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Beyond oversight through legislative committees, there is some additional room for legislative input into the execution of laws. Certain types of legislative participation create only a minimal danger of the aggregation of power in the legislative branch which the separation of powers seeks to prevent. This is particularly true where the Executive has extensive control pursuant to a statutory delegation of authority and the Legislature has only limited power to reject discrete projects rather than entire schemes of regulation.

In *Brown v. Heymann*, 62 *N.J.* 1, 297 *A.*2d 572 (1972), this Court upheld the constitutionality of the Executive Reorganization Act, which authorized the Governor to prepare an executive reorganization plan and present it to both houses of the Legislature. The statute provided that the plan would take effect unless both houses passed a concurrent resolution within 60 days disapproving the plan. The Court noted the plaintiffs' Presentment Clause claim but did not discuss it, focusing instead on the claim that by delegating too much legislative authority the act unconstitutionally *increased the power of the executive* branch. The Governor did not challenge the Legislature's veto power.

The Federal executive has also generally supported executive reorganization plans that take effect unless the Legislature votes a resolution of disapproval. *See Consumer Energy*, 673 F.2d at 458-59; 43 Op. Att'y Gen. 2 (Jan. 31, 1977) (Attorney General Bell) ("the procedures provided in ... the reorganization statute are constitutionally valid").[4] *But see* 37 Op. Att'y Gen. 56 (1933) (Attorney General Mitchell) ("power to disapprove administrative acts raises a grave question as to the validity of the entire provision in the ... Executive reorganization [statute]").

"[G]overnmental powers must be shared and exercised by the branches on a complementary basis if the ultimate governmental objective is to be achieved." *Knight*, 86 *N.J.* at 339, 431 *A.*2d 833. In some of these areas the legislative veto might serve an important function consistent with the separation of powers. However, we cannot allow the Legislature to create oversight mechanisms that will circumvent the constitutional procedures for making laws and interfere unduly with the Executive's constitutional responsibility to enforce them.

Our holding here does not foreclose all legislative veto provisions. Where legislative action is necessary to further a statutory scheme requiring cooperation between the two branches, and such action offers no substantial potential to interfere with exclusive executive functions or alter the statute's purposes, legislative veto power can pass constitutional muster.

The remarkably broad veto power in *L.* 1981, c. 27, offers almost unlimited potential for law making without the constitutionally required participation of the Governor and for undue interference with the executive branch. For these reasons, we hold that the Act violates the separation of powers and the Presentment Clause.

V

The Legislative Oversight Act is unconstitutional. It violates the separation of

4. Similarly, in *Atkins v. United States*, 556 F.2d 1028 (1977), cert. den. 434 *U.S.* 1009, 98 *S.Ct.* 716, 54 *L.Ed.*2d 751 (1977), the Court of Claims upheld a legislative veto provision in the Federal Salary Act of 1967, 2 *U.S.C.* §§ 351 to 361, pursuant to which the President's recommendations for judicial pay increases become effective unless vetoed by either house of Congress. The court noted that by disapproving the President's recommendations Congress "is certainly not making new law," *id.* at 1063, and by approving the salary changes they "become effective, just as if a majority in each House had concurred in them and the President approved them (which of course can be assumed in light of his rule initiating them)," *id.* at 1064.

The Court of Claims in *Atkins* further noted that the "matter of salaries [is] traditionally within the peculiar province of the legislative branch, not impinging upon presidential functions or veto rights." *Id.* at 1063. *Atkins* thus suggests that control over the appropriations process is another area in which additional legislative oversight is appropriate and may sometimes proceed without the participation of the Governor.

The constitutional power of the Legislature in overseeing its own appropriations is discussed more fully in *Enourato v. New Jersey Building Authority*, *supra*, decided today.

powers by giving the Legislature excessive power to impede the Executive in its constitutional mandate to faithfully execute the law. Further, the Act permits the Legislature to effectively amend or repeal existing laws without the participation of the Governor. Foreclosing the Governor from the law-making process offends the separation of powers and the Presentment Clause. This is an exercise of legislative power that the Constitution forbids.

CLIFFORD and SCHREIBER, JJ., concurring in the result.

For invalidation—Chief Justice WILENTZ and Justices PASHMAN, CLIFFORD, SCHREIBER and HANDLER—5.

Opposed—None.

90 N.J. 396

Albert ENOURATO, Plaintiff-Appellant,

v.

NEW JERSEY BUILDING AUTHORITY, The Directors of the New Jersey Building Authority, Brendan T. Byrne, Governor of the State of New Jersey, Clifford A. Goldman, State Treasurer of the State of New Jersey, Earl Josephson, Acting Director, Division of Purchase and Property (Division of the Treasury, State of New Jersey), Edward F. Meara, III, Chairman, New Jersey Building Authority, and W. Harry Sayen, Nancy Beer, Edward L. Hoffman, John H. Walther, Al Faiella, Ramon Rivera, Bernard E. Kelchick, Edward Pulver, Directors, New Jersey Building Authority, Defendants-Respondents.

Supreme Court of New Jersey.

Argued March 22, 1982.

Decided July 22, 1982.

Plaintiff, a New Jersey resident and taxpayer who leased land to the State, brought action challenging the constitutionality of provisions of the New Jersey Building Authority Act giving Legislature a power to veto building projects and lease agreements proposed by the Authority. The Superior Court, Law Division, Mercer County, dismissed the complaint, and plaintiff appealed. The Superior Court, Appellate Division, 182 N.J.Super. 58, 440 A.2d 42, affirmed and further appeal was taken. The Supreme Court, Pashman, J., held that: (1) legislative veto provisions in New Jersey Building Authority Act, which limited veto power to approval or rejection of proposed building projects and leases that require continuing budget appropriations by the Legislature and which were limited in scope and did not empower Legislature to revoke at will portions of coherent regulatory schemes, fell within proper scope of legislative oversight of executive action and did not violate separation of powers provision or presentment clause of State Constitution, and (2) since New Jersey Building Authority Act did not authorize creation of any debts by state, debt limitations clause of the State Constitution did not apply to Authority's debts on any obligations of the state on its lease agreements with the Authority.

Affirmed.

Schreiber, J., filed separate dissenting and concurring opinion in which Clifford, J., joined.

1. Constitutional Law ⇨58

Where legislative action is necessary to further a statutory scheme requiring cooperation between the two branches, and such action offers no substantial potential to interfere with exclusive executive functions or to alter the statute's purposes, legislative veto power can pass constitutional muster. N.J.S.A.Const.Art. 3, par. 1.

2. Constitutional Law ⇨58
States ⇨9

Legislative veto provisions in New Jersey Building Authority Act, which limited

veto power to approval or rejection of proposed building projects and leases that require continuing budget appropriations by the Legislature and which were limited in scope and did not empower Legislature to revoke at will portions of coherent regulatory schemes, fell within proper scope of legislative oversight of executive action and did not violate separation of powers provision or presentment clause of State Constitution. N.J.S.A. 52:18A-78.1 to 52:18A-78.32; N.J.S.A.Const.Art. 3, par. 1; Art. 5, § 1, par. 14.

3. States ⇐119

Since New Jersey Building Authority Act did not authorize creation of any debts by state, debt limitations clause of the State Constitution did not apply to Authority's debts on any obligations of the state on its lease agreements with the Authority; overruling *McCutcheon v. State Building Authority*, 13 N.J. 46, 97 A.2d 663. N.J.S.A. 52:18A-78.1 to 52:18A-78.32; N.J.S.A. Const.Art. 8, § 2, par. 3.

David S. Lieberman, Atlantic City, for plaintiff-appellant (DeGeorge & Gendzel, Lawrenceville, attorneys; Murray Gendzel, Lawrenceville, of counsel).

Michael R. Cole, Asst. Atty. Gen., for defendants-respondents (Irwin I. Kimmelman, Atty. Gen., attorney; Sherrie L. Gibble, Deputy Atty. Gen., on the brief).

The opinion of the Court was delivered by

PASHMAN, J.

Plaintiff is a New Jersey resident and taxpayer who leases land to the State. He challenges the constitutionality of provisions of the New Jersey Building Authority Act (Act), *L.* 1981, c. 120, *N.J.S.A.* 52:18A-78.1 to .32, which give the Legislature the power to veto building projects and lease agreements proposed by the New Jersey Building Authority. He alleges that the legislative veto violates the Presentment Clause, Art. V, § 1, ¶ 14, and the separation of powers provision, Art. III, ¶ 1, of the New Jersey Constitution. Plaintiff further alleges that the Act violates the State Constitution's debt limitations clause, Art. VIII, § 2, ¶ 3. For the reasons stated below, we reject plaintiff's claims and uphold the constitutionality of the challenged provisions.

I

The Legislature established the New Jersey Building Authority ("Authority") to build and operate office facilities for state agencies. *L.* 1981, c. 120, *N.J.S.A.* 52:18A-78.1 to .32. The Act authorizes the Authority to issue bonds and notes in an amount not to exceed $250,000,000 to be used to build those facilities. *N.J.S.A.* 52:18A-78.14(a). The bonds and notes are entirely the debt of the Authority, not the State. They must state on their face that they shall not create any indebtedness, liability or obligation of the State or any political subdivision. *N.J.S.A.* 52:18A-78.14(f).

All actions taken by the Authority must receive the Governor's approval. No action taken at any Authority meeting has any legal effect if the Governor vetoes the action within 15 days of the meeting. *N.J.S.A.* 52:18A-78.4(i).

The Act also contains two provisions that allow the Legislature to veto Authority actions. First, to commence any project whose estimated cost exceeds $100,000, the Authority must obtain a concurrent resolution of both houses of the Legislature within 45 days of the submission of the project to the Legislature for approval. *N.J.S.A.* 52:18A 78.6, .7, .9. Second, every lease agreement between the Authority and a state agency must be approved by the presiding officer of each house of the Legislature. *N.J.S.A.* 52:18A-78.9.

On November 24, 1981, plaintiff filed suit in the Superior Court, Law Division, alleging that the Act was unconstitutional. He claimed an interest in the matter as a New Jersey taxpayer and landowner who leased a building and property to the State for use by the Department of Environmental Protection. The Authority had proposed and the Legislature had approved building projects that might eliminate the State's need for plaintiff's facility.

The suit was filed one day before the Authority was scheduled to execute a contract for the sale of $135,000,000 in bonds. Over plaintiff's objection, the trial court granted respondents' request to schedule a show cause hearing for that same day. At the hearing respondents orally moved to dismiss the complaint. The trial court rejected plaintiff's constitutional claims and granted the motion.

The following day, November 25, 1981, respondents applied to the Appellate Division for an order reducing the time within which plaintiff could appeal the order of dismissal. The Appellate Division granted the motion requiring plaintiff to appeal by November 30, 1981 and submit briefs by December 4, 1981. Plaintiff appealed the dismissal of his complaint and filed a brief in the allotted time. On December 14, 1981 the Appellate Division heard oral argument and affirmed the dismissal. A written opinion followed. 182 *N.J.Super.* 58 (1981).

Plaintiff filed a notice of appeal with this Court on December 30, 1981, and moved for an interim restraint against the Authority's sale of bonds. The Authority cross-moved for summary affirmance. The Court denied both motions and accelerated the appeal by order dated January 19, 1982.

II

Constitutionality of the Legislative Veto Provisions of the New Jersey Building Authority Act

In *General Assembly v. Byrne*, 90 *N.J.* 376, 448 *A.2d* 438 (1982), decided today, the Court holds that the Legislative Oversight Act, *L.*1981, *c.* 27, is unconstitutional. By empowering the Legislature to revoke virtually all proposed executive agency rules, the Act intruded excessively upon the Executive's law enforcement authority in violation of the separation of powers. The Act also allowed the legislative branch to effectively amend and repeal existing laws without the participation of the Governor. This violated the separation of powers, *N.J. Const.* (1947), Art. III, ¶ 1, and the Presentment Clause requirement that "[e]very bill which shall have passed both houses shall be presented to the Governor" for approval or veto. *N.J.Const.* (1947), Art. V, § 1, ¶ 14.

[1] However, the Court in *General Assembly* made clear that the separation of powers leaves room for some legislative oversight and participation in executive action. Not every legislative input into law enforcement impermissably interferes with the Executive's law enforcement power. Likewise, not every action by the Legislature constitutes law making that requires a majority vote of both houses and presentment to the Governor.

> Where legislative action is necessary to further a statutory scheme requiring cooperation between the two branches, and such action offers no substantial potential to interfere with exclusive executive functions or alter the statute's purposes, legislative veto power can pass constitutional muster. [*General Assembly* (at 395, 448 *A.2d* 448)]

[2] The Court finds that the legislative veto provisions in the New Jersey Building Authority Act, *L.* 1981, c. 120, *N.J.S.A.* 52:18A 78.1 to .32, fall within the proper scope of legislative oversight of executive action. The Act's veto power is limited to approval or rejection of proposed building projects and leases that require continuing budget appropriations by the Legislature. Legislative oversight therefore plays a necessary role in ensuring continuing legislative support for these projects.

At the same time, the veto provisions in the Act are limited in scope and do not empower the Legislature to "revoke at will portions of coherent regulatory schemes," *General Assembly*, 90 *N.J.* at 378, 448 *A.2d* 439. The veto therefore cannot substantially disrupt exclusive executive branch functions.. Indeed, the Governor has full control over Authority decision making. Further, even repeated use of the veto has little potential to alter the underlying legislative policy of providing capital facilities to meet internal governmental needs. Nor can it subvert the Governor's role in enforcing the law. The oversight provisions in *L.* 1981, c. 120, therefore violate neither the

Presentment Clause nor the separation of powers.

A. *The veto provisions' role in furthering the statutory scheme.*

The New Jersey Building Authority Act created the Authority and authorized it to issue bonds and notes in an amount up to $250,000,000 to provide facilities for state agencies. Those who purchase these bonds and notes become creditors of the Authority alone and not the State. They have no remedy against the State government because the statute provides that the notes and bonds issued by the Authority are entirely its own obligation. The notes must state on their face that

> neither the State nor any political subdivision thereof is obligated to pay the principal or interest and that neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of or the interest on the bonds or notes. [*N.J.S.A.* 52:18A-78.14(f)]

The Authority's creditors depend on the solvency of the Authority for repayment of the money they have lent. To repay the borrowed money, the Authority in turn depends upon rental payments from the state agencies that lease the Authority's facilities. In fact, the rental fees are calculated to satisfy the Authority's obligations on its bonds and notes. When it issues those bonds and notes, however, the Authority has no enforceable promise that the state agencies will pay the Authority the rent moneys necessary to reimburse its creditors. The statute provides that

> the payment of any and all rentals or other amounts required to be paid by the agenc[ies] thereunder, shall be subject to and dependent upon appropriations being made from time to time by the Legislature for that purpose .... [*N.J.S.A.* 52:18A-78.22]

The Authority's lenders thus depend upon the good faith of the Legislature in appropriating sufficient money each year to pay the rental fees that are used to repay them. The Legislature's refusal to appropriate the necessary money would not only bankrupt the Authority and force it to default on its obligations, but would also cripple the State's ability subsequently to borrow money for any purpose. The legislators who passed the Building Authority Act therefore sought to minimize the possibility that any future Legislature would refuse to make such appropriations.

One legislative veto provision in the Act gives either house of the Legislature the power to veto any Authority project estimated to cost over $100,000, *N.J.S.A.* 52:18A-78.8(b). The other provision enables the presiding officer of either house to veto any lease agreement, *N.J.S.A.* 52:18A-78.9. These vetoes advance the crucial purpose of obtaining continued legislative support in two related ways. First, the Act makes certain that every Authority project receives a legislative imprimatur by allowing the Legislature to reject any proposed project at its inception. It follows that if the Legislature does not veto a particular project and thereby approves it, this action will constitute a strong, if not compelling, basis for the Legislature to continue to appropriate sufficient money to support the project.

Second, the legislative veto mechanism can foster close cooperation between the Legislature and the Executive in this area of mutual concern. It can induce the Authority to exercise care in selecting its projects. The veto powers are vested not only in the Legislature but in the Governor as well. *N.J.S.A.* 52:18A-78.4(i). They thus serve to ensure that the Authority acts prudently. Moreover, veto power is only one part of a broader statutory scheme ensuring fiscal prudence. For example, before the Legislature even has a chance to review a proposed building project, the Governor can veto the proposal at its inception. *N.J.S.A.* 52:18A-78.4(i). Similarly, the Authority itself faces extensive requirements before commencing any project estimated to cost over $100,000. *N.J.S.A.* 52:18A-78.6. This includes the preparation of a detailed plan describing the project's estimated costs and the anticipated appropriations necessary for all lease agreements. *N.J.S.A.* 52:18A-78.6(a). As a further assurance of fiscal prudence, the Act mandates that the Authority's board of directors include the State Treasurer, the State Comptroller and the chairman of the State Commission on Capital Budgeting and Planning. *N.J.S.A.* 52:18A-78.4(b).

The Legislature has the power to fund or not to fund executive agencies and the projects undertaken by those agencies. Each year the Legislature must decide which executive activities it will fund. Legislative oversight has been regarded as particularly important in some situations where legislation authorizes an executive agency to undertake projects that require continued budget appropriations. *Cf. Atkins v. United States*, 556 *F.*2d 1028, 1063 (Ct.Cl.1977) (upholding legislative veto power over presidential recommendations for judicial pay increases under the Federal Salary Act of 1967, 2 *U.S.C.* §§ 351 to 361). The legislative veto provisions in *L.* 1981, *c.* 120, enable the Legislature to make those decisions about Authority projects at the most auspicious time possible—before the Authority begins the project. The Legislature's veto power in *L.* 1981, *c.* 120, helps ensure that the Authority will undertake financially sound projects in the way the Legislature envisioned when it passed the Building Authority Act.

We disagree with the dissent's contention that the argument for the narrow legislative veto in this case would apply equally to all executive programs requiring legislative appropriations. *Post* at 451–452. Unlike most funding situations, the approval of a building project and lease agreement locks the Legislature, for all practical purposes, into making continued appropriations. By contrast, in most cases a future legislature can discontinue appropriations if it believes the project funded is no longer necessary. Moreover, the Oversight Act's veto provisions withstand constitutional scrutiny only because they are both necessary to effectuate the statutory scheme and, as discussed below, they offer little potential for interference with executive functions or alteration of the statute's purpose. *General Assembly*, 90 *N.J.* at 395, 448 *A.*2d 438. *See post* at 405–407.

