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COMMITTEE REPORT
SENATE

FURTHER: ICM

Date: _____

Mr. President:

The Committee on Education has had _____

relating to the _____

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
- and recommends _____ new title
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

A M E N D M E N T to SB 331

By Ferguson

Page 1, line 10 DELETE (NOVEMBER 15) Insert: December 1

Page 1, line 15 DELETE (THIS) Insert: The general appropriations Act

Page 1, line 16 after the word "December 1" Insert: 5

Page 2, lines 1-29 DELETE ALL MATERIAL

Page 3, lines 1-2 DELETE (IMMEDIATELY IN ACCORDANCE WITH AS 01.10.070(c))

Insert: on the effective date of the 1984 amendment to the Alaska Constitution limiting the length of regular sessions of the legislature

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

January 25, 1984

The Honorable Bill Ray
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: SB 331, re preparation of the
executive budget

Dear Senator Ray:

On January 23, 1984, you requested that we review SB 331 in advance of the Senate Judiciary Committee meeting scheduled on January 25 at 1:30 p.m. We have identified constitutional issues raised by several provisions of the bill.

The bill provides that the governor shall submit the budget to the legislative finance division by November 15 and to the legislature by December 1. The bill also provides that the agencies shall submit budget information to the legislative finance division by September 1. These provisions potentially conflict with Alaska Constitution article IX, section 12 and article III, section 16.

1. Article III, section 16 provides that the governor is responsible for the faithful execution of the laws. Article IX, section 12 specifically recognizes that preparation of the budget is an executive function. In connection with that function, the legislature is authorized by the constitution only to fix by law a date for submission of the budget to the legislature. The provisions directing earlier submission to the legislative finance division of the budget and budget information could constitute violations of the doctrine of separation of powers. Those requirements on the governor and the agencies may disrupt the performance by the governor of his constitutionally-assigned duty to prepare the budget. See Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th Cir. 1980), aff'd ___ U.S. ___, 103 S.Ct. 2764 (1983).

2. Article IX, section 12 requires the governor to submit the budget to the legislature at a time fixed by law. One possible interpretation of this provision is that it requires that the legislature be convened at the time the budget is sub-

The Honorable Bill Ray
Alaska State Senate
SB 331

January 25, 1984
Page 2

mitted. Unless it is convened in regular or special session, the legislature is not a body, empowered to act, to which the budget and an appropriation bill can be submitted. Since the legislature will not be in session on December 1, that date may not be a proper time for the legislature to require submission of the budget by the governor.

The bill also provides that the budget is not public information until it is submitted to the legislature. This may codify an existing qualified privilege of confidentiality derived from the doctrine of separation of powers. The provision of the bill requiring the agencies to make budget information public prior to submission of the budget by the governor may violate that qualified privilege of confidentiality, since premature disclosure of the budget information provided by the agencies could conflict with the need of the governor to consider, in confidence, recommendations and information concerning the executive function of budget preparation. Disclosure may be required only upon a showing of an overriding interest or need for the information.

Because of time constraints, we are able only to raise these issues, and are not able to provide detailed analyses of the caselaw concerning the doctrine of separation of powers. Please do not hesitate to contact this office if you require further assistance in this matter.

Sincerely yours,

NORMAN C. CORSUCH
ATTORNEY GENERAL

By: *Virginia B. Ragle*
Virginia B. Ragle
Assistant Attorney General

VBR/pjg

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE JUNEAU 99801

MEMORANDUM

DATE: November 30, 1985

TO: Senator Frank Ferguson
attn: ~~Mike Scott~~

FROM: Michael Greany, Director *MGREANY*
Legislative Finance Division

SUBJ: Budget Process

File
FB 331

You asked for a suggestion as to how the budget process could be altered to expedite a 120 day session.

One way would be to require the Governor to provide his budget to the Legislature earlier than the statutes currently mandate.

The concept outlined below is generally patterned after Oregon's budget preparation schedule. I found it very workable for Oregon's biennial budget process. The one shortcoming I can foresee in Alaska's annual process is if the session were to extend much beyond 120 days -- agencies would be required to begin preparation of their budget for the second future fiscal year before their next fiscal year budget is enacted.

Except in transition years, the Governor shall prepare a budget in the following manner according to the prescribed statutory schedule:

1. Each state agency shall submit its budget request to the Office of Management and Budget no later than September 1. A copy shall be provided to the Legislative Finance Division. An additional copy is to be maintained in the Office of Management and Budget for public information. The budget request and subsequent revisions become public information at the time they are received in the Office of Management and Budget.
2. Not later than November 15th, the budget shall be completed and prepared for printing.

STATE OF ALASKA
THE LEGISLATUREFOUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99801
907-465-2600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 24, 1984

SUBJECT: Constitutionality of SB 331
 Preparation of Executive Budget

TO: Senator Bill Ray
 Chairman, Senate Judiciary Committee

FROM: Billy G. Bezrier *BGB*
 Director
 Division of Legal Services

You have asked whether SB 331, an Act relating to the preparation of the executive budget, infringes on constitutional powers of the governor with particular reference to the doctrine of executive privilege.

In my opinion it does not.

Section 12 of Article IX Constitution of the State of Alaska is the authority on which the present law and the amendments proposed by this bill rests. That section reads:

SECTION 12 BUDGET. The governor shall submit to the legislature, at a time fixed by law, a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments, offices, and agencies of the State. The governor, at the same time, shall submit a general appropriation bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenues.

