944 HJ HB 928 - HB 981

> "It is clear that the legislative act need not conform to the intitiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.
>
> Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative."

It then made an analogy to the power to amend given the legislature saying:

> "The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital governmental functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.
>
> What is significant to us here is the effect which the amendatory power of the legislature has upon our interpretation of the words 'substantially the same measure.'

> For if the legislature has broad power of amendment, it follows that it has broad power to change an initiative by an enactment covering the same subject as the initiated measure. In short, we must interpret Art. XI, Sec. 4, broadly and not narrowly as to the scope of legislative power. We, of course, are not passing here on the question of whether an amendment so vitiates an act passed by initiative as to constitute its repeal."

While this is clearly dictum since the issue of amendment was not before the Court the analysis was reaffirmed, except as it may suggest that the legislature may interfere with the initiative process by amending an initiated law only where it creates a potential danger to the operation of governmental functions by Thomas.

Boucher then went to an analysis of the differences and held:

> "Viewing the two measures as a whole we find that they accomplish the same general goals. They adopt similar, although not identical, functional techniques to accomplish those goals. The variances in detail between the measures are no more than the legislature might have accomplished through reasonable amendment had the initiative become law."

There was a strongly worded dissent. The dissent stated:

> "In this case the legislature took the initiative title and enacted a measure which clearly was more politically palatable to them, but which is definitely not 'substantially the same' as the initiative sponsored by the people."

followed by its analysis of the changes and effect.

Thomas was a case in which action was brought to prevent the legislature's amendments to the conflict of interest law, which was enacted by initiative, from becoming effective. The case was decided by a unanimous court. The court quoted the constitutional provision involved and said:

> "According to this plain language the legislature may not repeal a law passed by initiative for two years, but may pass an amendment at any time. We interpret this provision in accordance with the general principle

> of statutory construction that a constitutional provision should receive a reasonable and practical interpretation in accordance with common sense."

The court reaffirmed its recognition that the legislature has broad powers to amend an initiative. It stated the central issue in the case was whether the legislature had exceeded that broad power by passing an amendment which so vitiates the initiative as to constitute its repeal.

It then examined the changes and held:

> "Of course there remains the question whether the amendments so emasculate the law that it is effectively repealed. We conclude that they do not. There are considerable language changes, but these clarify and render the law more precise."

The court concluded its opinion with cautionary language saying:

> "As Warren argues, there is much merit in the dissent in Meyers as to the scope of the legislature's power to amend laws enacted by initiative, but we are not presented with a similar case. The amendments to AS 39.50, which preserve its basic structure and purpose, fall far short of the drastic changes made to the apportionment scheme by the Washington legislature.
>
> For purposes of this appeal it is unnecessary for us to decide at what point an amendment might be so drastic as to constitute a repeal of an initiated law in violation of the Alaska Constitution. In this case the amendments only reduced the penalties for violation of the law and clarified some of the language. We are of the opinion that such an amendment did not constitute a repeal of the initiated law."

The conclusion in my opinion is that the legislature has broad power to amend an initiative but may not exceed that power by enacting an amendment which so vitiates the initiative as to constitute its repeal. The court apparently will use a reasonable and practical approach in its analysis. The question as to whether amendments have reached the point where they are so drastic as to constitute a repeal will be

determined on a case by case basis by comparison of the amendment to the initiative being amended and developing a conclusion as to the total effect of the amendments. Based on the Alaska cases discussed earlier, considerable change by amendment is allowed without constituting a repeal.

I am aware that two cases concerning Ballot Proposition No. 4, Disposal of State Lands, which was approved by the people at the last general election are pending on appeal before the Supreme Court. Since among other questions, the matters discussed in this opinion have been presented for consideration of the court, the decision in those cases may significantly affect this opinion.

BGB:jdn

STATE OF ALASKA
THE LEGISLATURE

POUCH Y, STATE CAPITOL
JUNEAU ALASKA 9981
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 4, 1979

SUBJECT: Amendment to FRANK Initiative
(Work Order No. 5956)

TO: Representative-elect Ray H. Metcalfe

FROM: Billy G. Berrier BGB
Director
Division of Legal Services

The draft of the amendments to the FRANK initiative that you requested is enclosed.

In my opinion the proposed amendments would not be constitutional.

I am enclosing a current opinion from this division on the extent of and limitation on the power of the legislature to amend initiatives and the material contained in the Official Election Pamphlet on Ballot Proposition No. 3.

The general purpose of the initiative is disclosure to the voters of the full bondable costs of relocating the capital and approval of those costs by the people. The constitution requires voter approval of incurring general obligation bonded debt by providing in Sec. 8 of Art. IX that:

> "No state debt shall be contracted unless authorized by law for capital improvements and ratified by a majority of the qualified voters of the State who vote on the question. . . ."