In sum, the Act's legislative veto provisions serve a necessary role in effectuating a scheme of cooperation between the Legislature and the Executive to obtain capital facilities for state agencies. They serve to assure that these projects will be soundly planned and will operate efficiently with the Legislature's continued fiscal support. Our next task is to consider whether the Act constitutes an undue legislative interference with executive functions or improper legislative policy making without the Governor's participation.

B. *The legislative veto's limited effects on the separation of powers.*

The legislative veto provisions in *L.* 1981, *c.* 120, serve a necessary legislative oversight purpose in ensuring that the projects approved by the Authority will receive continued legislative support. At the same time, the veto offers little of the potential for improper uses that led the Court to strike down the extremely broad veto provision in *General Assembly v. Byrne, supra.*

Three significant factors distinguish the veto provisions in the Building Authority Act from those in the Legislative Oversight Act that the Court struck down in *General Assembly*. First, the Governor's full control over the selection of Building Authority projects makes it impossible for the Legislature to usurp executive authority in ways that were possible under the Legislative Oversight Act. Pursuant to *N.J.S.A.* 52:18A-78.4(i), the Governor has 15 days to veto any Authority decision. The Legislature has absolutely no control over Authority projects unless the Governor first approves them.

A legislative veto in a particular statute may not offend the constitutional allocation of governmental powers if the statute gives the Executive extensive authority in the policy-making process. In *Brown v. Heymann*, 62 *N.J.* 1, 297 *A.*2d 572 (1972), this Court upheld the Executive Reorganization Act, which authorized the Governor to pre-

pare an executive reorganization plan and present it to both houses of the Legislature. The Court found no constitutional infirmity in the Legislature's power to pass a concurrent resolution within 60 days disapproving the plan.[1] *See also Atkins v. United States, supra.*

Second, because the Legislature's veto power is limited to the rejection of discreet projects and leases, it has limited potential to interfere with executive action. One significant constitutional defect in the Legislative Oversight Act was its potential for "allowing the Legislature to control agency rulemaking," 90 *N.J.* at 385, 448 *A.2d* 443. Executive agencies are charged with designing coherent plans to implement existing statutes. Where the Legislature has the power to veto any portion of a coherent scheme of regulation, it can

> undermine performance of that duty by ... nullify[ing] virtually every existing and future scheme of regulation or any portion of it.... Moreover, the Legislature need not explain its reasons for any veto decision. Its action therefore leaves the agency with no guidance on how to enforce the law. [90 *N.J.* at 386–387, 448 *A.2d* 443–444]

By contrast, the veto provision here cannot cause any such disruption. The Legislature cannot veto any arbitrary portion of a proposed Authority project. It must either veto the entire project or let the project proceed. Any "disruption" of Building Authority action in this context is actually part of the legislative scheme and can be considered necessary to further the statutory purpose of ensuring that the Legislature will support the building projects selected.

Moreover, the Legislature cannot coerce the Authority into proposing projects solely on the Legislature's own terms, since the Governor has veto power over every agency decision. *N.J.S.A.* 52:18A-78.4(i). The Legislature can forestall Authority action by repeatedly vetoing proposed projects, but it cannot engage in the types of intrusion and disruption that occur when the Legislature has total and arbitrary control.

Third, even repeated use of the veto would not be likely to alter the legislative intent in ways that require presentment to the Governor under the Presentment Clause. *N.J.Const.* (1947), Art. V, § 1, ¶ 14. In enacting the Building Authority Act, the Legislature clearly did not want the Authority to undertake any project unless it met with both legislative and gubernatorial approval. Exercise of the veto provisions is not inconsistent with the regulatory framework the Legislature has erected to assume tight controls over the selection of Authority building projects and leases.

We recognize that future legislators may veto a particular project that the legislators who passed the Act might have thought desirable. But this type of judgment is fundamentally different from a subsequent legislative nullification of a policy that a former Legislature enacted into law. *General Assembly*, 90 *N.J.* at 389, 448 *A.2d* 445. This crucial difference is illustrated in *Consumer Energy Council of America, etc. v. Fed. Energy Reg'y Comm'n*, 673 *F.2d* 425 (D.C.Cir.1982). The potential to interfere with exclusive executive responsibilities or to effectively alter the policy of existing laws without presentment to the Governor, which rendered the Legislative Veto Act in *General Assembly* unconstitutional, is negligible under the limited veto power in the Building Authority Act.

The above arguments notwithstanding, the legislative veto provisions in the Building Authority Act have some limited potential to interfere with executive functions and allow policy judgments without the participation of the Governor. Although the Legislature clearly intended tight controls over the Authority's selection of building projects, repeated legislative vetoes conceivably would prevent the Authority from commencing any projects at all. This legislative action would effectively repeal the Act without the constitutionally required presentment to the Governor. However, the mere remote possibility of never-ending legislative vetoes is insufficient to invalidate a veto provision that serves an important governmental purpose.

1. The dissent seeks to distinguish *Brown* on the ground that the Legislature there had to affirmatively wield its veto power to block executive action, while here the executive action takes effect only if the Legislature votes to approve it. We see no relevant distinction for purposes of constitutional analysis since in either instance the Legislature has identical power to impede executive functions.

More troubling is the fact that either house of the Legislature can veto proposed projects. This allocation of power tends to contravene the principle of bicameralism that "[i]n republican government, the legislative authority necessarily predominates [and therefore] ... [t]he remedy ... is to divide the legislature into different branches," *The Federalist No. 51* at 338 (R. Luce ed. 1976) (Hamilton or Madison). A one-house veto frustrates "[t]he overriding objective of bicameralism ... to constrain the exercise of ... legislative power by making sure that the Legislature can act only where representatives of two different constituencies are in agreement." *Consumer Energy*, 673 *F.2d* at 464 (footnote omitted).

The one-person veto provision in *N.J.S.A.* 52:18A-78.9, which allows either presiding officer to veto a proposed lease agreement, exacerbates this problem of concentrating legislative control. In *Opinion of the Justices*, 431 *A.2d* 783 (N.H.1981), the Supreme Court of New Hampshire invalidated provisions giving legislative veto power to standing committees and the presiding officers of both houses of the Legislature. The court held that although the "legislative veto is not *per se* unconstitutional ... wholesale shifting of legislative power to such small groups in either house cannot fairly be said to represent the 'legislative will.'" 431 *A.2d* at 788. *Cf. Atkins v. United States*, 556 *F.2d* at 1064 (upholding the veto provisions under the Federal Salary Act, but stating that "[i]t is not as if the 'veto' is imposed by one committee of Congress or one member").

A concentration of authority in one house of the Legislature or in one legislator threatens the separation of powers and the principle of bicameralism unless that power is narrowly circumscribed. As we have stated, not every legislative action requires the approval of both houses and presentment to the Governor. The more limited the grant of power, the more concentrated it can be without violating the Presentment Clause or the separation of powers. Here, the delegated authority is narrowly limited. No single house or single legislator is empowered to approve new legislation. No danger of precipitate legislative action is posed. To the contrary, the veto provisions of the Act provide *additional checks* against Building Authority projects which may in the future prove unwise or unduly costly. The presiding officers have power to disapprove the lease agreements only for building projects that the Legislature has already approved. These lease agreements involve no policy determinations whatsoever; they merely establish rental rates sufficient to allow the Building Authority to repay its bondholders. Thus, the Act's veto provisions, despite their failure to conform with the principle of bicameralism, do not offend the Constitution.

III

The Debt Limitation Clause

[3] We also reject plaintiff's argument that the New Jersey Building Authority Act, *L.* 1981, c. 120, *N.J.S.A.* 52:18A-78.1 to 82, violates the debt limitations clause of the State Constitution. *N.J. Const.* (1947), Art. VIII, § 2, ¶ 3.

Plaintiff claims that the debts of the Authority resulting from its issuance of notes and bonds are debts of the State, and therefore the procedures in Art. VIII, § 2, ¶ 3 must be followed. The Court rejected this argument in *Clayton v. Kervick*, 52 *N.J.* 138, 244 *A.2d* 281 (1968). In that case, as here, the Legislature created an independent authority empowered to borrow money and issue bonds that were not the liabilities of the State or any political subdivision. In *Clayton*, the New Jersey Educational Facilities Authority built school facilities with the borrowed money and leased them to

to repay the Authority's creditors. The Court held that the Authority's debts were not debts of the State, despite "[t]he fact that the rentals were admittedly geared to satisfy the bonded indebtedness and enable the State ultimately to become the owner of the buildings," 52 *N.J.* at 153, 244 *A.2d* 281.

Similarly, in *Holster v. Bd. of Trustees of Passaic County College*, 59 *N.J.* 60, 279 *A.2d* 798 (1971), the Court upheld the County College Bond Act, under which a county issued bonds whose repayment was expressly subject to appropriations being made by the Legislature. The Court stated:

> Although there is doubtless a strong likelihood that payment of the bonds will in fact be met by legislative appropriations, we find nothing in the statute compelling the State to make such payments as a matter of law. Hence, both issuing counties and purchasing bondholders are on notice that the faith and credit of the State will not be pledged in respect of bonds issued pursuant to this enactment, but that payment on the part of the State will be dependent upon appropriations provided from time to time. [59 *N.J.* at 66–67, 279 *A.2d* 798]

No relevant distinction exists between the financing schemes upheld in those cases and that in the New Jersey Building Authority Act. The Authority's bonds and notes are not a debt or liability of the State. They state on their face that the State does not pledge its faith and credit to their payment. *N.J.S.A.* 52:18A-78.14(f). Although the Act not only contemplates that the State will make the necessary appropriations but also seeks to ensure this result, *supra* at 402–404, the State is under no legal obligation to do so. The Authority's creditors have notice that their only remedy lies against the Authority.

Nor does the liability of the State on its lease agreements with the Authority create any debt of the State. Both the statute and the lease make clear that all rent payments from the State are subject to legislative appropriations. Moreover, the State may incur liability for future rentals without violating the debt limitations clause. *See Bulman v. McCrane*, 64 *N.J.* 105, 117–18, 312 *A.2d* 857 (1973). Plaintiff does not contend otherwise.

Since the Building Authority Act does not authorize the creation of any debts by the State, the debt limitations clause, *N.J. Const.* (1947), Art. VIII, § 2, ¶ 3, does not apply to the Authority's debts or any obligations of the State on its lease agreements with the Authority. We have already disapproved the contrary result reached by a sharply divided Court in *McCutcheon v. State Building Authority*, 13 *N.J.* 46, 97 *A.2d* 663 (1953), and now expressly overrule that case.

IV

For the above reasons, the New Jersey Building Authority Act, *L.* 1981, c. 120, does not violate the separation of powers, Art. III, ¶ 1, the Presentment Clause, Art. V, § 1, ¶ 14, or the debt limitations clause, Art. VIII, § 2, ¶ 3, of the New Jersey Constitution. The New Jersey Building Authority can issue bonds and notes and negotiate lease agreements with state agencies under the procedures set forth in the Act. The judgment of the Appellate Division is affirmed.

SCHREIBER, J., dissenting and concurring.

When tested by the principles decided today in *General Assembly v. Byrne*, 90 *N.J.* 376, 448 *A.2d* 438 (1982), the New Jersey Building Authority Act, *N.J.S.A.* 52:18A-78.1, *et seq.*, includes a classic example of a violation of the state constitutional requirement of separation of powers by enabling the Legislature to control an executive agency's essential functions. The Legislature has refined this intrusion by vesting each of its components, the Senate and Assembly, as well as their individual leaders, with the power to thwart the agency's ability to execute the law. It has thereby violated the constitutional structure of bicameralism. Lastly, the Act implicitly violates the Presentment Clause of the Constitution, which requires submission to the governor

for his approval or disapproval before a law can become effective.

Whether a power is executive, legislative or judicial is not always clear. In some situations the subject may be deemed to have the characteristic of more than one type of power. For example, some rules of evidence are distinctly procedural in nature and may be promulgated by the judiciary. Others have a much more substantive gloss and may be more appropriately enacted by the Legislature. *See* Evidence Act of 1960, *L.* 1960, c. 52. When that occurs, a sharing of power may be appropriate. *See Knight v. Margate*, 86 *N.J.* 374, 388–89, 431 *A.2d* 833 (1981). In other situations it may be fitting for one branch of government to exercise a power traditionally belonging to another. Thus, in executing and administering a law, the executive branch of government may legislate by adopting rules and may adjudicate by resolving adversarial interests. A third category is illustrated by one branch being called upon to perform an act incidental to a function belonging to another branch of government. Thus, the Chief Justice has been given the power to designate certain public trustees of the Prudential Insurance Company although execution of the insurance laws is an executive prerogative.

However, an outer limit of all these intrusions is that none may undermine the independence and integrity of a branch of government or that branch's ability to exercise the constitutional check with which it has been endowed. *See Myers v. United States*, 272 *U.S.* 52, 292–93, 47 *S.Ct.* 21, 84–85, 71 *L.Ed.* 160, 242 (1926) (Brandeis, J., dissenting). Examination of the problem before us should be made with these underlying principles in mind.

The New Jersey Building Authority (Authority) resembles numerous other agencies charged with carrying out their respective laws. The Authority, a corporate body, has been placed within the Department of the Treasury. It has 12 directors, including the State Treasurer, Comptroller of the Treasury, and Chairman of the Commission on Capital Budgeting and Planning, these three being members *ex officio*. The Governor appoints the remaining nine directors, two of whom are to be recommended by the President of the Senate and two by the Speaker of the General Assembly. The directors have four-year terms, except that those recommended by the legislative leaders may serve only during the two-year legislative term in which they are appointed. Any action taken by the Authority requires at least seven affirmative votes. All such action must be reflected in the minutes of the meeting and are subject to a gubernatorial veto.

The Authority's general powers are typical of regulatory agencies. It may adopt by-laws and an official seal, sue and be sued, and enter into contracts necessary or incidental to the performance of its duties. Its reason for existence is to provide office space for state agencies. To accomplish this the Authority is authorized to raise the necessary capital funds by issuing bonds and notes, the aggregate principal amount not to exceed $250,000,000 at any time. The State has no direct obligation to pay this debt, although the state agencies have an obligation to pay the rents under the leases that they enter into with the Authority and which rents are to be pledged to secure the bonds and notes.

The Authority is authorized to construct and improve office buildings necessary or convenient for the operation of any state agency. It must decide if a project is feasible. The Governor, however, can veto any project. If he does not and the costs are $100,000 or less, the Authority may proceed. However, if the costs are greater, the report proposing the project must be submitted to the Legislature. The Authority cannot proceed unless both the Senate and Assembly adopt resolutions of approval. Even if the Legislature has sanctioned the proposal, the President and the Speaker of the General Assembly must approve each lease made by a state agency with the Authority.

I

Separation of Powers

Justice Pashman has described in *General Assembly v. Byrne*, *supra*, the overriding

concern of the Founding Fathers that the Legislature might arrogate unto itself undue power. This concern and a desire to facilitate the administration of government by having the executive, rather than the Legislature, handle the details involved in administering and executing the laws are the primary reasons for the separation of powers implicit in the Federal Constitution and expressly set forth in the State Constitution in Art. III, par. 1.

A violation of the constitutional separation of powers precept occurs when, as stated in *General Assembly*, there is "unwarranted legislative interference with the executive branch and excessive legislative law-making power" so that the Legislature "can gravely impair the functions of the agencies charged with enforcing," administering and executing the statutes. *General Assembly v. Byrne*, 90 *N.J.* at 385, 448 *A.2d* 443. Legislative interference can violate the goals of a statute. This is particularly so when the legislative veto overrides a central or essential component of the executive authority. Moreover, "[t]he Legislature cannot [lawfully] pass an act that allows it to violate the Constitution." *Id.* at 391, 448 *A.2d* at 446. Professor Bickel expressed a similar thought in his testimony before the Subcommittee on Separation of Powers of the Senate Committee of the Judiciary:

> [T]he constitutional separation of powers is not ordained for the convenience of the separate branches of the Government, as they may from time to time conceive it, but is intended to insure observance of certain principles which the framers believed would conduce to effective and responsible Government consistent with the liberties of the people. Hence neither the Congress nor the President may choose to suspend these principles when convenient. [Congressional Hearings, September 15, 1967, at 247]

The New Jersey Building Authority Act cannot withstand these separation of power tests. The Authority is an agency in the executive branch of the government. No one has questioned the adequacy of the standards under which it is to approve a project to house another state agency or to determine the project's financial feasibility. Yet, the Legislature has retained control over the *heart* of the Authority's reason for being. It is the Authority, subject to the Chief Executive's approval, that determines whether a project is feasible and should be effectuated. But still the project cannot move forward without the approval of each house of the Legislature. What could constitute greater legislative control over an executive department of government!

The majority contends that legislative approval of a project will constitute "a strong, if not compelling, basis for the Legislature to continue to appropriate sufficient money" throughout all future years, to pay the rent required under the leases. *Ante* at 452. It argues that the approval of a project and lease agreement "locks the Legislature, for all practical purposes, into making continued appropriations . . . ." *Ante* at 453. It is one thing to appropriate dollars annually and quite another to bind one's self ahead of time to make appropriations. Obviously, the Legislature that approves a project in 1982 does not control future Legislatures. This is particularly evident when Legislatures must appropriate funds each year to enable tenants to pay their rents throughout lease terms as long as 35 years. Legislatures are not bound as courts are by precedent; yet even the judiciary is not "locked in." *See, e.g., Schaad v. Ocean Grove Camp Meeting Ass'n*, 72 *N.J.* 237, 370 *A.2d* 449 (1977), overruled in *State v. Celmer*, 80 *N.J.* 405, 418, 404 *A.2d* 1 (1979).

More importantly whether the Legislature exercises the discretion to finance or not to finance governmental operations cannot justify a legislative intrusion into the executive power. Stating the proposition demonstrates its inherent weakness. Legislative control over appropriation purse strings does not warrant violation of the constitutional separation of powers. Otherwise the Legislature could through this mechanism direct the operations of all executive functions. Neither the Legislature's surrender of its appropriation authority, which is questionable to say the least, nor its exercise of that authority entitles the Legislature to assume a power in contravention of the Constitution. The contention that the Legislature's appropriation power entitles it to share in the executive function of formulating and planning housing projects entrusted to the Authority is not sound.