The time of the submission is clearly within the power of the legislature to provide. It appears beyond question that the legislature may designate one of its agencies as the proper party to whom the required submission is made since the legislature, much like a corporation, may function only

Senator Bill Ray
Page 2
January 24, 1984

through its agents such as its presiding officers, committees, clerk and secretary, and its agencies.

I see no possibility that the requirements of this statute infringe on the power of the governor under the doctrine of executive privilege. This privilege covers direct advice to the president and in a well known decision, Nixon v. Sirica 487 F2 700 (United States Court of Appeals, District of Columbia Circuit, 1973) the court stated that the law should be sensitive to "intra governmental deliberations comprising part of a process by which governmental decisions and policies are formulated" in requiring disclosures.

Neither factor is involved in the present bill. The bill allows the budget to remain confidential for a period and then requires it be made public in Sec. 1.

In Sec. 3 of the bill it adds to the requirement already in law that specified information furnished the Office of Budget and Management by agencies be furnished to legislative finance division a requirement that this information also be made available to the public. While facially this could appear to be the type material referred to in Nixon v. Sirica cases under the Freedom of Information Act (5 USCA 552) make the distinction between pre-decisional communications by agencies and final submissions. The information contained in the submission under AS 32.07.050(a) would be available to the public in my opinion under the Freedom of Information Act.

While that conclusion does not directly speak to the constitutional question of executive privilege it is clear that information available in civil litigation under court rules or under the Freedom of Information Act is not protected from disclosure by the Constitution.

In my opinion the amendments contained in the bill do not infringe upon the constitutional powers of the executive branch.

BGB:ojb
w2/072

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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1. Article III, section 16 provides that the governor is responsible for the faithful execution of the laws. Article IX, section 12 specifically recognizes that preparation of the budget is an executive function. In connection with that function, the legislature is authorized by the constitution only to fix by law a date for submission of the budget to the legislature. The provisions directing earlier submission to the legislative finance division of the budget and budget information could constitute violations of the doctrine of separation of powers. Those requirements on the governor and the agencies may disrupt the performance by the governor of his constitutionally-assigned duty to prepare the budget. See Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th Cir. 1980), aff'd ___ U.S. ___, 103 S.Ct. 2764 (1983).

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Because of time constraints, we are able only to raise these issues, and are not able to provide detailed analyses of the caselaw concerning the doctrine of separation of powers. Please do not hesitate to contact this office if you require further assistance in this matter.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:

Virginia B. Ragle
Assistant Attorney General

VBR/pjg

Introduced: 1/9/84
Referred: Judiciary and
Finance

1 IN THE SENATE

BY FERGUSON

2

SENATE BILL NO. 331

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the preparation of the executive
7 budget; and providing for an effective date."

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

9 * Section 1. AS 37.07.020(a) is amended to read:

10 (a) ^{December 15} By ~~November 15~~, the [THE] governor shall prepare and submit
11 to the legislative finance division [LEGISLATURE BEFORE THE FOURTH
12 LEGISLATIVE DAY] a budget for the succeeding fiscal year which shall
13 cover all estimated receipts, including all grants, loans, and money
14 received from the federal government, and all proposed expenditures of
15 the state government. This budget is not public information until
16 December 15 at which time the governor shall submit copies to the
17 legislature and make copies available to the public. The budget
18 submitted by the governor shall be organized so that the proposed
19 expenditures for each agency are presented separately. The budget
20 shall be accompanied by a general appropriation bill to authorize the
21 proposed expenditures, and a bill or bills covering recommendations in
22 the budget for new or additional revenues.

23 * Sec. 2. AS 37.07.020 is amended by adding a new subsection to read:

24 (e) In a year following a gubernatorial election in which the
25 incumbent governor does not retain office the newly elected governor
26 shall submit a summary budget to the legislature on the first day of
27 the legislative session and a detailed budget by February 1. This
28 subsection does not relieve the outgoing governor of the obligation to
29 submit a budget to the legislature under this section.

1 * Sec. 3. AS 37.07.050(a) is amended to read:

2 (a) By September 1 of each fiscal year, each [EACH] state agen-
3 cy, [ON THE DATE AND] in the form and content prescribed by the of-
4 office, shall prepare, make available to the public, and forward to the
5 office and the legislative finance division

6 (1) the goals and objectives of the agency programs, to-
7 gether with proposed supplements, deletions and revisions;

8 (2) its proposed plans to implement the goals and objec-
9 tives, including estimates of future service needs, planned methods of
10 administration, proposed modification of existing program services and
11 establishment of new program services, and the estimated resources
12 needed to carry out the proposed plan;

13 (3) the budget requested to carry out its proposed plans in
14 the succeeding fiscal year, including information reflecting the
15 expenditures during the last fiscal year, those authorized for the
16 current fiscal year, those proposed for the succeeding fiscal year, an
17 explanation of the services to be provided, the number of total posi-
18 tions for all persons employed or under contract by the agency for
19 personal services including those rendered for capital improvement
20 projects, the need for the services, the cost of the services, and any
21 other information requested by the office;

22 (4) a report of the receipts during the last fiscal year,
23 an estimate of the receipts during the current fiscal year, and an
24 estimate for the succeeding fiscal year;

25 (5) a statement of legislation required to implement the
26 proposed programs and financial plans; and

27 (6) an evaluation of the advantages and disadvantages of
28 specific alternatives to existing or proposed program policies or
29 administrative methods.

1 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).