

SB

2009

HFIN

FILE

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 3, 1998

Honorable Jerry Ward
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

Re: SB 209 -- relating to the task force on
Privatization

Dear Senator Ward:

It has come to our attention that SB 209 has passed the Senate, and is now in the House with a committee referral to the House Finance Committee. SB 209 is very similar to a bill from last session, HCS CSSB 68 (STA) ("SB 68"). SB 68 was vetoed last year by the governor. Because SB 209 raises similar concerns to those raised in SB 68, we are advising you of those concerns.

As you know, SB 209 creates a legislative Task Force on Privatization ("task force"). The task force would have 13 members appointed by the governor, the speaker of the house, and the president of the senate. Its members would be drawn from the state house of representatives, the state senate, the public, and unions representing state employees.

This particular task force would have the duty to review and evaluate the privatization efforts in other states, review state contracting policies and procedures, identify the functions that could appropriately be privatized, and solicit public comment. The bill would be effective immediately upon enactment and its statutory provisions would be repealed on December 1, 1998.

Following enactment of the bill, the task force would take on some fairly complex matters. The bill would require that the task force issue its findings and recommendations in a report to the governor and the legislature by November 15, 1998. The report would address contracting policies and procedures necessary to accomplish its recommendations.

This bill raises a concern regarding the form of the legislation. Although reviews such as this are within the purview of the legislature, the usual mechanism to establish a

TONY KNOWLES, GOVERNOR

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legislative task force is by resolution, not by bill, with membership consisting exclusively of legislators and legislative appointees. Also, the bill mandates the type of representation of two of the governor's three appointments on the proposed 13-person task force, limiting meaningful participation by the Administration.

This bill raises a constitutional issue under the doctrine of the separation of powers because it provides for the appointment of the task force's members by the governor and the presiding officers of the legislature and the participation of members of the legislature in its deliberations. We view this as a significant legal issue because the bill provides that the recommendations of the task force will be relied upon in reaching significant decisions on privatization.

This bill raises another significant point for your consideration. The bill provides that the task force may administer an oath to witnesses appearing before it. The authority to administer oaths to witnesses is one that legislative bodies have long held under AS 24.25.060, though seldom exercised. However, under AS 24.25.060, the authority is limited to the senate president, the speaker of the house, and committee chairmen. The bill extends this power to a temporary task force which, while within the legislature's power to confer, seems unnecessary. Furthermore, inadvertent factual mistakes in testimony under oath could subject witnesses to charges of perjury.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL



By: Sarah J. Felix
Assistant Attorney General

BMB:SJF:jn

cc: Representative Mark Hanley
Co-chair, House Finance Committee

Representative Gene Therriault
Co-chair, House Finance Committee

Pat Pourchot, Legislative Director
Office of the Governor

Chrystal Smith, Legal Administrator
Deborah E. Behr, Assistant Attorney General
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Alaska State Legislature

Senate

JERRY WARD

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Memorandum

To: Representative Gene Therriault
Co-Chair House Finance

From: Senator Jerry Ward *JW*

Re: SB 209

Date: February 2, 1998

Please Schedule SB 209, "An Act relating to the Task Force on Privatization," at your earliest convenience. This legislation is the same bill that the Governor vetoed last session condensed into a one-year time frame.

Thank you for your consideration of this matter.

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 17, 1997

SUBJECT: Task Force on Privatization (CSSB 68(FIN))

TO: Senator Jerry Ward
Attn: Craig Johnson

FROM: Tamara B. Cook
Director

The Task Force on Privatization is established in the legislative branch and consists of members appointed by the president of the senate, speaker of the house, and governor. You have asked whether the appointment authority granted to the governor violates the separation of powers doctrine. While the question is not entirely free from doubt, I do not believe that a court is likely to find a violation of the separation of powers doctrine.