II

Bicameralism and Legislative Delegation of Power

The Constitution vests the legislative power in a Senate and General Assembly. *N.J. Const.* (1947), Art. IV, § 1, par. 1. The 1966 Constitutional Convention rejected a move to change to a unicameral legislature because of the constraint that bicameralism imposes upon the exercise of legislative power. Our constitutional provision is modeled after the federal scheme, both serving the same purposes. It is pertinent, therefore, to note Judge Wilkey's comments in *Consumer Energy Council of America v. Federal Energy Regulatory Commission*, 673 *F.2d* 425, 464 (D.C.Cir.1982):

> The overriding objective of bicameralism, then, is to constrain the exercise of the federal legislative power by making sure that the Legislature can act only where representatives of two different constituencies are in agreement.

See also The Federalist, No. 51 (J. Madison).

We have seen that either house of the Legislature can amend the Building Authority Act by vetoing projects approved by the executive branch of the government. Thus, one body may determine whether a duly enacted statute should be administered, this in defiance of the constitutional mandate that both the Senate and General Assembly must approve every bill. *See N.J. Const.* (1947), Art. V, § 1, par. 14(a).

As the Senate may not delegate its legislative power to the General Assembly, so, too, neither the Senate nor the General Assembly may delegate its legislative authority to a smaller body. It is obvious that the Senate could not delegate to a committee of its members the right to pass a bill. This can be done only by a majority of its members. Therefore, neither the Senate nor the General Assembly has the authority to delegate to its respective presiding officers the authority to approve each lease to be entered into between a state agency and the Authority. No standards or guidelines bind these legislative officers. Either could negate a proposed lease and doom to failure a project approved by the Authority, the Governor, and even the Legislature.

Springer v. Philippine Islands, 277 *U.S.* 189, 48 *S.Ct.* 480, 72 *L.Ed.* 845 (1928), has long been the leading opinion in this area of the law. There the Supreme Court struck down a statute vesting authority in the President of the Senate and Speaker of the House of Representatives of the Philippine Islands to vote government-owned stock in the Philippine National Bank, observing:

> Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions. It is unnecessary to enlarge further upon the general subject, since it has so recently received the full consideration of this court. *Myers v. United States*, 272 *U.S.* 52, 47 *S.Ct.* 21, 71 *L.Ed.* 160.
>
> Not having the power of appointment, unless expressly granted or incidental to its powers, the legislature cannot engraft executive duties upon a legislative office, since that would be to usurp the power of appointment by indirection; though the case might be different if the additional duties were devolved upon an appointee of the executive. [*Id.* at 202, 48 *S.Ct.* at 482, 72 *L.Ed.* at 849]

Neither house of the Legislature may create effective legislation alone. Nor may it delegate essential executive or legislative duties to the Senate President or Speaker of the Assembly. The New Jersey Building Authority Act contravenes these principles.

III

Presentment Clause

Another important constitutional check on the legislative power is found in the Presentment Clause, *N.J.Const.* (1947), Art. V, § 1, par. 14(a). Every bill passed by both houses must be presented to the Governor. If he approves, it becomes law. If not, the Legislature may reconsider the matter and then, if two-thirds of each house votes for passage, the bill becomes law. The Presentment Clause serves two purposes. It protects the executive from an overreaching legislative power that could effectively thwart the executive in performing his constitutional charge of executing the laws. *See The Federalist*, No. 73 (A. Hamilton). The second purpose is to prevent hasty or imprudent legislation. It has also served as a means of expressing the policy of the chief executive, the only official elected statewide.

The legislative action under the Building Authority Act is essentially legislative in nature.[1] Even if it is contended that when the Legislature disapproves a project, it acts as an administrative agency, much as that agency itself acts when it declines to approve a project, that would violate the separation of powers. When the Legislature approves a project, its action is more akin to acting in a legislative capacity. It need follow no standards or criteria, other than constitutional ones. However, both approval and disapproval by the Legislature involve the Senate and General Assembly in a legislative review mechanism. This mechanism can be utilized only in accordance with the constitutional scheme. That scheme requires conformance with the Presentment Clause. There is no other way in which the Legislature may act legislatively. *See In re N.Y., Susquehanna & Western R.R. Co.*, 25 *N.J.* 343, 136 *A.2d* 408 (1957) (concurrent resolution may express opinion, but lacks operative effect of legislation).

It is no answer to say that the Governor had previously approved the project and therefore the Presentment Clause has not been violated. Otherwise, the Legislature could always seek proposals from the Governor and thereafter adopt them without presentment to the Governor. No one would seriously claim that such an adoption would constitute duly enacted legislation. The Constitution contemplates the Governor will act *after* the Legislature has completed its deliberations, not before. Legislative hearings might disclose facts or reasons that impel the executive to change his position. Sanction of a plan having prior gubernatorial approval and elimination of the presentment of the act after passage by the Legislature reverses the constitutional scheme of the legislative check and power placed in the executive—and without any valid reason. *Cf.* Justice Mountain's comment in *Vreeland v. Byrne*, 72 *N.J.* 292, 304-05, 370 *A.2d* 825 (1977), in which he advocates literal compliance with constitutional provisions governing details of governmental administration. Neither the Governor nor the Legislature may choose to suspend constitutional procedures.

IV

Some recent judicial opinions that have carefully considered these problems of presentment, separation of powers and bicameralism have declared legislative attempts to circumvent these provisions invalid. *See Consumer Energy Council of America v. Federal Energy Regulatory Commission*, 673 *F.2d* 425 (D.C.Cir 1982);[2] *Chadha v. Immigration and Naturalization Service*, 634 *F.2d* 408 (9th Cir. 1980), *cert.* granted, 454 *U.S.* 812, 102 *S.Ct.* 87, 70 *L.Ed.2d* 80 (1981); *Opinion of the Justices*, 431 *A.2d* 783 (N.H.1981); *State ex rel. Barker v. Manchin*, 279 *S.E.2d* 622 (W.Va.1981); *State v. A.L.I.V.E. Voluntary*, 606 *P.2d* 769 (Alaska 1980).

The only recent decision of this Court which relates to this subject is *Brown v. Heymann*, 62 *N.J.* 1, 297 *A.2d* 572 (1972). However, that decision did not discuss the problems presented in this case. The issue in *Brown* was whether the Executive Reorganization Act of 1969 "so enhance[d] the executive power as to threaten the security against aggregated power which the separation-of-powers doctrine was designed to provide." *Id.* at 10, 297 *A.2d* 572. The Court answered that proposition in the negative. The statute authorized the Governor to prepare a reorganization plan of executive departments and to submit each plan to the Legislature. If the Legislature did not pass a concurrent resolution opposing the plan, it would become effective. See *N.J. S.A.* 52:14C-7(c). It was observed that the Legislature could express only disapproval. No affirmative legislative action was needed to have the plan become law. This is to be differentiated from the Building Authority Act under which the Legislature must act affirmatively before the project is effective and presiding officers of each house must approve leases that are essential to the realization of a project.

I sympathize with what the Legislature is seeking to accomplish in reviewing actions of administrative agencies. However, it is not without recourse. The Legislature could, of course, express its views during rulemaking hearings under the Administrative Procedure Act. It has also been suggested that the Legislature could require that rules would not become effective for a period of thirty days so that the Legislature could, if it so desired, pass a statute within that time nullifying or modifying proposed regulations. *See* Watson, "Congress Steps Out: A Look at Congressional Control of the Executive," 63 *Calif.L.Rev.* 983, 1060-61 (1975). It has also been proposed that the Legislature's direction should perhaps be to do more reviewing of what the administrative agencies are doing and then rewriting the laws in light of their administration, rather than reshaping and redirecting the administration of its laws. I am certain there are many other legislative oversight mechanisms that will fulfill the Legislature's desire that the laws be interpreted in accordance with its intent.

Though I believe those sections of the Building Authority Act relating to legislative concurrence in the Authority's projects and approval of the leases by the presiding officers of each legislative house are invalid, I am of the opinion that the balance of the statute may stand. Paragraph 31 of the Act evidences a broad legislative intent to that effect:

> If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

1. One commentator has stated: "Since the Constitution plainly requires presidential participation in the exercise of legislative power, a power must be classified as non-legislative to justify its exercise by Congress or one of its branches in a way other than that prescribed." R. W. Gixanne, "The Control of Federal Administration By Congressional Resolutions and Committees," 66 *Harv. L. Rev.* 569, 593 (1953).

2. Judge Wilkey's opinion contains a comprehensive discussion of the Presentment Clause, bicameralism, and separation of powers. 673 *F.2d* at 771-78. He held that the provision authorizing either house of Congress to disapprove a regulation of the Federal Energy Regulatory Commission (FERC) under the Natural Gas Policy Act of 1978, 15 *U.S.C.* §§ 3301-3342, was unconstitutional for several reasons. Congress could not create a device enabling it to control agency rulemaking; the Presentment Clause was evaded because the President had had no opportunity to exercise his right of veto; the constitutional requirement of bicameralism was violated because one house could affect the validity of the regulation; congressional expansion of its role to one of shared administration of the law contravened separation of powers; and the entire scheme adversely affected the constitutional system of checks and balances.

The majority, in considering this opinion, has isolated one point in Judge Wilkey's discussion as crucial, that is, that the subject matter involved a "basic policy judgment." The opinion is not so circumscribed. However, even that standard does not differentiate this case. Here the Authority is making basic policy decisions with respect to where a state governmental body should be located, the adequacy of the facilities, and the costs involved. Though these policy decisions are different from whether incremental pricing should apply to boiler fuel, both the Authority and FERC have been entrusted with basic policy decisions within their respective substantive spheres.

I agree with the majority that the debt limitation clause, Art. VIII, § 2, par. 3, has not been violated, although this is a close question because of the State's obligations under the leases.

I join in the judgment that the sale of the bonds in the principal amount of $135,000,000 under the New Jersey Building Authority Act, as modified, would not violate the New Jersey Constitution.

Justice CLIFFORD joins in this opinion.

CLIFFORD and SCHREIBER, JJ., concurring in the result.

For affirmance—Chief Justice WILENTZ and Justices PASHMAN, CLIFFORD, SCHREIBER, HANDLER, POLLOCK and O'HERN—6.

For reversal—None.

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Mary JORDAN, Carmine Russo, Frank De Gaetano, James F. Murphy, Arthur J. Caccese and Elizabeth Caccese, his wife, Frank A. Duffield and Albert Florio, Jr., Individually and on behalf of all similarly situated owners and trainers of racing horses in the State of New Jersey, Plaintiffs-Appellants,

v.

HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION, Defendant-Respondent.

Supreme Court of New Jersey.

Argued March 9, 1982.

Decided July 27, 1982.

Owners of thoroughbred racehorses brought action challenging, as unconstitutional special law, statutory designation of regional division of national nonprofit horsemen's organization to receive percentage of purse money from thoroughbred horseracing in state. The Superior Court, Chancery Division, concluded that special law provisions of New Jersey Constitution had not been violated. Direct certification was granted, and the Supreme Court, Pollock, J., held that: (1) interest of horseowners in winnings of their horses was sufficient "additional private interest" to accord them standing; (2) participation of Attorney General as amicus curiae adequately protected interests of state; (3) statutory distinction, because of national organization's rules, in allocating benefits between members and nonmembers of organization bore no rational relationship to any legitimate public purpose; (4) to free statute from constitutional defects, organization's rules would be required to yield to legislative purpose of aiding racing personnel; and (5) regional division's statutory advantage, as recipient of funds, was not tantamount to unconstitutional "exclusive privilege."

Modified and affirmed.

1. Constitutional Law ⇐42(1)

Any slight additional private interest is sufficient to afford standing to private litigants who raise issues of great public interest, such as constitutional challenge to statute.

2. Constitutional Law ⇐42.3(2)

Interest of horseowners in winnings of their horses was sufficient "additional private interest" to accord them standing to challenge, as unconstitutional special law, statutory designation of regional division of national nonprofit horsemen's organization to receive percentage of purse money from thoroughbred horseracing. N.J.S.A. 5:5-66, subds. b(1)(d), b(2)(d), 5:10-7; N.J.S.A. Const.Art. 4, § 7, pars. 7, 9(8).

See publication Words and Phrases for other judicial constructions and definitions.

3. Constitutional Law ⇐44

State is not required to be named as defendant in every action challenging validity of statute. R. 4:28-4(a).

4. Constitutional Law ⇐44

In action challenging validity of statute, Attorney General must be notified. R. 4:28-4(a).

5. Constitutional Law ⇐44

Participation of Attorney General as amicus curiae adequately protected interests of state in action challenging, as unconstitutional special law, statutory designation of regional division of national nonprofit horsemen's organization to receive percentage of purse money from thoroughbred horseracing. N.J.S.A. 5:5-66, 5:5-66, subds. b(1)(d), b(2)(d), 5:10-7; N.J.S.A. Const.Art. 4, § 7, pars. 7, 9(8); R. 4:28-4(a).

6. Statutes ⇐66

Special legislation may be constitutional if enacted for valid purpose and in accordance with procedures required for special legislation. N.J.S.A.Const.Art. 4, § 7, pars. 7-9; N.J.S.A. 1:6-1 et seq.

7. Statutes ⇐68, 77(1)

Whether law is "special" or "general" depends on class of persons affected by law. N.J.S.A.Const.Art. 4, § 7, par. 7.

See publication Words and Phrases for other judicial constructions and definitions.

8. Statutes ⇐68, 77(1)

"General" legislation includes all those who should be included in class, but unconstitutional "special" legislation excludes some who should be included in class. N.J.S.A.Const.Art. 4, § 7, par. 7.

9. Statutes ⇐77(1)

Essence of unconstitutional "special" legislation is arbitrary exclusion of someone from class. N.J.S.A.Const.Art. 4, § 7, par. 7.

10. Statutes ⇐68, 77(1)

In considering whether legislation is "general" or "special," the court must determine purpose and subject matter of statute, whether any persons are excluded who should be included, and whether classification is reasonable, given purpose of statute. N.J.S.A.Const.Art. 4, § 7, par. 7.

11. Constitutional Law ⇐48(1)

Statute is presumed to be constitutional and court should exercise sparingly the power to declare statute unconstitutional.

12. Statutes ⇐77(1)

Purpose of constitutional prohibitions against special laws is to prevent abuse of legislative process by picking favorites. N.J.S.A.Const.Art. 4, § 7, pars. 7, 9(8).

13. States ⇐119

Direct benefit to national nonprofit horsemen's organization by statutory designation of regional division to receive percentage of purse money from thoroughbred horseracing in state would violate constitutional prohibition against appropriation of monies for private association. N.J.S.A. 5:5-66, 5:10-7; N.J.S.A.Const.Art. 8, § 3, par. 3.

14. Gaming ⇐3

Where object of statute designating regional division of nonprofit horsemen's organization to receive percentage of purse money from thoroughbred horseracing in state was to benefit all horsemen, if effect of statute, on account of organization's rules, was to restrict benefits to organization members in good standing but to require all horsemen, even those who were not members, to contribute to organization's regional division, distinction in allocating benefits between members and nonmembers of organization would bear no rational relationship to any legitimate public purpose and statute would be constitutionally defective. N.J.S.A. 5:5-66, 5:10-7; N.J.S.A.Const.Art. 4, § 7, pars. 7, 9(8).

15. Gaming ⇐3

Although statute designating regional division of nonprofit horsemen's organization to receive percentage of purse money from thoroughbred horseracing in state would be constitutionally defective in its effect if as written, it restricted benefits to organization members in good standing but required all horsemen, including nonmembers, to contribute to regional division, where statute was reasonably susceptible to constitutional construction and legislature would prefer that statute survive with ap-

ified expenditures were "appropriations," in the broad sense, as used in the title. Acts 1984, c. 418, § 1 et seq.; Const. § 51.

5. Statutes ⇐141(1)

Constitution's requirement that amended statutes be reenacted and published at length is limited, by its own wording, to amendment, revision, extension or conferring of existing statutes and if an enactment is merely a suspension or modification of existing statute, it does not fall within the requirement. Const. § 51.

6. Statutes ⇐141(1)

Budget bill's reduction in annual salary increases for certain state officers from those provided for in statutes did not constitute a repeal or amendment subject to reenactment and publication requirements. Acts 1984, c. 418, § 1 et seq.; KRS 15.755, 18A.355, 64.055, 64.480, 64.485, 446.085.

7. Statutes ⇐141(1)

Appropriations bill purporting to transfer money from agencies in which public and private funds and private employee contributions were commingled was unconstitutional because such transfers could not be termed suspensions or modifications of operation of statute exempt from reenactment and publication requirements; however, transfers of public funds were permissible. Acts 1984, c. 410, § 1 et seq.; KRS 45.253, 48.315; Const. §§ 15, 51.

8. Statutes ⇐141(1)

Budget bill which directed secretary of transportation to use road fund resources to meet rental payments to turnpike authority and provided that capital construction and equipment purchases contingency fund be used to advance funds for certain projects was a change in operation of statutes despite conflicts with existing statute and not subject to reenactment or publication requirements. KRS 45.760(12), 45.770, 143.090; Acts 1984, c. 418, § 1 et seq.; Const. § 51.

1. House Bill 474, Chapter 418 of the 1984 Acts hereinafter referred to as HB 474, or the budget bill.

9. Statutes ⇐141(1)

Budget bill permitting school districts to rent textbooks and imposing a minimum six-year period on use of textbooks was a valid suspension or modification of existing statute under General Assembly's policy authority and not subject to reenactment or publication requirements. Acts 1984, c. 410, § 1 et seq.; c. 418, § 1 et seq.; KRS 45.760(12), 45.770, 143.090, 446.085.

10. Statutes ⇐141(1)

Budget bill imposing certain conditions on payments for county jail medical service contracts was properly the subject of an appropriation and was germane to the bill and, thus, not subject to reenactment and publication requirements. Acts 1984, c. 410, § 1 et seq.; c. 418, § 1 et seq.; KRS 441.045, 446.085; Const. § 51.

Robert L. Chenoweth, Sp. Asst. Atty. Gen., Bryan, Fogle & Chenoweth, K. Gail Leeco, Asst. Attys. Gen., Frankfort, for appellant.

J. Michael Noyes, Gen. Counsel, Office of the Governor, Frankfort, A. Wallace Grafton, Jr., Sheryl G. Snyder, Virginia H. Snell, Wyatt, Tarrant & Combs, Louisville, for appellees; Lee Sisney, Charles Wickliffe, Finance and Admin. Cabinet, Frankfort, Henry Watson, III, Cynthiana, of counsel.

STEPHENS, Chief Justice.

The basic issue we address is to what extent, if any, the General Assembly of the Commonwealth may, in adopting a budget bill and based on the financial condition of the Commonwealth provide therein for the reduction, elimination and transfer of appropriated funds, and for all practical purposes, provide as a result thereof, that the effectiveness of certain existing statutes is temporarily modified.

