

HB

100

filed
these if they come
here

February 16, 1977

The Honorable Bob Bradley
Chairman
House State Affairs Committee
Pouch V
Juneau, Alaska 99811

Re: HB 100 and HB 181; filling of court-
created vacancies in the legislature

Dear Representative Bradley:

The following are my comments on the referenced
bills.

HB 100: Proposed AS 15.40.480 in the second
sentence has the effect of creating a mandatory vacancy.
This vacancy, pursuant to proposed AS 15.40.490, may exist
for as long as 55 days, or possibly for more than one-half
of the legislative session. This mandated vacancy raises
serious constitutional problems in view of the directive of
Alaska Constitution, Article II, Section 4, which provides:

A vacancy in the legislature shall be
filled for the unexpired term as provided
by law. If no provision is made, the
governor shall fill the vacancy by
appointment.

Although there are no cases in Alaska on point, it would
appear clear that the intent of the constitutional provision
set forth above is to avoid vacancies where possible.
Proposed AS 15.40.480 would do just the contrary.

HB 181: The comments set forth above apply as
well to proposed AS 15.40.351(b) and proposed AS 15.40.431.
Their effect is also contrary to the apparent intent behind
the constitutional provision set forth above.

A suggested solution to the problem is simply to
amend the definition of "vacancy" found in the present AS
15.60.010(19), thus effectuating the present statutory
provisions for filling vacancies set forth in the present AS
15.40. Additionally, in view of the fact that the practical

The Honorable Bob Bradley
February 16, 1977
Page 2

effect of an election being overturned shortly before or at the very beginning of a legislative session is to create an empty seat for approximately one-half of the session, the legislature should promulgate statutes for filling that vacancy by appointment by the governor on an interim basis. The authority of the legislature to pass on that appointment could be set forth very clearly; see, for example, AS 15.40.330. This solution would carry out the intent behind Alaska Constitution, Article II, Section 4, set forth above, and have the additional important practical benefit of providing representation for a district that might be otherwise unrepresented for one-half of the legislative session.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By:
William T. Council
Assistant Attorney General

WTC:cp

cc: The Honorable Bill Miles
The Honorable Tim Kelly
The Honorable Hugh Malone
Art Peterson

House Judiciary
April 6, 1977

The meeting was called to order at 3:10 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Eliason, Rudd and Dankworth. Mr. Specking came late. Mr. Brown was absent.

HB 100 Procedure when an election to the state legislature is set aside by court

HB
100

HB 181 Vacancies in the Legislature

HB
181

Bill Miles, sponsor for HB 181, explained HB 100 and HB 181 so that the committee would be aware of the differences.

Tim Kelly here to testify on HB 100, for which he is a sponsor. He indicated that he does not see a problem with appointments under certain conditions.

Bill Miles explained that his bill would give "power to the people" by calling for a special election to fill vacancies in the Legislature. The committee agreed to work with Mile's bill. A committee substitute will be drafted so that after April 1, the Governor would make an appointment to fill any vacancies.

HB 341 Liability of health care providers

HB
341

This started off as a discussion of HB 414, which also has to do with liability of health care providers. It was brought to the attention of the committee that Gardiner's HB 414 and Mile's HB 341 are basically the same. Rudd moved that HB 341 be moved out of committee. There was no objection, so this was done.

HB 208 Child custody jurisdiction

HB
208

Liz Arnold from the Attorney General's Office was here to testify on the amendments that were proposed to HB 208 by the A.G.'s office. Mr. Dankworth moved to adopt the amendments suggested by the A.G.'s office. There was no objection, so the amendments were adopted. Miles moved that HB 208 be moved out of committee. The motion was carried so CSHB 208 was moved out.

HB 143 Compulsion of testimony or other evidence in judicial proceedings

HB
143

HB 393 Immunity and protection of witnesses

HB
393

The amendments that had been adopted for HB 393 were looked at. Miles moved that the sale of heroin amendment by the A.G.'s office be taken out. The motion carried. There was a motion to pass out CSHB 143. (CSHB 143 will incorporate HB143 and HB 393.) The motion carried.

The meeting was adjourned at 4:25.