The court has recognized that the separation of powers doctrine applies in Alaska and that appointment of executive officers is an executive function. (Bradner v. Hammond, 553 P.2d 1 (Alaska 1976)) However, the power to appoint to office is not exclusively an executive function, at least not so exclusively an executive function that it may not be exercised by the legislature or by the courts as an incident to the discharge of functions properly within their respective spheres. (16 C.J.S. 216) Furthermore, the ordinary constitutional distributive clause providing for the complete separation of governmental powers has generally been held insufficient to vest the appointing power solely in the executive. Creation of a commission with some members appointed by the legislature and some by the governor has been held in other states not to violate the separation of powers doctrine when the commission is performing legislative and executive functions as a cooperative venture. (16 C.J.S. 135)

The Task Force on Privatization is charged with studying the issue of privatizing governmental functions, a topic of interest to both the legislative and executive branches. The Task Force is strictly advisory. It cannot exercise any legislative power, despite its location in the legislative branch of government. Generally, in order to rise to the level of a constitutional question, a conflict between the executive and legislative branches must be clear. (16 C.J.S. 217) Because the Task Force is advisory only and because it is involved in studying a matter of concern to both branches of government, I do not see the clear conflict between the branches necessary to create a separation of powers violation.

TBC:lmb
97-060.lmb

Alaska State Legislature

Senate

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Sponsor Statement Senate Bill 209

"An Act relating to the Task Force on Privatization;
and providing for an effective date"

Privatization is the fundamental political and economic reassessment of the role of government and the private sector in the modern state. It is a variety of management techniques and activities encouraging more involvement of the private sector in providing government services. Markets are efficient only when they are competitive, however, efficiency should not be government's only goal. Government must balance the pursuit of efficiency with effectiveness, while maintaining the confidence of the people it represents.

SB 209 was introduced to establish a task force that will review functions of state government that could easily be transferred to the private sector. The task force will have members from the public, legislative and executive branches of government.

In this time of decreased revenue the State of Alaska needs an all encompassing evaluation of governmental services and their delivery. Forty-eight other states, including Alaska, have streamlined some governmental services through a number of methods including outsourcing and privatization. When enacted, this bill will evaluate which services could be provided more efficiently by the private sector as well as highlight those services that are better provided by the government. The report will provide a road map for reducing the size and cost of state government, without reducing service, while providing options for the future.

SB 209 will also look into the State's contracting procedures to make sure Alaskans are getting the most out of every contracting dollar spent.

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: February 2, 1998

FURTHER REFERRALS:

Date of Committee Action: 2/17/98

The FINANCE Committee considered:

SB 209

SENATE BILL NO. 209

TASK FORCE ON PRIVATIZATION

“An Act relating to the Task Force on Privatization; and providing for an effective date.”

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) Gov. 1/21/98
LAA 1/21/98

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Theriault</i>	Theriault	x			
<i>Mark Hanley</i>	Hanley	x			
<i>Colin Mulder</i>	Mulder	>			
<i>Terry Martin</i>	Martin	x			
<i>Michael Kohring</i>	Kohring	x			
<i>Henry Davis</i>	Davis	x			

CHAIR'S SIGNATURE *Gene Theriault* *Mark Hanley*
 co-chair

FISCAL NOT

STATE OF ALASKA
1998 LEGISLATIVE SESSION

NO. No. 1
BILL Bill Version: SB 209
PUBL (S) Publish Date: 1-21-98

Revision Date: _____
Title: "An Act relating to the Task Force on Privatization; and providing for an effective date."
Sponsor: Senator Ward
Requestor: Senate State Affairs

Department Affected: Legislative Affairs Agency
BRU: Legislative Council
Component: Council & Subcommittees

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	22.1	0.0	0	0	0	0
CONTRACTUAL	3.2	0.0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	25.3	0.0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	25.3	0.0	0	0	0	0
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	25.3	0.0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

SB209 establishes a 13 member Task Force on Privatization consisting of 3 members appointed by the Governor, 4 public members appointed by the presiding officers of the Alaska State Legislature, and 6 Legislators. This task force will review and report to the Legislature and the Governor regarding the feasibility of privatization of some government functions. The report is due November 15, 1998.