BACKGROUND

At its regular session in 1984, the General Assembly passed a biennial budget bill.

This document appropriated the revenue for the Commonwealth and determined how that revenue would be expended for the operation, maintenance and support of the three branches of state government and the myriad of ancillary state agencies and programs.[2] This document, included a reduction in appropriations for various salary increases and transfers of funds from various trust and agency accounts to the General Fund to cover central administrative expenses.

In addition, at the same session the General Assembly passed corollary legislation[3] which conferred upon the General Assembly the authority to provide, in a budget bill for the suspension or modification of the operation of an existing statute if the General Assembly found that such action is required by the financial condition of state government.

PROCEDURAL HISTORY

The appellant, Attorney General of the Commonwealth, on June 6, 1984 filed a petition for declaratory judgment in the Franklin Circuit Court challenging the constitutional validity of those legislative acts.[4] Basically, the petition claimed that the legislative enactments violated the prescriptions of Section 51 of the Kentucky Constitution, both as to the germaneness of the titles of the acts and as to the failure to follow the procedural requirement of Section 51 for the enactment and publication of amendments to existing law. A temporary restraining order was entered by the trial judge which prevented various officials in the Executive branch of government from transferring funds from certain designated trust and agency funds[5] and other special accounts to the general operating fund of the Commonwealth. Following normal briefing and arguments, the trial court entered its findings of fact, conclusions of law and declaratory judgment. A notice of appeal was timely filed by the Attorney General and upon appropriate motion, and for obvious reasons, we transferred the appeal directly to this Court.

DECISION OF THE TRIAL COURT

In rejecting the contentions of the Attorney General in the main, the trial court declared that the General Assembly has, under Ky. Const. Secs. 15 and 51, the authority to "suspend existing laws in a budget bill if the provision is germane to the broad subject of appropriations." It further declared that the procedural requirements of Ky. Const. Sec. 51 were not applicable to the challenged statutes because they only effected a "suspension" of existing statutes and were not an "express or implied repeal" of existing statutes.

The trial court also upheld the General Assembly's authority to suspend previously authorized salaries, trust and agency funds.[6] It declared certain transfers of funds invalid because they accomplished more than "the mere suspension of existing statutory provisions" and because they were not "germane" to appropriations within the aegis of Kentucky Constitution Section 51.[7] The former ruling is before us on appeal, the latter is not.

2. The specific provisions of the statutes under attack will be more fully described in the appropriate parts of this opinion.

3. Senate Bill 294, Chapter 410 of the 1984 Acts hereinafter referred to as SB 294 or KRS 446.085.

4. Mr. Thompson was sued in his official capacity. He resigned the position of Secretary of the Finance and Administration Cabinet, and the Governor of Kentucky has appointed Gordon C. Duke to that office.

5. For a description of trust and agency funds, see infra, p. 18, *et. seq.*

6. Specifically the trial court approved the transfer of funds in the following areas: Board of Elections; Kentucky Development Finance Authority; University of Kentucky; Banking and Securities; Fish and Wildlife Resources; Road Fund; Capital Construction of Road Fund; Education and Humanities; Local Jail Support (medical contracts).

7. Those declared invalid were: Unified prosecutorial system, only insofar as it provides that a county or a circuit will receive funds proportional to the state's total criminal case load; Auditor of Public Accounts, only insofar as it imposes additional duties on the Auditor; Corrections, only insofar as it creates a scheme for

CONTENTIONS OF THE PARTIES

The appellant urges us to reverse the trial court because of what he maintains is an erroneous and "cryptic analysis" by the trial court of Sections 51 and 15 of the Kentucky Constitution. In essence, appellant argues that the titles to the two acts in question do not pass Section 51's constitutional requirement that the content of the act be germane to the title thereof. The Attorney General also urges us to declare as error the ruling that the procedural requirement of Section 51 does not apply to a "suspension" of existing statutes. Further, appellant argues the trial court erroneously concluded that Section 15 of the Kentucky Constitution permitted the statutory suspension and modification contained in HB 474. Finally, it is argued that the trial court erroneously applied the "germaneness" test of Section 51 to the various provisions of the acts in question.

THE CHALLENGED STATUTES

SB 294 provides as follows:

"(1) *Nothing in a budget bill adopted by the general assembly shall be construed to effect a repeal or amendment in the Kentucky Revised Statutes,* and if any repeal or amendment appears to be effected in any of the Kentucky Revised Statutes, it shall be disregarded, shall be null and void, and the law as it existed prior to the effective date of the budget bill shall be given full force and effect.

"(2) Notwithstanding the provisions of subsection (1) of this section *the general assembly may provide in a budget bill for the suspension or modification of the operation of a statute* if the general assembly finds that the financial condition of state government requires such suspension or modification. Such suspension or modification shall not extend beyond the duration of the budget bill." (emphasis added).

It is clear from the plain language of the statute that in Section (1) the General Assembly deprives itself of the legal authority to *repeal or amend,* through the device of a budget bill, any other existing law appearing in the Kentucky Revised Statutes. However, in Section (2), the General Assembly gives itself the power to *suspend or modify the operation* of any statute, but only if the financial condition of state government so requires. The duration of such suspension is limited to the duration of the budget.

The General Assembly has, by this statute, drawn a line between its power in the budget bill to suspend or modify existing statutes, as opposed to repeal ing or amending existing statutes. It cannot repeal or amend, but it can suspend or modify existing statutes through the provisions of a budget bill.

Armed with this legislation, the General Assembly, in its biennial budget bill for the years 1984-1986, exercised this authority by drafting items relating to the reduction of increases in state officials' salaries, items providing for the transfer of monies from agencies and special funds to the states' general fund and items qualifying funds for resource recovery road projects, school books, and local jail support.

It is our role to determine if SB 294 may constitutionally permit the General Assembly to suspend or modify the operation of existing statutes; if the answer is in the affirmative, to further determine if both SB 294 and the budget bill comply with the requirements of the title section of Kentucky Constitution Section 51. If the answer to the second inquiry is in the affirmative we must, finally, examine each contested "modification or suspension" contained in the budget bill to determine if such actually constitutes a repeal or amendment, or if each is only a modification or suspension within the purview of SB 294(2) and of the re-enactment and publication section of Kentucky Constitution Section 51.

investigating and reporting on community and private corporate availability of correctional services; Department of Social Services, only insofar as it exempts certain personnel from salary ceilings and imposes a limit on administrative costs; Transportation Cabinet, only insofar as it places a ceiling on the number of full time positions in the Transportation Cabinet.

DOES THE GENERAL ASSEMBLY HAVE THE POWER IN THE BUDGET BILL TO SUSPEND OR MODIFY EXISTING STATUTORY LAW?

[1] As stated, SB 294, while denying the power of the General Assembly to repeal or amend existing statutory law through the device of a budget bill, did indeed authorize that legislative body to "provide in a budget bill for the suspension or modification of the operation of a statute." No matter how one slices it, the General Assembly is permitted through the reduction or elimination of an appropriation, to effectively eliminate the efficacy of existing statutes, subject only to the finding of a financial emergency and further subject to the time limitation of the budgetary period.

We believe that this statutory scheme is clearly within the constitutional powers of the General Assembly.

It is clear that the power of the dollar—the raising and expenditure of the money necessary to operate state government—is one which is within the authority of the legislative branch of government. The Constitution of the Commonwealth so states and we have so stated. Kentucky Constitution Section 230, is as follows:

"No money shall be drawn from the State Treasury, except in pursuance of appropriations made by law."

The purpose of this section is to prevent the expenditure of the state's money without the consent of the General Assembly. *Ferguson v. Oates,* Ky., 314 S.W.2d 518 (1958). As we said in *Legislative Research Commission v. Brown,* Ky., 664 S.W.2d 907 (1984),

"The budget, which provides the revenue for the Commonwealth and which determines how that revenue shall be spent, is fundamentally a legislative matter.... Ky. Const. Sec. 49-50 empowers the General Assembly to contract debts; and Ky. Const. Sec. 53 empowers the General Assembly to provide for investigations into the accounts of the Treasurer and Auditor of Public Accounts.

... *In a word, the final action on the enactment or adoption of the budget is a legislative matter.* It is, of course, the duty of the Governor ... to carry out and to implement the budget which is passed by the General Assembly. Ky. Const. Sec. 81." *Id.* at 925. (emphasis added).

In *Brown,* we approved a legislatively mandated budget reduction plan applicable to all three branches of state government, the operation of which was triggered when a state revenue shortfall occurred.

Also in *Brown* we declared invalid a statutory provision that required the budget be submitted as a resolution, as opposed to the mandate of Kentucky Constitution Section 88 that it be presented as a bill. Significant to the issue in the case *sub judice,* we declared

"When the budget is enacted as a *bill,* the provisions thereof could *repeal existing statutes. But if the budget document is introduced in the form of a resolution, it can not have the effect of repealing any existing statutes."* *Id.* at p. 927. (emphasis added).

We thus *twice* stated that a budget bill could be used to *repeal* existing statutes.

Our statement there should not come as any surprise when one considers our previous decisions. In *Mattingly v. Kirtley,* 285 Ky. 795, 149 S.W.2d 521 (1941), a statute enacted in 1920 established a State Board of Athletic Control and authorized a $5,000.00 appropriation for the Board's operating expenses. That amount was not changed by a repeal of or an amendment to the statute. In the 1940 Budget Act, the appropriation to the Board was increased to $6,500.00. A suit was then filed seeking a determination of which amount was proper. The Court of Appeals gave effect to the "last word" of the General Assembly as expressed by the 1940 increased appropriation and permitted an amendment of the 1920 bill by the 1940 Budget Act. *id.* at 523. *Mattingly* stands for the proposi-

tion that—*at the very least*—the General Assembly may appropriate funds in a Budget bill in amounts that are different from those in previously enacted statutes. Interestingly enough, in that case the court did not attach any conditions such as emergency, etc., to the amendment permitted. In *Commonwealth ex rel. Meredith, Attorney General v. Johnson*, 292 Ky. 288, 166 S.W.2d 409, 414 (1942) the questioned budget bill permitted the Governor the "widest discretion" to expend and to transfer money from one fund to another, upon the finding by him that an emergency existed for which public money should be spent. The court said:

"To hold that the state government could not take the precaution of anticipating such miscellaneous items [as an emergency] would be to retard the progress and operation of public affairs." *Id.*

In *Johnson*, the court declared that a budget bill could allow not only the transfer of funds from special accounts but also that selfsame bill would properly authorize the unappropriated and unbudgeted expenditure of funds, if an emergency (or other miscellaneous items) were found.

If it is proper for the General Assembly to delegate to the Governor the power, in a budget bill, to transfer funds and to spend them for unbudgeted items, why is it not, *a fortiori*, proper for the General Assembly, in the limited circumstances of an emergency financial situation of state government, to transfer funds and to suspend and modify the operation of a statute? We think the question answers itself.

The United States Supreme Court agrees. In *United States v. Will*, 449 U.S. 200, 101 S.Ct. 471, 66 L.Ed.2d 392 (1980), our highest court specifically held that the United States Congress could modify statutory law in an appropriation bill. In an unanimous opinion, the Court quoting *United States v. Dickerson*, 310 U.S. 554, 555, 60 S.Ct. 1034, 1035, 84 L.Ed. 1356 (1940) said:

"[W]hen Congress desires to suspend or repeal a statute in force, '[t]here can be no doubt that ... it could accomplish its purpose by an amendment to an appropriation bill ...'" *Id.* at 222, 101 S.Ct. at 484.

At this point, it is necessary to remember that the questioned statute SB 294—by its own terms—denied the General Assembly the power to repeal or amend an existing law. It permitted only *suspension or modification.*

It may well be argued, that if the General Assembly has the constitutional power to *repeal or amend* existing statutes in a budget bill, it should have the power to *suspend or modify* such statutes in that selfsame budget bill. This conclusion is supported by logic, and it is also supported by law

Kentucky Constitution Section 15, is as follows:

"*Laws to be suspended only by General Assembly.* No power to suspend laws shall be exercised unless by the General Assembly or its authority."

There have been a minimal number of cases interpreting this section. In *Lovelace v. Commonwealth*, 285 Ky. 326, 147 S.W.2d 1029 (1941), a statute authorizing a court to probate the sentence of a person convicted of a crime was held to be a constitutionally valid "suspension" of the criminal statute. We said:

"The legislature makes the laws that declare what are criminal offenses and define the processes by which these laws are enforced. Having the power to make, it has the power to modify and provide for abatement or suspension. *Id.* at 1034.

"[T]he power in the legislature to authorize the courts to suspend those laws is *in the logically implied affirmation contained in Section 15 of the Constitution of Kentucky....*" *Id.* (emphasis added).

It is beyond cavil that the General Assembly can suspend the operation of statutes. Moreover, under *Lovelace*, the General Assembly delegated that authority to the Courts. See also, *Gering v. Brown Hotel Corporation*, Ky., 396 S.W.2d 332 (1965).

Because of the General Assembly's exclusive authority with respect to public funds and the budget, we have no problem in deciding that Ky. Const. Sec. 15 applies to statutes which can be affected by the budget bill of the Commonwealth. The General Assembly is mandated to operate the financial offices of the Commonwealth under a balanced budget. If revenues become inadequate, the General Assembly must be empowered to use adequate devices to balance the budget. Provisions in the budget document which effectively suspend and modify existing statutes which carry financial implication certainly are consistent with those duties and responsibilities.

We have reiterated the proposition that the General Assembly may constitutionally repeal or amend existing statutes by the terms of a budget bill, so long as said bill complies with Ky. Const. Sec. 51. We have emphasized the obvious, viz, that the General Assembly may also *suspend or modify* existing statutes in a budget bill. Since, under paragraph (1) of SB 294, the General Assembly *denied itself* the power to *repeal or amend* and further said in paragraph (2) thereof it granted (or recognized) in itself the power to suspend or modify existing statutes, we must, perforce, examine the questioned provisions of the budget bill and determine whether they are only suspensions or modifications, and therefore, proper under the General Assembly's self-imposed limitation. Prior to that, however, we must address appellant's argument that both challenged acts violate Section 51 of the Kentucky Constitution.

DO THE TITLES OF SB 294 AND HB 474 COMPORT WITH THE MANDATE OF KENTUCKY CONSTITUTION, SECTION 51?

Kentucky Constitution Section 51 is as follows:

"No law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title, and no law shall be revised, amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revised, amended, extended or conferred, shall be re-enacted and published at length".

There are two proscriptions contained in this oft-litigated section. One directs that an act of the General Assembly shall only relate to one subject and requires that the subject shall be expressed in the title of the act. The other directs that no existing law shall be revised, amended, or its provisions conferred or extended by referring to its title only, but rather when such action is intended, the law is required to be re-enacted at length. Appellant attacks HB 474 and SB 294 with respect to the first proscription of Section 51 and HB 474 with respect to the second.

(A) DO THE TITLES TO SB 294 AND HB 474 PROPERLY DESCRIBE THE SUBJECT OF THOSE ACTS.

Ky. Const. Sec. 51 has always been liberally construed, with all doubts being resolved in favor of the validity of the legislative action. The purpose of the section is said to be to prevent the enactment of "surreptitious" legislation. *Bowman v. Hamlett*, 159 Ky. 184, 166 S.W. 1008 (1914); *Dawson v. Commonwealth, Department of Transportation*, Ky., 622 S.W.2d 212 (1981). The framers of the Constitution intended to prevent surprise and fraud upon the members of the General Assembly and other interested parties, thus preventing the practice of "log rolling". *Commonwealth ex rel. Meredith v. Johnson*, 292 Ky. 288, 166 S.W.2d 409, 411 (1942).

[2] The title need only furnish general notification of the general subject in the act. If the title furnishes a "clue" to the act's contents, it passes constitutional muster. *Talbott v. Laffoon*, 257 Ky. 773, 79 S.W.2d 244 (1935).

"Section 51 of our Constitution ... was to prevent the evil that had grown up of legislating in one act upon as many dis-

tinct and wholly disconnected subjects as the legislative body saw fit, without any indication in the title of the act as to what its contents might be.... [Prior to its adoption] [i]t was then competent for the Legislature to legislate upon a multiplicity of unrelated subjects which were neither remotely germane to, or in any wise connected with, the one or ones named in the title ... *[t]o circumvent such deceptive practices resulting in deceitful, selfish, and other baleful consequences, the provision was inserted in the Constitution.*" *Id.* at 246 (emphasis added).

[3] Do the challenged titles provide the reader a clue as to the contents of the act? Do the acts perpetrate a fraud? Did the General Assembly in providing a title to the acts and placing it in juxtaposition with the content of the acts effect something deceitful, selfish or baleful? We think not.

The challenged SB 294 title is as follows: "AN ACT relating to the relationship of the budget bill to the Kentucky Revised Statutes, and declaring an emergency."

The challenged two paragraphs of SB 294 limit the General Assembly's right to *repeal or amend* in a budget bill but permit the *suspension or modification* of such existing statutes, but only in the event that the financial conditions of the state mandate emergency action. The substance of the act thus permits suspension or modification of Kentucky Revised Statutes by a budget bill. The act expresses the relationship of a budget bill to all existing statutory law—which is primarily what the title says it does. The "germaneness" argument here is little short of specious.

[4] The title of HB 474, the biennial budget bill, is as follows:

"AN ACT relating to appropriations for the operation, maintenance, support, and functioning of the government of the Commonwealth of Kentucky and its various officers, cabinets, departments, boards, commissions, institutions, subdivisions, agencies, and other state supported activities."

The various contested provisions of HB 474, provide for the transfer of funds from various trust and agency accounts to the general fund of the Commonwealth, and also provide for the reduction of raises made in various officers' salaries. The title to the act refers to "appropriation" for the operation, etc., of state government. Certainly, the title does not tell the reader that—in the voluminous act—the General Assembly has authorized the reduction of salary increases and the transfer of trust and agency funds. However, under the case law cited above all that is necessary is that the act give a "clue" as to its contents and that the act be not deceitful, selfish or result in "baleful" consequences.