This has been implemented by statute providing for a vote and for the mechanics of voting on bond propositions. A vote authorizing incurring necessary bonded debt is required by the Constitution itself whether or not a specific statute requires that vote. With the amendment proposed in this bill, the only limitation portion of the initiative that survives is the prohibition of other expenditures prior to the already required approval. It appears clear that the general purpose of the initiative is not preserved.

Apart from the constitutional problem, I see two technical drafting problems.

The insertion of the word "necessary" preceeding the word "offices" on line 22 is redundant and harmful. While I realize this is intended to tie to the reference to "necessary bonded costs" on line 25, that tie is not needed. The surface meaning of the sentence, as it stands, is that there is a prohibition against moving "necessary offices" of the heads of principal departments; there is no prohibition of moving unnecessary offices. No court would interpret the section that way but adding a word which serves no useful purpose and creates a surface absurdity is unfortunate. I suggest its deletion.

A more serious problem arises from the limitation on the bond issue to only those bonds the commission determines to be required after giving priority to financing through the proceeds of sales of land. I assume it is your intention that the bond issue be limited to the amount necessary excluding proceeds of land sales. The phrase "after giving priority to financing" is somewhat unclear. If you intend to mandatorily exclude those costs, I would suggest language to replace that phrase with a phrase such as "after excluding those costs which the plan determines may reasonably be realized."

BGB:jdn

Enclosures

HB
952

Sec. 42.20.020. Refusal to transmit or falsification of official communication. On application of an officer of the state in case of war, insurrection, riot, civil commotion or resistance of public authority, for the prevention and punishment of crime, or for the arrest of persons suspected or charged with crime, every telegraph company shall give immediate dispatch to the communication of the officer at the price of ordinary communications of the same length. An officer, agent, operator, or employee of the company who refuses or wilfully omits to transmit the communication, or designedly alters it or falsifies it is, upon conviction, punishable by a fine of not more than $1000, or by imprisonment in jail for not more than one year, or by both. (§ 49-5-11 ACLA 1949)

Sec. 42.20.030. Punishment and civil liability for injury to, interference with, or obstruction of telegraph, telephone, electric, or gas lines. A person is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $500, or by imprisonment for not more than six months, or by both, and is liable to the company or person whose property is injured, or line obstructed, or current diverted, in a sum equal to three times the amount of the actual damages sustained, and three times the price of the current, light, power, or gas diverted or used, if he

(1) wilfully and maliciously cuts, breaks, or throws down a pole, tree, pipeline, or other object used in a line of telegraph, telephone, gas line, or system for the transmission of light or power by use of electricity, or gas by pipeline;

(2) wilfully and maliciously breaks, displaces, or injures an insulator in use in the line, or wilfully and maliciously cuts, breaks, and removes from its insulator any wire used for any of the purposes set forth in (1) of this section;

(3) by any interference wilfully and maliciously destroys the insulation of the line, or interrupts the transmission of the electric current through it, or wilfully and maliciously destroys the protective wrapping of a gas pipeline;

(4) wilfully and maliciously injures, molests, or destroys property or materials appertaining to any of these lines or belonging to a telegraph, telephone, electric light or power company, or gas company;

(5) wilfully and maliciously interferes with the use of a telegraph, telephone, electric light or power line or gas line, or obstructs or postpones the transmission of a message over a telegraph or telephone line, or procures or advises injury, interference, or obstruction to any telegraph, telephone, electric light, power or gas line;

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(6) wilfully and maliciously interferes with or alters a meter or other device for the measuring of current, power, or gas; or

(7) without the authority of the owner diverts, uses, or appropriates a message or current or taps a wire or line used for the transmission of messages, current, power or gas, or procures or advises this to be done. (§ 49-5-12 ACLA 1949; am § 1 ch 39 SLA 1964)

Paragraph (5) prohibits willful and malicious interference with telephone lines and messages. Anniskette v. State, Sup. Ct. Op. No. 732 (File No. 1231), 489 P.2d 1012 (1971).

Proof. — Proof of the element of intent is not necessary under a count charging a violation of paragraph (7) of this section. Selman v. State, Sup. Ct. Op. No. 302 (File No. 527), 406 P.2d 181 (1965), overruled as to same-evidence test in double jeopardy cases in Whitton v. State, Sup. Ct. Op. No. 661 (File No. 1153), 479 P.2d 312 (1970).

Proof of any unauthorized diversion, use, appropriation or a mere tapping of a transmission line without the taking of any current would complete proof of an offense under paragraph (7) of this section. Selman v. State, Sup. Ct. Op. No. 302 (File No. 527), 406 P.2d 181 (1965), overruled as to same-evidence test in double jeopardy cases in Whitton v. State, Sup. Ct. Op. No. 661 (File No. 1153), 479 P.2d 312 (1970).