Prepared By: Karla Schofield, Deputy Director *Karla Schofield* Phone: 465-3852
 Division: Administrative Services Date: 1/19/98

Approved By: Pamela A. Varni, Executive Director *Pamela A. Varni*
 Agency: Legislative Affairs Agency Date: 1/19/98

CONTINUATION OF FISCAL NOTE: SB 209

Travel

Travel costs for the Governor's appointees will be paid for by the Office of the Governor. FY98 travel costs for Legislators and public members will be absorbed within existing budgets. This fiscal note contains FY99 travel funding for Legislators and public members appointed by the Presiding Officers.

If the task force begins work in FY98 they are expected to travel once in FY98, and three times in FY99 to hold meetings. Any other meetings of the task force will be conducted by teleconference.

For the purposes of this fiscal note, the public members of the task force appointed by the presiding officers are assumed to be 1 from Fairbanks, 2 from Anchorage and 1 from Ketchikan. The Legislators are assumed to be 3 from Anchorage, 1 from Fairbanks, 1 from Ketchikan, and 1 from Juneau. Two days of per diem are calculated for each meeting. 1 Staff person from Anchorage will attend the meetings.

	<u>Per Diem:</u>	<u>Travel</u>	
<u>2 Anchorage Meetings</u>			
Anchorage - 2 public members/3 Legislators/1 Staff	-	-	
Fairbanks - 2 public members/1 Legislator	1,278	1,110	
Ketchikan - 1 public member/1 Legislator	852	1,240	
Juneau - 1 Legislator	426	470	
<u>1 Fairbanks Meeting</u>			
Anchorage - 2 public members/3 Legislators/1 Staff	2,172	2,220	
Fairbanks - 2 public members/1 Legislator	-	-	
Ketchikan - 1 public member/1 Legislator	724	1,560	
Juneau - 1 Legislator	362	655	
<u>1 Juneau Meeting</u>			
Anchorage - 2 public members/3 Legislators/1 Staff	2,016	2,820	
Fairbanks - 2 public members/1 Legislator	1,008	1,965	
Ketchikan - 1 public member/1 Legislator	672	580	
Juneau - 1 Legislator	-	-	
Total FY99 Travel	9,510	12,620	TOTAL 22,130

Contractual

	Phones \$100/month	Postage \$50/month	Advertisizing \$750/meeting	TOTAL
FY99	600	300	2,250	3,150

Teleconference charges and expenses for printing the report will be absorbed by the Agency.

FISCAL NOTE

No. 2

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: SB 209

(S) Publish Date: 1-21-98

Revision Date (Note if correction) _____

Dept. Affected All departments

Title An Act relating to the Task Force
on Privatization.

BRU _____

Sponsor Sen. Ward

Component _____

Requester Senate State Affairs Committee

Component Serial No. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY98) cost: *****

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would establish a Task Force on Privatization, which would, among other tasks, "identify functions of our state government that could economically and appropriately be privatized, if any."

Most of the state's labor agreements include provisions which require the state to conduct feasibility studies determining potential costs and benefits before any decisions are made on contracting out work currently performed by state employees. Therefore, before any decisions are made on implementation of the Task Force's recommendations to privatize state functions covered by these labor agreements, the feasibility studies required by the labor agreements would need to be conducted.

Prior feasibility studies of this type have cost from approximately \$20,000 to \$50,000 per study. However, because the need for feasibility studies will depend on the recommendations of the Task Force, these costs, and the departments affected, cannot be estimated now. This is why asterisks are shown on this fiscal note.

In addition to feasibility studies, the labor agreements require other procedures to be followed before contracting out of work can be done.

Prepared by Annalee McConnell

Division Office of Management and Budget

Approved by Commissioner

Jim Ayers, Chief of Staff

Agency Office of the Governor

Phone 465-4676

Date 1/13/98

Date _____

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