HB 474 is a budget—a biennial budget—directing the expenditure of literally billions of dollars to be used in the operation of state government. The provisions thereof that suspend or modify the expenditure of monies in the event of a financial problem are clearly appropriations, in the broad sense. Appropriation of the people's money is the exclusive responsibility of the General Assembly, including the power to suspend or modify such appropriation under emergency financial circumstances. Moreover, such modification or suspension is obviously part of the whole framework of the budget, and no one could possibly be deceived by the inclusion of such provisions. The fact that the title tells the reader that the act is an appropriation for the funding of state government clearly alerts one to the fact that the act deals with "appropriations" including possible changes. No person could claim to have been misled by the title of HB 474 because the content of the act sets a course of action when the financial condition of the Commonwealth deteriorates. We believe that the title of HB 474 clearly complies with Ky. Const. Sec. 51.

(B) DO THE CHALLENGED PORTIONS OF HB 474 COMPORT WITH THE PROVISION OF KENTUCKY CONSTITUTION, SECTION 51 THAT REQUIRES AMENDMENT OF STATUTES TO BE DONE AT LENGTH?

[5] This second part of Section 51 is nearly so often litigated as the "germane" section. The purpose of this section is perhaps best explained by one of the framers:

"The members of the General Assembly did not know what they were voting for half the time, and this section ... provides when an act is amended ... shall be set out in full, so every man will understand what it is when voting on it, and the people will know what change has been made when they see it." *Spalding, Chairman of the Legislative Committee, Volume 3, p. 3792, Debates of the Constitutional Convention.*

As the court said, in *Board of Penitentiary Commissioners v. Spencer*, 159 Ky. 242, 166 S.W. 1017 (1914):

"When any person, lawyer or layman, takes up an act of the Legislature, to read and understand what changes have been made in an old law, he ought to have before him in the act that he is reading the whole of the law as it appears when amended or revised by the new act...." *Id.* at 1024

This part of Section 51 may be described as the reenactment and publication requirement of that section. As stated, its application is limited by its own wording to amendment, revision, extension or conferring of existing statutes. Its purpose is to prevent deceitful practices and to provide full and easily accessible information to legislators and to the public when the General Assembly is so effecting existing law.

If a challenged statutory enactment falls within the proscribed activities, as opposed to merely being suspensory in nature, it is violative of this second part of Section 51. If it is, however, merely a suspension or modification, it is not violative thereof. The same restriction appears in SB 294(2), wherein the General Assembly restricted itself to the same limitation of Ky. Const. Sec. 51.

We now proceed to examine the challenged statutory provisions that are before us on this appeal to determine if they repeal or amend existing statutes or if they merely suspend or modify existing statutes and are therefore valid.

DO THE CHALLENGED STATUTES CONSTITUTE A REPEAL OR AMENDMENT TO EXISTING STATUTES SO AS TO BE VIOLATIVE OF SECTION 1 OF SB 294?

1. STATE OFFICERS' SALARIES

[6] HB 474, the budget document, in Part VII thereof provides in essence that if the financial condition of the state deteriorates certain salary increases of specific state officers were to be reduced.[8] The bill then provided for annual increases which are less than are provided for in the particular cited statutes. Such reduction is temporary only, expiring at the end of the biennium. The trial court upheld this action saying that the General Assembly "... has the authority to suspend previously authorized salaries in a budget bill, a subject clearly germane to appropriations." We agree.

In *Mattingly*, we upheld a budget appropriation that "repealed" prior statutory authorization for the Athletic Board of Control. See also, *State ex rel. McLeod v. Mills*, 256 S.C. 21, 180 S.E.2d 638 (1971). As we view this statute, the General Assembly has—as a premise for its action—cited the shaky financial condition of the Commonwealth. It has exercised its discretion—nay, it has performed its constitutional obligation—that of operating the Commonwealth within a balanced budget, by reducing expenditures in areas which it felt were proper. It has exercised proper legislative discretion and judgment. It has not repealed or amended the existing salary statutes, it has simply temporarily sus-

[8] They are as follows: KRS 15.755 (Commonwealth Attorneys); KRS 15.765 (County Attorneys); KRS 18A.355 (State Employees); KRS 64.530 (Circuit Clerks); KRS 64.480 (Elective Statewide Officers—Governor, Lieutenant Governor, Attorney General, Superintendent of Public Instruction, Commissioner of Agriculture, Secretary of State, Auditor of Public Accounts, Clerk of Supreme Court); and KRS 64.485 (Justices and Judges of the Court of Justice).

pended them, as it clearly has the power to do. *LRC v. Brown, supra.* SB 294(2).

2. TRUST AND AGENCY FUND TRANSFERS

[7] Under a traditional statutory scheme, the General Assembly has created what are called "trust and agency funds." Basically, when any affected agency, board, commission, or other entity of state government receives fees, rental, sales, bond proceeds, gifts, or other income, those monies are specifically appropriated by the General Assembly to those units of government. *Budget, Part II, Trust and Agency Funds;* KRS 45.253.

In the present budget bill, and based on the same premise of the financial condition of the state, the General Assembly provided for the "suspension" of enumerated statutes to "provide for the transfer of certain agency and special funds to the general fund." *Budget Memorandum, at i.*[9] Not only does the budget document provide for the transfers, but they are also authorized by statute. KRS 48.315.[10]

In each of the challenged transfers of funds, the enabling act created a reduction in the funds available to the affected agency. The trial court upheld the validity of these transfers, declaring that the General Assembly has the authority under Section 15 of the Kentucky Constitution and under KRS 48.315 "to suspend, for the duration of the biennium, sections of the Kentucky Revised Statute that pertain to trust and agency funds." We agree in part.

We repeat ourselves when we say that the General Assembly has, constitutionally speaking, the power in a budget bill to *repeal* or *amend* the manner in which public funds are used. Ky. Const. Sec. 51, the "title" section, has not been violated by budget matters clearly relating to appropriations. What we decide is simply that the transfers of funds which are merely temporary, determinable suspensions of the operation of the statutes relating to appropriations of public funds are within the legislative authority as set out in SB 294 and Ky. Const. Sec. 51, the amendment section.

However, the transfers of funds which relate to appropriations of private contributions cannot be termed suspensions or modifications of the operation of the statutes. Because the General Assembly has no authority to transfer private funds to the general fund, the transfer of money from agencies in which public funds and private employee contributions are commingled, and cannot be differentiated, is unconstitutional. Diversions from the Kentucky Employees Retirement System, County Employees Retirement System, State Police Retirement System, and Teachers' Retirement System fall within this category, as do Workers' Compensation and Workers' Claims Special Fund. The employee contributions and the insurance company assessments constitute private, mandatory donations.[11] To the extent that private funds were transferred, we reverse.

9. In the interest of brevity, we will not discuss these at length. Suffice it to say that the Attorney General complains of the following items—Kentucky Development Finance Authority, required lapsing of $100,000 each fiscal year to the General Fund; University of Kentucky, transfer of $500,000 from the Tobacco Research Trust Fund to the General Fund; Department of Banking and Securities, transfer of $3,000,000 to the General Fund; Fish and Wildlife Resources, lapsing $1,128,000 in 1984–1985 and $1,150,000 in 1985–86; and a general transfer of various amounts to the General Fund. See Budget Document, Item 19, 35, 49, 63. For anyone who desires to read the 47 specific authorized transfers, see Budget Bill, Item VIII.

10. KRS 48.315 is as follows: "(1) The general assembly may provide in a budget bill for the transfer to the general fund for the purpose of the general fund all or part of the agency funds, special funds, or other funds established under the provisions of KRS 15.430; 16.565; 21.347; 21.540; 21.560; 42.500; 47.010; 48.010(g); 56.100; 61.470; 61.580; 64.345; 64.350; 161.430; 161.430; 164A.110; 164A.020; 164A.800; 164A.810; 216A.110; 230.218; 230.398; 230.400; 230.770; 235.330; 248.540; 248.550; 278.130; 278.150; 287.485; 304.35-030; 311.450; 311.610; 312.019; 313.350; 314.161; 315.195; 316.210; 317.530; 317A.080; 319.131; 320.360; 321.320; 322.290; 322.330; 322.420; 323.050; 323.190; 323.210; 323A.060; 323A.190; 323A.210; 324.286; 324.410; 325.250; 326.120; 327.050; 330.050; 344.160; 334A.120; 335.140; 342.122; 342.480, etc.

(2) The transfer of moneys from the agency funds, special funds, or other funds to the general fund provided for in subsection (1) of this section shall be for the period of time specified in the budget bill.

(3) Any provisions of any statute in conflict with the provisions of subsections (1) and (2) of this section are hereby suspended or modified. Such suspension or modification shall not extend beyond the duration of the budget bill. (Enact. Acts 1984, ch. 410 § 6, effective July 13, 1984.)"

3. TRANSPORTATION PROVISIONS

[8] The budget bill directs that the Secretary of the Transportation Cabinet shall use road fund resources to meet lease rental payments to the Kentucky Turnpike Authority. It further provides that in the event such resources are insufficient to meet payments, the shortage shall be met by transferring coal severance tax receipts to "cover the obligation". *Budget Document, Part IV,* Road Fund, Item 1.

The bill also provides that the capital construction and equipment purchase contingency fund may be used to advance funds to projects authorized to be financed by bonds and may further be used to finance feasibility studies for future projects. *Budget, Part V. Capital Construction, L., Transporation.*

The Attorney General argues that the first provision is in conflict with KRS 143.-090 and that the second provision is in conflict with KRS 45.770. The trial court disagreed and found no inconsistency between the provisions and existing statutory law. We agree with the result, but not the reasoning, of the trial court.

It is clear that the first provision which diverts, albeit temporarily and for the same reason as all of the challenged provisions of the budget bill, funds from the purpose set out in KRS 143.090[12] does *conflict* with that statute. As we have said, previously, the "conflict" is authorized by SB 294.

The same reasoning applies to the second contested provision in this section. In addition, this action of the General Assembly was authorized by a 1984 statute. KRS 45.760(12) is as follows:

"(12) The general assembly may provide in a budget bill for the capital construction and equipment purchase contingency fund to be used to advance funds to projects authorized to be financed by bonds, and to finance feasibility studies for projects which may be contemplated for future funding."

The General Assembly thereby specifically authorized by another statute, the action which it took in the budget document. We find no inconsistency, even if such were relevant to our decision.

4. FUNDING FOR TEXTBOOKS

[9] The General Assembly, also through the budget bill, permitted local school districts to rent textbooks and further imposed a minimum six year period on the use of textbooks selected by the Textbook Commission. *Budget, Part I, General Fund, D. Education and Humanities, Item 29(c), (b).* It is argued that this section of the budget conflicted with KRS 156.400 and KRS 156.435(4). The trial court disagreed. We agree with the trial court.

In this section of the budget bill—as in all the questioned sections—the General Assembly was basing its action on the financial condition of the state and its various entities. It was acting on the authority granted in SB 294. In this instance, local boards of education can now—at their option—rent textbooks to students. All books shall now be used for six years. Both of these objects are economy moves. They allow local school boards to make

11. Following are the agencies and special funds which have private contributions:
Kentucky Employees Retirement System (KRS 61.580), County Employees Retirement System (KRS 78.650), State Police Retirement System (KRS 16.565), Teachers' Retirement System (KRS 161.420), Workers' Compensation (KRS 342.450), and Workers' Claims Special Fund (KRS 342.122).

12. KRS 143.090 provides a scheme for the expenditure of Road Fund Resources. It does not authorize the use of such funds for the payment of rent to the Kentucky Turnpike Authority.

appropriate individual decisions as to whether textbooks shall be *loaned or rented* to students. Whether one agrees with this infringement on the traditional use of "free" textbooks, one cannot challenge the General Assembly's right to make such a policy decision. The same logic applies to extending the use of books for a period of six years.[13]

We believe therefore that not only is the action of the General Assembly in the budget bill valid as a suspension or modification of existing statutes, we also believe that, there is, in effect, no real conflict.

5. FUNDS FOR MEDICAL CONTRACTS

[10] The budget bill provided $900,000 fund for medical service contracts for county jails. It also provided a condition, that that fund be maintained in an individual account specifically for medical contracts, and furthermore that a county must be "certified" before it received its share of the funding. In order to be so certified, the county must attest that it has investigated and obtained the "most feasible medical contract or contracts possible." The contract(s) is subject to approval by the Corrections Cabinet. *Budget, Part I, General Fund, C. Corrections, Item 27d. Local Jail Support.*

It is claimed by appellant that such provision is in conflict with KRS 441.045.[14] It is argued that the budget bill contains "substantive law" and that such a requirement is not an appropriation. The trial court disagreed and so do we.

It is an altogether too familiar litany that the premise of this provision is to react to the financial crunch of the state and that such directive is only temporary. It is also too familiar to say that this attempt of the General Assembly to regulate even temporarily, the procurement by medical services contracts—in an economical manner—is clearly a subject of an appropriation. The General Assembly is saying to counties, in effect, "we will give you $900,000 in aid but you don't qualify unless the contract you obtain is the most economical and feasible one." It cannot be seriously argued that this is not appropriation and therefore germane.

There is no need to "wrap up" this opinion with a lengthy summary. The General Assembly has the basic constitutional power and responsibility to tax and to spend the public's money. This power, as we have seen in prior decisions, is exclusive to the General Assembly and includes the power to use a budget bill to repeal, amend, modify and suspend existing statutes. Such power must be exercised within all constitutional proscriptions, including those of Section 51. The General Assembly, in the questioned statute hereinbefore described and relying on its own specific statutory authority, did precisely that.

The judgment of the trial court is affirmed.

STEPHENS, C.J., and GANT, LEIBSON, STEPHENSON, WHITE and WINTERSHEIMER, JJ., concur.

VANCE, J., dissents, and files a dissenting opinion.

VANCE, Justice, dissenting.

Section 51 of the Kentucky Constitution provides:

"No law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title, and no law shall be revised, amended or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revised, amended, extended or conferred, shall be revised and published at length."

13. Although the statutes permits the Superintendent of Instruction to authorize the use of textbooks for more or less than six years (KRS 156.400), the statute specifically allows the General Assembly to make its own period *in a budget bill.* KRS 156.440.

14. KRS 441.045 sets out the procedure as to how counties are to obtain money from the state for medical contracts. Nothing appears therein about the certification procedure

This section contains two important restrictions that relate to the transaction of the business of the General Assembly in an orderly and intelligent fashion. The provisions relating to title and the provisions relating to republication in full of amended statutes preserve the significant purpose of preventing confusion in the minds of legislators as to the effect of proposed legislation.

Our court, some time ago, expressed the purpose of this amendment. In *Talbott v. [illegible]*, 257 Ky. 773, 79 S.W.2d 244 (1935), we said:

"Section 51 of our Constitution, and like provisions in Constitutions of other states, is of comparatively modern origin, and the purpose of the people in incorporating it as a part of their fundamental law was to prevent the evil that had grown up of legislating in one act upon as many distinct and wholly disconnected subjects as the legislative body saw fit, without any indication in the title of the act as to what its contents might be. Prior to the adoption of such a provision, the title to an act might clearly indicate that it related to a specifically named subject, or to a number of named subjects, with the body of it containing provisions for a wholly distinct and unconnected subject or subjects than what was mentioned in the title. It was then competent for the Legislature to legislate upon a multiplicity of unrelated subjects which were neither remotely germane to, or in any wise connected with, the one or ones named in the title, and which, as we are advised, is yet true with reference to congressional legislation. To circumvent such deceptive practices resulting in dishonest, selfish, and other baleful consequences, the provision was inserted in the Constitution requiring, inter alia, that no statute 'shall relate to more than one subject, and that shall be expressed in the title.'"

[illegible] 246.

In *Board of Education v. Mescher*, 310 [illegible], 220 S.W.2d 1016 (1949), we said:

"The purpose of the provision have been stated many times. Among them is the important purpose to prevent surprise or fraud, and the enactment of vicious legislation under an innocent and misleading title. Therefore, the title must give fair and reasonable notice of the nature and provisions of the Act so that a member of the legislature or any other interested person reading the title may obtain a general notice or knowledge of the contents of the Act or what it proposes to do. The title must be a true although not a detailed index of the contents. If it is restrictive, then the Act must not exceed the specification or include what is not reasonably and properly connected with or germane to it.'" *Id.* at 220 S.W.2d 1019.

In *Board of Penitentiary Com'rs v. Spencer*, 169 Ky. 255, 166 S.W. 1016 (1914), this court considered the requirements of Section 51 of the constitution and its purposes as it regards the republication of amended statutes. After discussing some of the practices attempted before the adoption of Section 51 of the present constitution, we said:

"It can readily be seen that, under this practice, no person, by reading an act the provisions of which had been extended or conferred in the manner indicated, could obtain any idea of the meaning or effect of it, without reading it in connection with the old law the provisions of which had been carried into the new law, by reference to the title of the old law; nor could any person, by reading an old law that had been revised or amended, by adding to it certain words or taking from it certain words, understand the meaning and effect of the old law without reading it in connection with the new one that amended or revised it in this manner. And it was largely to prevent this deceptive and misleading manner of legislating, which afforded so many opportunities for fraud, as well as to make the laws more convenient and accessible, that this section was adopted. As aptly said on this subject by Mr. Spalding, the chairman of the legislative committee, in

volume 3, p. 3792, of the Debates of the Constitutional Convention: 'The members of the General Assembly did not know what they were voting for half the time, and this section in the report provides when an act is amended it shall not be amended in that way, but that the act, as amended, shall be set out in full, so every man will understand what it is when voting on it, and the people will know what change has been made when they see it.'

"This was the whole purpose of this provision in the Constitution, and that it is a wise provision is not open to doubt. When any person, lawyer or layman, takes up an act of the Legislature, to read and understand what changes have been made in an old law, he ought to have before him in the act that he is reading the whole of the law as it appears when amended or revised by the new act, and so the convenient and the proper way to revise or amend an old law, by either adding to it or taking from it, or extending its provisions, is to set forth in the new act the law as it will read when revised, amended or extended."

Id. at 166 S.W. 1023–1024.

In *Board of Penitentiary Com'rs v. Spencer, supra*, the court also established guidelines concerning the republication of amended statutes as follows:

"(a) That it is not necessary, when the body of the new act repeals, or has the effect of repealing, all or part of an existing act, to republish or set forth the parts repealed, although the title of the repealing act may purport to be an amendment to the existing act.

"(b) That when it is proposed to revise or amend one or more sections of the Kentucky Statutes, or an act, the body of the new act should contain the section or sections as they will read when revised or amended, if it is proposed to re-enact or leave in force any part of the section or sections that are amended or revised. If, however, it is intended to repeal one or more sections, then it is not necessary to set forth in the body of the act the section or sections repealed.

"(c) That when the act does not purport to be an amendment to an existing law, but a new act, it is not necessary to set out or republish any part of any old law that may be changed or repealed by the new law.