Am. Jur. reference. — 52 Am. Jur., Telegraphs and Telephones, § 172 et seq.

Sec. 42.20.040. Removal of instrument or meter or disconnecting of wire. No agent or employee of a telephone or electric light company may remove any instrument or meter or disconnect any wire connected to the instrument or meter without notifying the owner, agent or tenant of the building or room where the instrument or meter is installed. A notice in writing of the intention to remove the instrument or meter or to disconnect a wire is sufficient if delivered to the owner, agent or tenant of the building or room before removal or disconnection, or in case of the absence of the owner, agent or tenant, either by depositing the notice in the post office with postage prepaid, or by posting in a conspicuous place upon the building or room 24 hours before removal or disconnection. No agent or employee of a telephone or electric light company may enter a building or room to examine, remove or disconnect an instrument or meter without first accouncing his presence to the occupant. A person violating this section is guilty of a misdemeanor, and upon conviction, is punishable by a fine of not more than $200, or by imprisonment for not more than 30 days, or by both. (§ 49-5-13 ACLA 1949)

Am. Jur. reference. — 52 Am. Jur., Telegraphs and Telephones, §§ 34, 49.

Sec. 42.20.050. Altering message. (a) A person is guilty of a misdemeanor and is punishable by a fine of not more than $1,000. or by imprisonment for not more than one year, or by both if he wilfully alters a message by adding to it or omitting from it a word or figure so as to materially change the sense, purport, or meaning of the message, to the injury of the person sending or desiring to send it, or to whom it was directed.

I. REQUEST

Bill/Resolution No. CSHB 952

Title Rel. to public utilities; eff. date

Requested by (H) Judiciary Date 4-23-80

II. FISCAL DETAIL

Agency Affected Commerce and Economic Development

Program Category Affected Protection

BRU, Program, or Subprogram(s) Affected Alaska Public Utilities Commission

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	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

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

There is no additional fiscal impact associated with passage of this bill.

IV. DATE 4-23-80 PREPARED BY David Creekman

AGENCY Dept. of Commerce & Economic Developme

PHONE 465-2504

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33--001 (Rev. 12/79)

HB
981

(9)

COMMITTEE REPORT

HOUSE

4/28/80

FURTHER:

Date: ____________________

Mr. Speaker: (Resources referral waived 4/28/80)

The Committee on JUDICIARY has had HB 981

"An Act authorizing an advisory vote by the qualified voters of the state on enactment of a law asserting the right of the state to own and control public land in the state."

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 [ ] new title

and recommends ____________________

[ ] 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:
[illegible] D Pass	[illegible]
[illegible]	Terry Martin Do Not Pass
[illegible]	[illegible] Do not Pass
[illegible] Malone	[illegible]
	[illegible] N. Rec

[illegible signature]
CHAIRMAN

H 60 (Rev. 12/78)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill No. 981
Title Authorizing advisory vote re right of state to own & control public land
Requested by Rep. Charles H. Parr Date 4-28-80

II. FISCAL DETAIL
Agency Affected
Program Category Affected
BRU, Program, or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-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-

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Charles H Parr

IV. DATE 4-28-80 PREPARED BY Rep. Charles H. Parr
AGENCY House Judiciary Committee
PHONE 465-3718

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

April 28, 1980

TO: Members of the House Judiciary Committee

FROM: Representative Charles H. Parr, Chairman

SUBJECT: Sagebrush Rebellion Legislation

The members of the Committee are familiar with the path being followed by the State of Nevada in attacking the overweening influence of the Federal Government in the State. In brief, Nevada is saying that all public land in the State is its property and it plans to enforce its ownership. The intent is, of course, to lead to a Supreme Court resolution of Nevada's claim that Federal Government retention of nearly all the public land discriminated against the State -- that it was not admitted on an even footing with other States admitted earlier.

The chances of success in this legal battle may be slight, but if there is enough support among the Western States, Congress may well be forced to take a more reasonable attitude on land issues.

The Judiciary Committee passed out some weeks ago HJR 51 (7 "do pass" and 1 "no rec"). HJR 51 was the first of a package of three bills. It would place a constitutional amendment on the ballot so that the voters might rescind that portion of the State Constitution in which we give up all claim to "Federal" land.

HB 933 and HB 981 are the second and third parts of the package. In addition to the disclaimer in the Constitution, there is also a provision in the Statehood Act. The Statehood Act is a contract and requires bilateral agreement to change. HB 933 would have the voters advise us as to whether we should petition Congress for negotiations to change the Statehood Act.

HB 981 would ask the voters to tell us whether we should pass a bill similar to that passed by Nevada. This bill would then stake our claim to all the public land in the State (it would not affect private or Native Corporation land).

I believe we need to pass this three-bill package. Even though the concrete results may be slight, we will at the very minimum make a strong statement which may have some influence as the D-2 issue comes to a head this summer.