latter decision, of course, has brought into question a whole host of confirmations which, until now, have been submitted to the legislature out of comity rather than necessarily legal obligation.

The administration has already tried hard to accommodate the legislature's need for space. During the period of one year the legislature has increased its total office space from 47,907 square feet to 67,900 square feet. Its space in the capitol building has been increased from 29,600 square feet to 40,800 square feet. After an initially confused situation over whether executive offices would move from the capitol, extensive good faith negotiations were held with the legislature to reach an amicable resolution. We thought we had achieved that resolution. We also thought that we had set the tone for additional negotiations in the future to provide adequate working space for the legislature. This bill remove the discussion from one of cooperation to a point of confrontation.

There are a great many problems facing this state. I know that legislators want to deal with those problems just as the administration wants to deal with them. I think it is disheartening for the general public to see public time and money being spent on this type of business. Surely the legislative branch and the executive branch have better things to do than to confront each other in court over whether or not particular legislators are entitled to a particular office on a particular floor of a state building.

CSHB I have advised individual legislators and I advise the  
 550 legislature as a whole that the administration stands  
 am S prepared to try to reach long-range solutions to the  
 space problem and to continue our dealings in good  
 faith with the legislature to do so. I have no in-  
 tention, however, of accepting another effort by the  
 legislature to extend its constitutional powers by  
 usurping authority of the executive branch. I think  
 this bill would be destructive even if it were con-  
 stitutional, for it makes it more difficult to reason  
 together. The problem is simply compounded by the  
 bill's legal defects.

Sincerely,

  
 James S. Hammond  
 Governor

MESSAGES FROM THE SENATE

CSHB A message dated February 18, 1976 was read stating the  
 647 Senate has passed COMMITTEE SUBSTITUTE FOR HOUSE BILL NO.  
 647 (appropriating to the Office of the Governor, Athletic  
 Commission; effective date) with the following amendment:

Page 1, line 10: Change the sum of "\$98,300" to  
 "\$75,000"

and so, COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 647 amended  
 by the Senate, is transmitted herewith for consideration.

HP A message dated February 19, 1976 was read stating the  
 242 Senate has passed HOUSE BILL NO. 242 amended (relating to  
 am the rights of state employees; effective date) with the  
 following amendment:

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL  
 NO. 242 (relating to dress codes and appear-  
 ance standards of state employees; effective  
 date)

and so, SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 242  
 is transmitted herewith for consideration.

Mr. Miller stated that the above messages would be con-  
 sidered under Unfinished Business.

February 19, 1976

-The Honorable Mike Bradner  
-Speaker of the House  
-Alaska State Legislature  
-Juneau, Alaska 99811

Dear Mr. Speaker:

I have this day vetoed Committee Substitute for House Bill no. 550 amended Senate. The portion of the bill which required the veto is that which attempts to give to the Legislative Affairs Agency the power to allocate office space in the capitol building except for that occupied by the Governor's Office. Since all floors of the capitol building but the third and fourth are already occupied by the legislature, the reason for the bill appears to be to give the Legislative Affairs Agency control over the fourth floor.

Initially this bill would have given the Legislative Council administrative control over space assigned to the legislature. In the Senate the bill was amended to grant the Legislative Affairs Agency control over the physical space in the capitol building regardless of which branch of government occupied that space. In doing that, the legislature went beyond a specific contractual agreement reached with the executive branch for the allocation of office space prior to the beginning of the session. More significantly, the legislature has attempted to establish a scheme whereby it may now engage in the administrative function of allocating office space. I am advised by the Department of Law that insofar as the bill attempts to do that, it apparently violates the doctrine of separation of powers.

Rather than engage in any extended legal discussion in this message, I am making available the opinion I received from the Department of Law on the subject. You will note that the Department finds two basic legal defects with the bill. First the Department feels that the amendment on the floor of the Senate changed the subject of the bill, which resulted in the original title of the bill not adequately expressing its subject matter. The Department also raises the strong possibility that the bill violates the separation-of-powers principle.

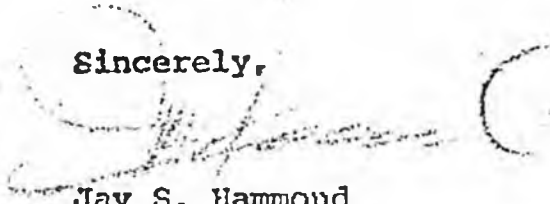
I sincerely hope that my veto does not result in another legal confrontation between the legislative and the executive branches of government. During the last three years, two suits have already been brought by the legislature against the administration in an effort to expand legislative powers. The legislature has lost both of those suits. In Egan v. Pipeline Impact Committee, C. A. No. 74-236, Super. Ct., 1st Jud. Dist. (Alaska 1974), appeal dismissed, Sup. Ct. No. 2424, Order of Nov. 7, 1975, the Superior Court held that while the legislature might impose conditions for allocation on impact funds, it could not administer the allocation of those funds. In Bradner v. Hammond, C. A. No. 75-383 (1st Jud. Dist. (Alaska 1976)), the Superior Court in Ketchikan recently held that the legislature could not expand its confirmation powers beyond that permitted in the Constitution. That latter decision, of course, has brought into question a whole host of confirmations which, until now, have been submitted to the legislature out of comity rather than necessarily legal obligation.

The administration has already tried hard to accommodate the legislature's need for space. During the period of one year the legislature has increased its total office space from 47,907 square feet to 67,900 square feet. Its space in the capitol building has been increased from 29,600 square feet to 40,800 square feet. After an initially confused situation over whether executive offices would move from the capitol, extensive good faith negotiations were held with the legislature to reach an amicable resolution. We thought we had achieved that resolution. We also thought that we had set the tone for additional negotiations in the future to provide adequate working space for the legislature. This bill removes the discussion from one of cooperation to a point of confrontation.

There are a great many problems facing this state. I know that legislators want to deal with those problems just as the administration wants to deal with them. I think it is disheartening for the general public to see public time and money being spent on this type of business. Surely the legislative branch and the executive branch have better things to do than to confront each other in court over whether or not particular legislators are entitled to a particular office on a particular floor of a state building.

I have advised individual legislators and I advise the legislature as a whole that the administration stands prepared to try to reach long-range solutions to the space problem and to continue our dealings in good faith with the legislature to do so. I have no intention, however, of accepting another effort by the legislature to extend its constitutional powers by usurping authority of the executive branch. I think this bill would be destructive even if it were constitutional, for it makes it more difficult to reason together. The problem is simply compounded by the bill's legal defects.

Sincerely,



Jay S. Hammond  
Governor