"(d) When the new act purports to amend an existing act by extending, revising, or amending it, and no particular section or part of it is specified, then the body of the new act must set forth the whole of the existing act as it will appear when extended, revised, or amended; but, if only a section or several sections of an act are extended, revised, or amended, it is only necessary to specify and republish the section or sections that are extended, revised, or amended.

"(e) That, when it is desired to confer or carry into a new law provisions of an old law, then so much of the old law as is thus conferred or carried into the new law must be published at length."

Id. at 166 S.W. at 1022–1023.

It seems to me that the purposes which impelled the framers of the constitution to place the limitations imposed upon the General Assembly by Section 51 of the constitution were inherently sound and ought not to be eroded to the vanishing point by judicial interpretation.

Let us examine the legislation in question. Senate Bill 294 is entitled "AN ACT relating to the relationship of the budget bill to the Kentucky Revised Statutes and declaring an emergency." This innocuous title would scarcely inform an unsuspecting legislator that it is really an act providing for the amendment, repeal, suspension, or modification of existing statutes through various provisions to be included in a separate budget bill. In my view, the title of the bill is misleading.

Even worse is the text. Section 6 of Senate Bill 294 provides:

SECTION 6. A NEW SECTION OF KRS CHAPTER 48 IS CREATED TO READ AS FOLLOWS:

"(1) The general assembly may provide in a budget bill for the transfer to

the general fund for the purpose of the general fund all or part of the agency funds, special funds, or other funds established under the provisions of KRS 15.430; 16.505; 21.347; 21.540; 21.560; 42.500; 47.010; 48.010(g); 56.100; 61.470; 61.580; 64.345; 64.350; 64.355; 78.650; 95A.220; 136.392; 138.510; 150.150; 154.150; 161.420; 161.430; 164A.110; 164A.050; 164A.800; 164A.810; 226A.110; 230.215; 230.398; 230.400; 230.770; 245.330; 248.540; 248.550; 278.130; 278.150; 287.485; 301.35–030; 311.450; 311.610; 312.019; 313.350; 314.161; 315.195; 316.210; 317.530; 317A.080; 319.320; 320.360; 321.320; 322.290; 322.350; 322.420; 323.080; 323.190; 323.210; 323A.060; 323A.190; 323A.210; 324.286; 324.410; 325.250; 326.120; 327.080; 330.050; 334.160; 334A.120; 335.140; 342.122; 342.480, etc.

"(2) The transfer of monies from the agency funds, special funds, or other funds to the general fund provided for in subsection (1) of this section shall be for the period of time specified in the budget bill.

"(3) Any provisions of any statute in conflict with the provisions of subsections (1) and (2) of this section are hereby suspended or modified. Such suspension or modification shall not extend beyond the duration of the budget bill."

Section 7 of Senate Bill 294 provides:

SECTION 7. A NEW SECTION OF KRS CHAPTER 48 IS CREATED TO READ AS FOLLOWS:

"To the extent that the provisions of a budget bill are in conflict with any provisions of KRS Chapters 12, 42, 56, 152, 175, or 341, the provisions of those chapters are hereby suspended or modified. Such suspension or modification shall not extend beyond the duration of the budget bill."

No member of the General Assembly could possibly have any idea by reading the language of Senate Bill 294 what agency funds were created by the 70 enumerated statutes and could not possibly know what funds were subject to transfer upon the passage of Senate Bill 294. The inclusion of "etc." at the end of the string of enumerated statute numbers would seem to make even more uncertain what transfers were to be authorized. Such uncertainty with regard to the effect of legislation is precisely the evil that Section 51 of our constitution was designed to prevent.

An entirely separate bill, House Bill 474, the budget bill, enacted into law the transfers authorized by Senate Bill 294. House Bill 474 was entitled "AN ACT relating to appropriations for the operation, maintenance, support, and functioning of the government of the Commonwealth of Kentucky and its various officers, cabinets, departments, boards, commissions, institutions, subdivisions, agencies, and other state supported activities."

With respect to the transfers of funds, it provided for a transfer from the agency and special funds to the general fund certain enumerated dollar amounts from certain enumerated agencies. In most cases, the agency from which funds were transferred was designated by an existing K.R.S. number which identified the agency and which designated the fees and monies which were appropriated to the agency by the existing statute, and the purposes and the manner in which those fees and funds were to be used.

No legislator could tell from a reading of House Bill 474 the purposes for which the transferred funds were required to be used by the existing statute. In a session limited to 60 days each biennium, in which hundreds of bills are introduced, it is not realistic to expect that an individual legislator could research each of the statutes enumerated in House Bill 474 to determine for himself the advisability of transferring funds away from that particular agency. In one instance, House Bill 474 purports to transfer $3,980,000.00 from the "Reinsurance Association" to the general fund, but no reference is made to the statute which created the association or to the purpose and manner in which its funds are to be used.

Of necessity, the individual legislators would find it impossible to determine the full import of House Bill 474 from a reading of its express language, and could not, therefore, know the full import of their action in either voting for or against the bill. It is just such uncertainties that Section 51 of our constitution was designed to prevent.

Furthermore, under only the loosest interpretation does the transfer to the general fund of funds appropriated to an agency by an existing statute have anything to do with the subject of appropriation. These transfers do not appropriate money. They rescind appropriations under existing statutes by transferring money which was previously made available to an agency by a statute which still exists on the statute books of this state. In doing so, the existing statutes, in my opinion, were amended by the budget bill and were therefore required by Section 51 of the constitution to be republished as amended.

The majority opinion states that these were not amendments, but only suspensions or modifications of the existing statutes. The General Assembly, in Senate Bill 294, divested itself of the power to repeal or amend an existing statute by a budget bill, but granted unto itself the power to suspend or modify existing statutes.

It seems to me beyond question that repeal and amendment of statutes relate to permanent actions of the General Assembly, whereas a suspension of a statute for the duration of the biennium of the budget bill is in effect a *temporary repeal*. A modification of a statute, limited to the biennium of the budget bill is a *temporary amendment*.

If an amendment is not valid unless republished as amended, it follows that a temporary amendment must also be published in full.

The transfer of various agency funds to the general fund conflicts in many instances with the express purpose and manner in which existing law requires those funds to be used, and the transfer in the budget bill does not suspend the existing statute. The existing statute is left intact, except to the extent that a portion of the funds for the use of the agency has been siphoned off for a different purpose. This does not suspend the existing statute but modifies it temporarily. Because a modification is in effect an amendment, albeit temporary, the full text of the existing law as modified is required to be published.

I do not doubt that the General Assembly has the power to control appropriations and expenditures, nor that it has the power to repeal or to amend statutes which appropriate money and provide the manner in which it shall be used.

It can, as an example, abolish the Department of Fish and Wildlife Resources Commission by repeal of the statute which created it. It has the power to direct that money derived from licenses issued by the commission be used for a different purpose than that provided by K.R.S. 150.150, but it must be done by amending K.R.S. 150.150 and republishing it in full as amended.

K.R.S. 150.150 provides:

"(1) Except as provided in this chapter, all moneys derived from the sale of licenses or from any other source connected with the administration of this chapter shall be promptly paid over to the state treasurer, who shall deposit such moneys in a special fund, known as the game and fish fund. The game and fish fund shall be used to carry out the purposes of this chapter and any law or regulation for the protection of wild animals, birds or fish, and for no other purpose.

"(2) All funds received under KRS 150.110, 150.310 and 150.520 shall be used by the department for the purpose of enforcing those sections and for the protection and propagation of mussel beds. Any surplus remaining in the fund at the close of each calendar year shall be turned into the general fund of the department. (1954d-10, 1954d-48 amend. Acts 1942, ch. 68, § 15; 1952, ch. 200, § 22; 1968, ch. 38, § 6; 1978, ch. 384, § 33, effective June 17, 1978.)"

This statute provides that the game and fish fund be used for purposes specified in the statute and *for no other purpose*. The budget bill purports to transfer $225,000.00 of the funds of the Department of Fish and Wildlife Resources Commission to the general fund with no limitation on the manner of spending. The budget bill does not repeal K.R.S. 150.150 because, except for the funds transferred, the statute will continue to be operative. The budget bill does, however, amend K.R.S. 150.150 because it takes away funds which were designated for a specific purpose and diverts them to another purpose. Because K.R.S. 150.150 was so amended, but its text was not republished or amended as required by the constitution, Section 51, a legislator would not know the effect that the budget bill would have upon the operation of the Department of Fish and Wildlife Resources Commission. The same thing is true of all other cases where the transfer of funds from commissions and agencies by the budget bill contravenes the express provisions of existing statutes.

I remain convinced that the intent and purpose of Section 51 of the constitution is sound, and that erosion of its effectiveness by judicial interpretation will in the long run lead to unfortunate consequences.

Recent events teach us the danger of circumventing the constitution. Sections 49 and 50 of our constitution prohibit the creation of public debt in excess of $500,000.00 except upon the vote of a bonded indebtedness by the people, accompanied by the enactment of a tax for the specific purpose of liquidating the principal and interest on the indebtedness. Notwithstanding this salutary economic principle, the state has issued millions of dollars of revenue bonds without a vote of the people and without enactment of a specific tax to retire the bonds. The bonds have been upheld by the courts upon the theory that they are to be retired from revenues derived from projects financed by the bonds and that such bonds do not constitute an indebtedness of the state. Many of the projects financed by these bonds produce no revenue at all apart from money taken from current state revenues. Revenue bonds are used to finance road construction projects, and the transportation department then leases the roads, and the lease payments are used to retire the principal and interest on the bonds.

Although not technically an indebtedness of the state, these bonds have created an obligation which must, as a practical matter, be satisfied out of current revenues because a default would ruin the credit of the state. The expenditure of current funds to pay for the leases necessary to retire interest and principal on revenue bonds is substantially responsible for a current critical shortage of funds available to the transportation department for other purposes.

One purpose of Sections 49 and 50 of our constitution is to prevent a current administration from obligating the tax revenues of a future administration. What has happened is that Sections 49 and 50 of the constitution have been circumvented, and as a practical matter, past administrations have been permitted to obligate the tax revenues of the present and of future administrations. We now begin to feel the consequences. I mention this as an example because it is easy to become impatient with restrictions imposed by our constitution. Section 51 serves a sound and prudent purpose, and in my view, it is important that we interpret it to prevent the very abuses it was designed to prohibit.

I would hold all of the contested sections of Senate Bill 294 and House Bill 474 unconstitutional to the extent they violate Section 51 of the Kentucky Constitution in the manner expressed in this dissent.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

SB
391

SB 391

Patrick M. Rodey
Senator

Alaska State Legislature

Senate

3111 C. St., Suite 510
Anchorage, Alaska 99503
(907) 561-7618

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3793

DATE: April 6, 1988

TO : Senator Jay Kerttula, Chair
Senate Judiciary Committee

FROM: Senator Patrick Rodey Pat

RE : Senate Bill 391 - relating to the sale of wine by wineries

Attached is a copy of a revised version of SB 391 which adds two minor changes from the original version before the Senate Judiciary Committee.

Section 1 remains the same as in the original bill. This section merely allows a holder of a winery license to sell in quantities of less than 5 gallons to an individual who is present on the licensed premises.

Section 2 is added to allow the holder of a brewery license the same opportunity as set forth above in Sec. 1.

Section 3 is added to allow a winery to offer off-premises sampling as is currently allowed by breweries.

As a result of these minor amendments, AS 04.11.130 (brewery license) and AS 04.11.140 (winery license) will be consistent.

#3 draft 4-6

IN THE SENATE

CS FOR SENATE BILL NO. 391 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the sale of wine by wineries and breweries and to the provision of wine samples by wineries."

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

* Section 1. AS 04.11.130(b) is repealed and reenacted to read:

(b) The holder of a brewery license may sell beer in quantities of

(1) less than five gallons to an individual who is present on the licensed premises;

(2) more than five gallons to a person who is licensed under this title.

* Sec. 2. AS 04.11.140(b) is repealed and reenacted to read:

(b) The holder of a winery license may sell wine in quantities of

(1) less than five gallons to an individual who is present on the licensed premises;

(2) more than five gallons to a person who is licensed under this title.

* Sec. 3. AS 04.11.140(c) is amended to read:

(c) The holder of a winery license may permit a person to sample small portions of the wine [ON THE PREMISES] free of charge unless prohibited by AS 04.16.030.

5-1305L
Bannister
4/8/88

1986

Original sponsor: Rodey

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 391 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

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March 31, 1988

3

Gary Koski- Pres.
Homegrown Industries LTD.
P.O. Box 91537
Anchorage, Ak. 99509
Ph.# (907) 276-8260

Senator Jay Kertulla- Chairman
Senate Judiciary Committee

Dear Senator Kertulla,

I am writing to you in regards to S.B. 391, an act relating to the sale of wine from wineries. I am concerned because I am starting up operation of ALASKA WINERY, Alaska's first licensed winery to produce, ferment, and bottle a line of fine berry and fruit wines from locally grown berries and fruit. We are actively engaged in the creation of a commercial berry industry in the Mat-Valley which would increase production from a present usable level of 5-6000 pounds per year, up to 40-50,000 or more pounds per year. Our development could create over 200 jobs with the growers, pickers, industry suppliers, retail sales, or distributers. Plans for the winery eventually call for the need of 70,000 pounds of berries and other fruit per year for just the winery. Development of the berry industry will also allow for expansion of the jelly and candy establishments and other edible tourist attractions.

I am not asking for state assistance, although the Anchorage Economic Development Corporation Board of Directors has agreed to support us and help in our securing financing. The capital is being obtained from private investors through the creation of Homegrown Industries Ltd., an Alaska corporation that I formed and Chair. We are hoping to start operation of our winery this summer (1988) early enough to be able to use part of this years rhubarb crop and possibly the blueberry too, if a large enough quantity can be gotten, to introduce two Alaskan Wines. We will definitely have the distinction of being the northernmost winery in North America. We will be starting off as a micro-scale winery (15,000 bottles/yr.), expanding production as we gain market acceptance and as the expansion of the berry industry will allow.

S.B. 391 would allow us to sell our wine, and only our wine, from our winery to the general public, the bulk of which will be tourists that will come to our tasting room during the times that we have it open to the public. Passage of this bill would follow in the steps of the other states, such as California, that allow the manufacturer of a legally produced wine the ability to sell his wine, but only his wine, from his winery to the general public. The restriction of being only allowed to sell less than two cases (5 wine gallons) is a sensible restriction and will allow for more control, yet allow for the collector of fine wines. Paragraph C of Sec. 04.11.140, of which I know you are very familiar with, already prohibits us from selling our wine by the glass. But we should be able to sell a bottle of Alaskan made wine to Mr. John Q. Tourist and his lovely wife if they want to take one back to share with their Uncle Jake who just couldn't make it.

(cont.)

I have talked to literally thousands of tourists and residents about their interests in Alaska and their ideas on an Alaskan wine and well over 80% of those asked, indicated that they would be interested in buying at least one bottle. I have talked to Bill Roche and Pat Schrock of the Alcohol Beverage Control Board about this bill and they could see no problem with it. I've talked with Bill on numerous occasions over the past 3 years that I have been working on this, about my plans and making sure everything is set up correctly and have recieved vast support throughout the Anchorage community. Without the rights to sell our product to the general public, in any [illegible]city, makes us dependant on a third party to sell our wine for us and we will not be able to operate.

I urge you for your support in passage of S.B. 391. If you have any questions about Alaska Winery, please contact me and I will clarify our operations more.

Sincerely,

Gary Koski

Gary Koski- Pres.

SB
397

Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802 907-586-2345

SB 397 Hunter Harassment

SB 397 Hunter Harassment and a companion bill, SB 398 Confidentiality of Records, represents another attempt to give preferential treatment to consumptive users of wildlife. The bills are intented to "protect" those individuals engaged in the lawful pursuit of hunting, fishing and trapping from so-called "intentional harassment" from animal protection groups.

SB 397 would establish statutes making it illegal to interfere, either directly or indirectly, with individuals involved in lawful hunting, fishing or trapping. While the Alaska Environmental Lobby does not condone the use of illegal harassment tactics, we feel that this bill is unnecessary for several reasons.

- THERE IS NO PRECEDENT FOR THIS BILL. TO DATE THERE HAVE BEEN NO DOCUMENTED INCIDENTS OF HUNTER HARASSMENT IN ALASKA.

- THERE ARE EXISTING LAWS WHICH PROTECT HUNTERS FROM THIS TYPE OF HARASSMENT, SPECIFICALLY ASSAULT, CRIMINAL MISCHIEF AND GENERAL HARASSMENT STATUTES.

- THE LANGUAGE OF THE BILL IS VAGUE, OFFERING NO CLEAR DEFINITION OF WHAT CONSTITUTES EITHER OBSTRUCTION OR INTENT TO HARASS.

- THE BILL FAILS TO ADDRESS THE QUESTION OF EQUAL RIGHTS FOR ALL USERS OF PUBLIC RESOURCES.

SB 397 would actually encourage the type of confrontation it seeks to prevent. Citizens involved in recreational activities such as bird watching, hiking, and camping would be vulnerable to citizen arrest and/or fines if their activities overlapped with those engaged in hunting or fishing. SB 397 fails to acknowledge these legitimate non-consumptive uses of our natural resources.

Variations of SB 397 were introduced in previous legislatures (1983 and 1986) and were vetoed by then-Governor Sheffield due to constitutional problems. AEL believes that these problems still exist with SB 397. AEL strongly opposes this legislation.

Alaska State Legislature

SENATOR KEN FANNING
P.O. BOX 80929
COLLEGE, ALASKA 99708

P.O. BOX V—STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3880

March 1, 1988

Senate

MAR 10 1988

MEMORANDUM

To: Senate Resources
Committee Members

From: Senator Ken Fanning

Subject: SB 397 - Obstruction of hunting, fishing & trapping

This bill is designed to prevent intentional harassment or obstruction of persons engaged in lawful hunting, fishing or trapping in Alaska. It was passed by the Legislature in this form in 1984, and in an earlier version in 1983. Both times it was vetoed by then-Governor Bill Sheffield, who explained his actions by saying no real need existed because few incidents of hunter harassment had taken place, and that in his view current criminal statutes covered the issue.

It is true that Alaska has not experienced a great number of hunting and trapping harassment incidents, but this is primarily due to the state's remote location and vast expanse.

The bill is patterned after legislation adopted by other states, and has similar penalty provisions. It also provides a liberal defense clause to protect those who mistakenly believed it was not unlawful to disturb hunting, fishing and trapping activities.

As the legislative body of the State of Alaska, we have a responsibility to protect Alaskan citizens, as well as those who visit from Outside, in their pursuit of outdoor recreation. This bill does this, and it reduces the potential for violence in the field by providing judicial relief for those aggrieved by intentional harassment.

I urge your support of SB 397.

SPONSOR STATEMENT

SYNOPSIS AND ANALYSIS

OF

SB 397 - "An Act relating to the obstruction or hindrance of lawful hunting, fishing or trapping."

This is a one section bill that would amend Title 16 by adding a new section 16.05.926 to preclude intentional obstruction or hindrance of lawful hunting, fishing and trapping activities.

Subsection (a) contains the prohibition.

Subsection (b) provides a definition of "lawfully" to mean in compliance with applicable state and federal statutes and regulations, and with the permission of a private landowner, if that is where it occurs.

Subsection (c) provides that a peace officer can order a person to desist from the harassment, and to cite the person if he or she persists.

Subsection (d) provides that it is an affirmative defense that a person believed it was alright to harass sportsmen.

Subsection (e) provides punishment of up to 30 days in jail or up to $500 fine.

The second portion of the bill provides for civil remedies. Subsection (a) allows an aggrieved party to obtain a court order to enjoin the obstructer from the activities.

Subsection (b) allows an aggrieved party to recover damages, including license and tag fees, travel costs, guide fees, etc.

Subsection (c) allows the court to award punitive damages in addition to general and special damages allowed under subsection (b).

SYNOPSIS

NRA

Position Paper

SB 397 and SB 411

SB 397

NRA's field representative, Rupe Andrews, is out of town and would like to have NRA's position into the record. We support SB 397. This legislation has passed the legislature twice already. This area of concern is not a large problem but the problem is growing.

SB 411

The NRA supports this bill. ANILCA took away significant hunting opportunities away from Alaskans. The National Park Service continues to work towards curtailing even existing hunting opportunites. The hunters of this state need not be restricted even further by our own state parks system. Thank-you!

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 397
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: An Act relating to Obstruction or Hindrance of Hunting, Fishing or Trapping
Sponsor: Senator Coghill
Requestor: _____

Agency Affected: Fish and Game
BRU: Game
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Don E. McKnight
Division: Game
Phone: 465-4190
Date: 3/2/88

Approved by Commissioner: [signature]
Agency: _____
Date: 3/2/88

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Game	SB 397	Senator Coghill

DEPARTMENT POSITION

Support

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Don E. McKnight	3/1/88		3/2/88

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Public Safety	Hunters, trappers and fishers
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Alaska Outdoor Council and other organized sportsmen groups	Anti hunting, fishing, trapping groups Animal rights activists

FISCAL IMPACT: ☐ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

In the past 10 to 15 years individuals who oppose hunting and trapping have become well organized and very aggressive in their efforts to impede those who hunt and trap. There have been a number of well-publicized instances in which hunters were harassed or game they were stalking harassed. The intent of this bill is to serve notice that such obstruction of hunting, fishing or trapping is not acceptable to Alaskans. Similar laws have recently been enacted in a number of states.

ANALYSIS OF BILL/PROGRAM EFFECTS

Passage of this bill into law would make obstruction or harassment of an individual legally hunting, fishing or trapping a misdemeanor punishable by a fine or imprisonment. This law would provide legal protection from this form of hooliganism to the thousands of Alaskans who legally hunt, fish and trap in Alaska each year. It would also provide these individuals an alternative to violence in protecting themselves from harassment by these well-meaning, but overzealous, opponents of hunting, trapping and fishing. Certainly for most Alaskans, hunting, fishing and trapping constitute recreational experiences which the state should help ensure not being disrupted by unpleasant or unsafe intrusions by individuals opposed to these particular activities.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

BILL SHEFFIELD
GOVERNOR

JAN 16 1985

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 19, 1984

The Honorable Joe L. Hayes
Speaker of the House
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Re: CSHB 546(Res) am S (An Act relating to the obstruction or hindrance of lawful hunting, fishing, or trapping.)

Dear Representative Hayes:

Under the authority granted in art. II, sec. 15, of the Alaska Constitution, I have vetoed CSHB 546(Res) am S -- a bill that would have made it a misdemeanor for a person "to perform an act with the intent to obstruct or hinder hunting, fishing, or trapping engaged in lawfully by another person." As you may recall, I vetoed a similar bill (2d SCS CSHB 163(Jud)) last year.

I have decided to veto this legislation for the following reasons:

First, an amendment to the bill made on the House floor (the insertion of the language "possessing a valid State of Alaska license or permit" which appears on page 1, lines 13 -- 14, of the final bill) creates both a potential constitutional problem and a public policy problem.

The amendment was made to ensure that a person who obstructs the capture of orca whales in Alaskan waters by Sea World could not be prosecuted under this law. The overall result of this amendment is that if a person obstructs a hunter holding a valid state license or permit, that person can be prosecuted under this law, whereas, if a person obstructs a hunter who is lawfully hunting with only a federal permit, (this includes orca capture, as well as any other kind of hunting, fishing, or trapping requiring a federal permit only) that person is

SHEFFIELD VETO MSG

exempt from prosecution. Such disparate treatment of similar offenders, with no apparent rational basis for the distinction, raises an equal protection question under the constitution.

On a policy basis, I question the wisdom of granting -- just because we want to specifically exempt from prosecution those who might attempt to obstruct the capture of orca whales -- blanket immunity to persons who obstruct hunters, fishermen, and trappers who are hunting, fishing, or trapping lawfully without a state license or permit. This provision should be given more thoughtful consideration.

Secondly, it may be difficult to effectively prosecute an offender under the bill. The new law would not apply to obstruction or hindrance that is "incidental" to a person's lawful use of public or private land or water. This exception was included so that hunting activities would not be given a clear priority over other lawful outdoor activities such as camping, hiking, birdwatching, etc. Although adding this provision serves a laudable purpose, especially since last year's bill included no recognition of the validity of such competing uses, this language is likely to make it more difficult to prosecute some cases. That is, it may be difficult to prove that obstructive acts were deliberate as opposed to being the incidental result of another person's lawful use of the land.

Thirdly, there have apparently been no verified reports in Alaska of the types of "sabotage" tactics that the proponents of this bill seek to prohibit. I am not convinced of the need to establish a new crime prohibiting conduct that has yet to occur in this state.

Fourthly, as I stated in last year's veto letter, existing criminal statutes provide adequate coverage for physical interference with lawful hunting and fishing. In particular, the crimes of assault, criminal mischief, and harassment provide criminal penalties similar to those imposed under this bill.

Finally, creating such a crime in the Alaska statutes gives the impression that Alaska seeks to give hunting, fishing and trapping of wildlife, (whether it be for sport, commercial purposes, or subsistence use) priority over efforts to protect and preserve wildlife. Despite the fact that I myself have participated in sport hunting and fishing, I do not believe that it is appropriate to make such a strong statement in our laws.

For these reasons, I have vetoed this bill.

Sincerely,

Bill Sheffield
Governor

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of _____ 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER Judiciary

**FISCAL NOTE(S) ATTACHED _____ **
IN ACCORDANCE WITH AS 24.08.035
(see below)

2/5/88 DATE TURNED INTO OFFICE _____

Mr. President:

Resources Committee considered SB 397

relating to the obstruction or hindrance of lawful hunting, fishing, or trapping.

and recommended:

[ ] replace with CS _____ [] same title
[] new title

[ ] attached amendment(s) and

[X] do pass Majority

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] further referral to _____ FIN

[ ] letter of intent adopted and attached

** Committee [X] attached or [ ] adopted fiscal note(s)
[X] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS

Lyman Hamm
Arliss Sturgulewski

OTHER RECOMMENDATIONS

2 J. Duncan - NO Rec
2 Fred E. Zharoff No Rec

Dave Donley Do Pass
Chairman signature and recommendation

[ ] Committee Backup Attached

Vice Chairman

PUBLIC OPINION MESSAGE

)EAR: SENATOR FANNING

IAME: ANDY GIFFORD
:TLE:
:ESS: 18827 TWENTY GRAND ROAD
:ITY: EAGLE RIVER ZIP: 99577
IONE: 694-2469
. NO: SB 397
)ECT: OBSTRUCTING OR HINDERING HUNTING/FISHI
;AGE: AND SB 398; I WHOLE-HEARTEDLY APPROVE OF THESE BILLS AND RECOMMEND
? PASSAGE.

)MID: 03124128
)ATE: 03/04/88
'IME: 12:41:28
IAME: ANCHORAGE LIO

PUBLIC OPINION MESSAGE

DEAR: SENATOR FANNING

NAME: JIM TALLERICO
TITLE:
ADDRESS: 2925 SEAWIND
CITY: ANCHORAGE ZIP: 99516
PHONE: 345-5709
BILL NO:
SUBJECT: GAME AND RECREATION
MESSAGE: STRONGLY SUPPORT SB 397, SB 398, AND HB 93. URGE PASSAGE OF THIS IMPORTANT LEGISLATION.

POMID: 03104543
DATE: 03/04/88
TIME: 10:45:43
LIONAME: ANCHORAGE LIO

PUBLIC OPINION MESSAGE

DEAR: SENATOR FANNING

NAME: GARVAN BUCARIA
TITLE:
)RESS: P.O. BOX 870298
CITY: WASILLA, ALASKA ZIP: 99687
PHONE: 373-4974
LL NO: SB 397
3JECT: OBSTRUCTING OR HINDERING HUNTING/FISHING
SSAGE: SB 398 - CONFIDENTIALITYOF TRAPPING/HUNTING INFO - I FULLY SUPPORT THESE TWO PORPOSED SENATE BILLS AND URGE THEIR PASSAGE WITH SUFFICIENT PENALTIES TO MAKE THEM SUFFICIENT APPROPRIATE LAWS. IF ENACTED PLEASE SEND E COPIES OF THE BILLS.

POMID: 03104934
DATE: 03/04/88
TIME: 10:49:34
ONAME: ANCHORAGE LIO

OPIES: SENATORS

KERTTULA
COGHILL
DUNCAN
ELIASON
FISCHER
STURGULEWSKI
ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: SENATOR FANNING

NAME: BOB GREEN
TITLE:
ADDRESS: 951 BUNKERHILL
CITY: WASILLA, ALASKA ZIP: 99687
PHONE: 271-2514
BILL NO: SB 397
SUBJECT: OBSTRUCTING OR HINDERING HUNTING/FISHING
MESSAGE: SB 398 - CONFIDENTIALITY OF TRAPPING/HUNTING INFO - I SUPPORT SB 397 AND SB 398.

POMID: 03104443
DATE: 03/04/88
TIME: 10:44:43
LIONAME: ANCHORAGE LIO

COPIES: SENATORS

COGHILL
DUNCAN
ELIASON
FISCHER
STURGULEWSKI
ZHAROFF
KERTTULA

INTERIOR REGIONAL FISH & GAME COUNCIL

c/o ADF&G, DIVISION OF BOARDS, P.O. BOX 3-2000, JUNEAU, ALASKA 99802 PHONE: (907) 465-4110

March 2, 1988

The Hon. Sen. Kenneth Fanning
P.O. Box V, Mail Stop 3100
Juneau, AK 99811

Re: SB 115, SB 188, SB 233, SB 397, SB 398

Dear Sir:

The Koyukuk River Fish and Game Advisory Committee met in Allakaket February 16, 1988. With a quorum present the Committee discussed some currently pending legislation and voted to make the following written comments to legislators.

SB 115. The Koyukuk River Advisory Committee unanimously opposes the opening of the Dalton Highway to the public. During hearings held before the road was built, local people granted the road right-of-way only so the pipeline could be built; not to grant public access to this area. Non-local people should only be allowed in restricted areas. The committee opposes development that will hurt our livelihood and our way of life.

SB 188. The Koyukuk River Advisory Committee would not like to see legal qualifications and requirements that would make it necessary to have a formal education in order to be a Board member. Also, the committee agreed there are already paid professional advisors to the Board of Fisheries. The committee would like to see local hearings required so the Board would be more responsive to this area.

SB 233. The Koyukuk River Advisory Committee would be willing to pay an amount of money for a hunting and fishing license equal to the amount of money it costs the State of Alaska to issue the license. The committee would not like to see the tag fees raised. The committee did not feel a comment on general hunting and fishing license fees was appropriate as most hunt with the .25 license. The committee does not support raising of tag fees.

SB 397. The Koyukuk River Advisory Committee would like to see a law passed that would prevent harassment of hunters and trappers.

SB 398. The Koyukuk River Advisory Committee would like to see a law passed that would make fur sealing certificates confidential as specified in this proposed legislation.

Thank you for your attention to these matters.

Sincerely,

Larry Edwards

Larry Edwards, Chairman
Koyukuk River Advisory Committee
%1300 College Rd.
Fairbanks, AK 99701

cc: Sen. Johne Binkley
Sen. John B. Coghill
Sen. Willie Hensley
Rep. Richard Shultz
Rep. Kay F. Wallis

SB
398

Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802 907-586-2345

SB 398 Confidentiality of Records

SB 398 Confidentiality of Records is a bill recently introduced which would make public records relating to the taking of wildlife, especially trapper sealing records, confidential and unavailable to the public without a court order. AEL opposes this legislation for several reasons.

- THERE IS NO PRECEDENT FOR THIS LEGISLATION AS THE INFORMATION HAS BEEN MADE AVAILABLE IN THE PAST WITHOUT ANY DETRIMENTAL CONSEQUENCE.

- THESE RECORDS ARE PUBLIC INFORMATION AND, AS SUCH, ARE SUBJECT TO THE OPEN RECORDS PROVISIONS OF AS 9.25.110.

- THE PUBLIC HAS A RIGHT TO INFORMATION PERTAINING TO THE USE OF PUBLIC RESOURCES.

Many public employees who have access to wildlife population and location data are also involved in trapping operations. While ADF&G has standard operating procedures that make such conflicts-of-interest illegal, this legislation would remove the "watch-dog" capability of concerned citizens and organizations.

This bill was introduced in a past legislature (1986) and was vetoed by then-Governor Sheffield due to constitutional concerns. AEL does not feel that this legislation is constitutional. We feel that the public has a right to information concerning the use of public resources. AEL strongly opposes this legislation.

Alaska State Legislature

SENATOR KEN FANNING
P.O. BOX 80929
COLLEGE, ALASKA 99708

P.O. BOX V—STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3880

MAR 10 1988

March 2, 1988

Senate

MEMORANDUM

To: Senate Resources
Committee Members

From: Senator Ken Fanning

Subject: SB 398 - Reports and records of game animals

The purpose of SB 398 is to keep confidential certain identifying information submitted to the department of fish and game on trapping and hunting documents, and thereby protect proprietary information pertaining to the livelihood of those providing the information. It is based upon the same reasoning employed in keeping commercial fish ticket identifying information confidential.

Legislation identical to this was passed in 1986 by the Legislature, but was subsequently vetoed by then-Governor Bill Sheffield on the basis that it was not needed. Within a short time after his veto, animal protectionist groups used the courts to force the department of fish and game to release the information to them. The sort of harassment this information enabled the anti-trapping groups to conduct clearly indicates the need to protect personal information on these documents.

I urge you to support SB 398, and protect valuable information that hunters and trappers provide in good faith to the department of fish and game. Proper wildlife management would be difficult without these records.

SYNOPSIS AND ANALYSIS

OF

SB 398 - "An Act relating to certain reports and records concerning game animals."

It is the purpose of this legislation to keep certain identifying information submitted on trapping and hunting documents confidential, for the protection of the persons providing the information.

This is a single-section bill that amends Title 16 by adding new subsections to AS 16.05.815 (Confidential nature of certain reports and records).

Subsection (c) provides that the identifying information is confidential and gives only three circumstances under which the information can be released by fish and game: to the department of revenue; to comply with court order; or to fish and wildlife protection.

Subsection (d) requires other departments receiving the confidential information to keep it confidential.

Subsection (e) requires the department to remove identifying information from a document before releasing it to the public.

Subsection (f) provides definitions for "identifying information," "sealing," and "trapping or hunting document."

Secs. 16.05.792 — 16.05.798. Master guides. [Repealed, § 2 ch 32 SLA 1968. For current law, see AS 08.54.]

Sec. 16.05.800. Public nuisances. A net, seine, lantern, snare, device, contrivance, and material while in use, had and maintained for the purpose of catching, taking, killing, attracting, or decoying fish or game, contrary to law or regulation of a board or the commissioner, is a public nuisance and is subject to abatement. (§ 25 art I ch 94 SLA 1959; am § 5 ch 131 SLA 1960; am § 13 ch 206 SLA 1975)

Opinions of attorney general. — Since there exists no statutory justification for destroying unmarked king crab pots pursuant to exercise of the power of summary abatement, such pots should not be destroyed without judicial approval. 1980 Op. Att'y Gen. No. 18.

Nuisance presented by unmarked king crab pots should be abated by instituting forfeiture proceedings rather than by summarily destroying the pots. 1980 Op. Att'y Gen. No. 18.

The abatement procedures described in AS 09.45.230 do not apply to the fish and game abatement law (this section). 1980 Op. Att'y Gen. No. 18.

Sec. 16.05.810. Burden of proof. The possession of fish or game or a part of fish or game, or a nest or egg of a bird during the time the taking of it is prohibited is prima facie evidence that it was taken, possessed, bought, or sold or transported in violation of this chapter. The burden of proof is upon the possessor or claimant of it to overcome the presumption of illegal possession and to establish the fact that it was obtained and is possessed lawfully. This section does not apply

(1) during the first full 10 days after the time when a taking is prohibited, except as provided in (3) of this section,

(2) if the fish or game or part of fish or game is in a preserved condition whether frozen, smoked, canned, salted, pickled or otherwise preserved, or

(3) with respect to crab aboard a commercial crab fishing vessel, during the first full three days after the time when a taking is prohibited. (§ 26 art I ch 94 SLA 1959; am § 1 ch 42 SLA 1974)

Sec. 16.05.815. Confidential nature of certain reports and records. (a) Except as provided in (b) of this section, records required by regulations of the department concerning the landings of fish, shellfish or fishery products, and annual statistical reports of buyers and processors required by regulation of the department are confidential and may not be released by the department except that the department may release

(1) any of its records and reports to the National Marine Fisheries Service as required for preparation and implementation of the fishery management plans of the North Pacific Fishery Management Council within the fishery conservation zone; however, information released to the National Marine Fisheries Service under this paragraph may not disclose the identity of individual fishermen or their vessels;

(2) any of its records and reports to the Department of Revenue and to the Commercial Fisheries Entry Commission to assist them in carrying out their statutory responsibilities;

(3) records or reports of the total value purchased by each buyer to a municipality that levies and collects a tax on fish, shellfish, or fishery products if the municipality

(A) requires records of the landings of fish, shellfish, or fishery products to be submitted to it for purposes of verification of taxes payable; and

(B) maintains the confidentiality of reports and records that it receives under this paragraph;

(4) such records and reports as necessary to be in conformity with a court order;

(5) on request, the report of a person to the person whose fishing activity is the subject of the report; and

(6) fish tickets and fish ticket information to the division of fish and wildlife protection, Department of Public Safety.

(b) Records or reports received by the department which do not identify individual fishermen, buyers, or processors or the specific locations where fish have been taken are public information. (§ 1 ch 117 SLA 1970; am § 1 ch 117 SLA 1974; am § 1 ch 66 SLA 1980; am §§ 1, 2 ch 72 SLA 1982; am § 1 ch 84 SLA 1985)

Cross references. — For reporting of wholesale canned salmon prices, see AS 43.80.050 — 43.80.100.

Effect of amendments. — The 1985 amendment in subsection (a) substituted "that" for "which" in two places, added paragraph (6), and made related stylistic changes.

Sec. 16.05.820. Research by the federal government. The Secretary of the Interior, the Secretary of Commerce or the Secretary of Agriculture of the United States and their authorized agents or other appropriate federal agencies may conduct fish cultural operations and scientific investigations in the state in the manner and at the times jointly considered necessary or proper by the Board of Fisheries and the secretary and their authorized agents. (§ 29 art I ch 94 SLA 1959; am § 14 ch 206 SLA 1975; am § 10 ch 208 SLA 1975)

Sec. 16.05.825. State upland game bird release program. (a) In addition to any other program for the stocking or propagation of game birds that the department has as of July 23, 1974, the department shall establish a special program for the raising, maintenance, and release of upland game birds in the state. Birds raised under this program may be released in an appropriate area of the state, at any time, but may be harvested only during regular hunting seasons, as specified by the board under AS 16.05.255(a)(2). The board shall adopt regulations necessary to implement this section.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 398
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act relating to certain reports and records concerning game animals."
Sponsor: Fanning, Faiks, et al
Requestor: Senate Resources

Agency Affected: Public Safety
BRU: Fish & Wildlife Protection
Components: Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Jnr 2/12/88

Prepared by: Captain Conrad G. Seibel
Phone: 269-5509
Division: Fish & Wildlife Protection
Date: 2/10/88

Approved by Commissioner: Dale Hoffbeck Dep Com
Date: 2-29-88
Agency: Department of Public Safety

Distribution (by preparer):
Legislauve Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

page ____ of ____

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 398
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to certain reports and records concerning game animals
Sponsor: Senator Coghill
Requestor: _____

Agency Affected: Fish and Game
BRU: Game
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0		
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0		

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Don E. McKnight
Division: Game
Phone: 465-4190
Date: 3/1/88

Approved by Commissioner: [signature]
Agency: _____
Date: 3/2/88

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Game	SB 398	Senator Coghill

DEPARTMENT POSITION

Support

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Don E. McKnight	3/1/88		3-2-88

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
None	State trappers and hunters
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Alaska Trappers Association Alaska Outdoor Council	Anti hunting and trapping organizations

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

SB 398 provides that identifying information in a hunting or trapping document is confidential. Similar legislation (HB 407) was passed by the 14th Legislature and vetoed by the Governor. In addition to providing confidentiality, however, HB 407 would have legalized the use of parts of big game animals for trapping bait.

ANALYSIS OF BILL/PROGRAM EFFECTS Opponents of this measure argue that confidentiality of identifying information in hunting/trapping harvest documents would abridge the public's right to information and deprive the public of a vital tool in monitoring the use of public resources. (This bill would not limit full disclosure of biological harvest data.) Proponents of the measure argue that adoption would ensure the individual hunter's or trapper's reasonable expectation of privacy, including specific trapping areas, financial interests, and protection from possible harassment by anti-trappers. The department's primary concern is that we obtain accurate and complete harvest reporting. We believe a lack of confidentiality can jeopardize accurate harvest reporting.

In debating confidentiality provisions of HB 407, opponents argued that the public right to know supercedes the individual rights to privacy, and that the law, if passed, could hide illegal or unethical behavior from the public--specifically, commercial trapping activities of Department of Fish and Game employees. SB 398 provides for the release of information, however, as necessary to prosecute criminal actions or comply with a court order. Opponents also maintain that financial information is not reported on sealing certificates. Financial interests, however, include marketing information as well as numbers and species of furs sealed or exported (from which a dollar value can be easily determined).

AMENDMENTS PROPOSED

Line 28(f)(1) that identifies individual trappers or hunters, and specifically identifies their individual take or activity.

Our main concern is that we receive as accurate and complete reporting of harvests as possible.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

Sue Entsminger

Position Paper

SB 398

SB 398

I am a trapper, hunter, and fur skin sewer. As soon as this bill was vetoed by the governor last time, Greenpeace requested all the trapping records. Their reputation against trappers proves to me that their use of these records are not in the best interest of trappers. I do not feel this possible misuse of data against the user is fair or warrented. I favor this legislation and hope you will again support it asd in the past. Thank-you.

February 23,1988

RE: Confidentiality of harvest reports
HB82/SB398

Dear Legislator,

Please allow me to point out a very critical issue you will be asked to consider.

This issue, Representative Dick Schultz's HB 82 and other similar bills, such as SB 398 will address the public access to vital information about the harvesting of our resources.

These kinds of legislation are perhaps the most dangerous acts in a democracy such as ours. It would also be very damaging to the principal that this State was founded on. That principal is that the resources of this state belong to all. It also undermines the public right to being involved in the process of allocating these resources through our advisory committees, and the board process which considers public testimony in it's deliberations.

I have lived in Delta Junction for many years and my family has been in Alaska since the turn of the century. I have some experience in This area. Let me tell you my story.

A few winters ago I became interested in methods of harvesting furbearers, and wolf control. This resource plays a vital economic role to many trappers in the area.

It became apparent, listening to the trappers in Delta, that there seemed to be some activities going on around here that were very questionable.

No one really seemed to be looking after these matters so I decided to try to find out about what was going on.

I found that there did seem to be some allegations about our local wildlife protection officer and some related stories about ADF&G involvement.

It appeared that our local biologist had authorized the local protection officer to conduct surveys of radio collared wolves in our area here using the Department of Public Safety aircraft.

At This same time, The local protection officer began to have some success at Harvesting wolves by the method of "land & shoot trapping". Also at this time, I began to hear Local trappers eye-witness accounts of aircraft herding and harrassing wolves.

Also other accounts of land & shoot activities by other local ADF&G employees came to my attention. It just so happened that these people were relatives of the local protection officer.

Surely you can appreciate my concern about these events. I became concerned that we might have a private wolf control program here, aided and abetted by the Department of Public Safety and the ADF&G. It became apparent that someone needed to concern themselves about what was really happening here.

One of the ways to confirm or deny these events would be by knowing whether or not there had even been any animals taken. The only sure way is by harvest reports.

Now, Mr. Schultz and others would subvert the public right to oversee the harvesting of the resources that are so vital to the welfare of every citizen of this State.

Their contention is that the anti-trapping people would use this information to harass the Trappers.

There is no record of an Alaskan trapper being harassed by any anti-trapper faction that I am aware of.

However, I can tell you that there are some unsavory facts revealed by the wolf & wolverine harvest reports.

The harvest reports show that indeed those Employees of the Department of Public Safety and the ADF&G here did have a very high success rate. The protection officer had harvested around 25 wolves. And over a few short years that the total wolves harvested by this small group was around 62 wolves. All this while the conventional trappers in the area had success levels drastically lower. I'll let you draw your own conclusions, but you must see some very questionable activities.

These same reports showed other very surprising facts on my computer. The reports showed out of the large number of licensed trappers in Alaska, Less than 20 people, all using the "land and shoot" method, had harvested more than 25% of this furbearing resource taken in the entire State. It also showed they were not usually people who lived in the areas where taken. They were taken, mostly, by Anchorage, Fairbanks and Kenai peninsula residents. People who would travel great distances(sometimes more than 500 miles away from their residence) to pursue their activities.

It was only with this vital information that I was able to introduce roposal #82 at the November '87 game board hearings calling for the end f land and shoot trapping on all furbearers. With these facts I was able to rove the many negative implications of this practice and my proposal was dopted (with some modification) and will be law this July.

I remember when I first started to address these concerns a Mr. mmen of the ADF&G, said "All these people are able to show us is a arrhea of emotion and a constipat'on of fact". I thought it would be more fective to use facts after that comment. And the effects of facts are leed more positive.

Maybe these facts are the reasons Schultz and his kind don't want se records to be public information.

Ordinarily you would think that either department would be king out for such seeming abuse.

However both departments seemed to have been compromised by some special interest groups who are bent on keeping wolves at a very low level and are willing to accept any form of taking wolves to achieve their ends.

I was able to curtail some of these activities and was only able to be effective by having access to these reports.

Perhaps My representative, Mr. Schultz, Would do better to call for legislation that would forbid employees of the state from being involved in commercial activities that are directly related to their line of duties and responsibilities during the course of their employment with the State.

I plea for your most careful consideration on these matters and hope you will do the only thing you can and kill this un-democratic legislation.

Sincerely,

Tom Dowling
2465 Militan
Delta Junction, Alaska
99737

(There is no priority information on sealing certificates) We, the public, have a right to know who and how public resources are used. As a practical matter, if sealing certificates and hunting permits are not public record, how would graduate students, economic researchers, statisticians, or any others be able to get the facts and figures needed in their studies? These records have been made available to organizations like ours who perform a watchdog roll. There have been no ill effects of this information having been provided.

We oppose (SB397) ("An Act relating to the obstruction or hindrance of lawful hunting, fishing, or trapping.") Rather than protecting the activities of consumptive users, this bill endangers the rights of non-consumptive users. In fact, this bill could create a real safety problem if a hunter perceived harassment and wanted an excuse to attack a non-consumptive user. The bill will promote the very kind of conflict it seeks to prevent. The majority of non-consumptive users are already virtually "second class citizens" in the field of wildlife management, and this bill will further deprive them of anything approaching equal rights. Even the proponents of this bill admit no such harassment has occurred in Alaska to date. If it were to occur, it can be addressed by existing statutes without further affecting the right of all non-consumptive users. This bill, in slightly different forms has been vetoed before by Governor Sheffield for these same reasons.

ny DeVRIES
ska Wildlife Alliance
Box 190953
horage, AK 99519

Tinney DeVries
Alaska Wildlife Alliance
PO Box 190953
Anchorage, Ak 99519

Anti-Hunting Group Seeking Names of New Jersey Trappers

Rodger Iverson, chairman of the Coalition of New Jersey Sportsmen

Having campaigned successfully to ban the steel leghold trap in New Jersey, the antis now are apparently taking aim at the trappers themselves.

An attorney for Friends of Animals and the Humane Society of the United States has asked the New Jersey Division of Fish and Game for a list of persons who have been licensed to trap in New Jersey.

The New Jersey attorney general's office has instructed the division to make the names and addresses available.

Attorney General Irwin Kimmelman informed the antis in mid-January that the only listing of licensed trappers available is for 1984. He said the division does have license stubs or receipts available from the 1980 to 1984 period and that these may be inspected at the Clinton office. The 1985 stubs have not yet been audited and won't be available until mid-1986. The ban went into effect last October.

The Coalition of New Jersey Sportsmen does not want any of these names and addresses released. Their attorney, James Seeley, of Bridgeton, has asked the Appellate Court in Salem County to stay the release of the list. That same court is scheduled to take up a number of issues involved in the trapping ban in a case set to begin on May 19.

Rodger Iverson, chairman of the coalition, said the antis already are harassing trappers and sportsmen and that there is no reason for them to have the list. They claim they need it for the court case.

"There is no logical reason for them to have that list," Iverson insisted. "If they're simply concerned about the elimination of the trap, that can clearly be accomplished without abolishing the trapper himself.

"Having been harassed myself, I know it can become rather upsetting. I'm concerned it could lead to some kind of altercation."

Iverson is also very concerned about the precedent the release of the trapping list could set.

"Will they next want a list of all licensed hunters in the state? What about gun owners?" he asked.

Iverson and other sportsmen worry about the list being distributed to members of anti-trapping organizations so that trappers can be placed under surveillance—as some apparently have been in the past.

Although no one is questioning that the use of the steel leghold trap has been banned in New Jersey, some very important issues remain to be decided in the May case in Salem County. Among the questions to be considered are:

- May trappers keep their steel leghold traps? (The law passed by the New Jersey Legislature bans even the possession of leghold traps but provides no compensation for their confiscation.)
- Can the state ban the interstate transportation of leghold traps? (The law seeks to make it illegal to even drive through the state with a leghold trap in a vehicle.)
- Is the padded-jaw, soft-catch trap a viable alternative to the steel leghold trap?

A New Jersey court earlier ruled that trappers may keep their traps until the courts reach a final decision in the case.

One fact that has emerged during the legal debates is the connection between banning traps and banning guns.

The New Jersey attorney general's office has argued that traps can be banned without compensation and has cited gun bans to support its case.

After mentioning a number of court cases, a brief filed by the attorney general's office declared, "Similarly, in the instant case the Legislature has, in the exercise of its police power, banned the use of the steel-jawed leghold trap. As a means to accomplish that end, it has banned possession of the trap itself.

"If it is constitutional to take away without compensation the right to possess firearms which had previously been lawfully acquired, to save human life, then, in the legitimate exercise of police power it is constitutional to take away, without compensation, the right to possess leghold traps, to save animals from a cruel and barbarous fate."

Iverson pointed out, "So as some of us previously thought, the confiscation of leghold traps can involve firearms. Indeed, there is a direct intention to involve firearms."

He urged other sportsmen to rally to the support of the trappers.

"It's time that people get involved. The precedent of confiscation, the precedent of names and addresses being distributed—these are things that threaten all sportsmen.

"The hunters, the trappers and the fishermen have to stand together because we're really all in the same boat. If we don't stand together, *we're* all going to be on the endangered species list."

Another threat to New Jersey trappers and sportsmen is the tremendous expense of fighting the antis in the Legislature and now in the courts.

Iverson estimated that $33,000 already had been spent and that another $10,000 would be needed just to bring in the expert witnesses for the May trail.

He urged sportsmen to send their contributions to the: Sportsmen's Defense Fund, Coalition of New Jersey Sportsmen, c/o Irwin, Post and Rosen, 65 Livingston Avenue, Roseland, N.J. 07068.

"United we can beat the antis. Divided, we're all going to lose. The trappers just happen to be in the greatest danger right now," Iverson concluded.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: Judiciary

**FISCAL NOTE(S) ATTACHED ____ **
IN ACCORDANCE WITH AS 24.08.035
(see below)

2/5/88 DATE TURNED INTO OFFICE _____

Mr. President:

Resources Committee considered SB 398

certain reports and records concerning game animals.

and recommended:

[ ] replace with CS _____ [] same title
[] new title

[ ] attached amendment(s) and

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] further referral to _____

[ ] letter of intent adopted and attached

** Committee [X] attached or [ ] adopted fiscal note(s)
[X] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS	OTHER RECOMMENDATIONS
2 Carlton Stanford Do Pass as amended	3 John Duncan - No Rec
1 Lyman Hoffman	2 Paul T. Fischetti No Rec

1 Paul Fischetti (Do Pass)
Chairman signature and recommendation

[ ] Committee Backup Attached

V- Chairman

PUBLIC OPINION MESSAGE

)EAR: SENATOR FANNING

IAME: ANDY GIFFORD
ITLE:
RESS: 18827 THENTY GRAND ROAD
ITY: EAGLE RIVER ZIP: 99577
IONE: 694-2469
. NO: SB 397
JECT: OBSTRUCTING OR HINDERING HUNTING/FISHING
SAGE: AND SB 398; I WHOLE-HEARTEDLY APPROVE OF THESE BILLS AND RECOMMEND
? PASSAGE.

)MID: 03124128
)ATE: 03/04/88
TIME: 12:41:28
IAME: ANCHORAGE LIO

PUBLIC OPINION MESSAGE

DEAR: SENATOR FANNING

NAME: JIM TALLERICO
TITLE:
ADDRESS: 2925 SEAWIND
CITY: ANCHORAGE ZIP: 99516
PHONE: 345-5709
BILL NO:
SUBJECT: GAME AND RECREATION
MESSAGE: STRONGLY SUPPORT SB 397, SB 398, AND HB 93. URGE PASSAGE OF THIS IMPORTANT LEGISLATION.

POMID: 03104543
DATE: 03/04/88
TIME: 10:45:43
LIONAME: ANCHORAGE LIO

PUBLIC OPINION MESSAGE

DEAR: SENATOR FANNING

NAME: GARVAN BUCARIA
TITLE:
DRESS: P.O. BOX 870290
CITY: WASILLA, ALASKA ZIP: 99687
PHONE: 373-4974
LL NO: SB 397
BJECT: OBSTRUCTING OR HINDERING HUNTING/FISHING
SSAGE: SB 398 - CONFIDENTIALITYOF TRAPPING/HUNTING INFO - I FULLY SUPPORT THESE TWO PORPOSED SENATE BILLS AND URGE THEIR PASSAGE WITH SUFFICIENT PENALTIES TO MAKE THEM SUFFICIENT APPROPRIATE LAWS. IF ENACTED PLEASE SEND E COPIES OF THE BILLS.

POMID: 03104934
DATE: 03/04/88
TIME: 10:49:34
)NAME: ANCHORAGE LIO

)PIES: SENATORS

KERTTULA
COGHILL
DUNCAN
ELIASON
FISCHER
STURGULEWSKI
ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: SENATOR FANNING

NAME: BOB GREEN
TITLE:
ADDRESS: 951 BUNKERHILL
CITY: WASILLA, ALASKA ZIP: 99687
PHONE: 271-2514
BILL NO: SB 397
SUBJECT: OBSTRUCTING OR HINDERING HUNTING/FISHING
MESSAGE: SB 398 - CONFIDENTIALITY OF TRAPPING/HUNTING INFO - I SUPPORT SB 397 AND SB 398.

POMID: 03104443
DATE: 03/04/88
TIME: 10:44:43
LIONAME: ANCHORAGE LIO

COPIES: SENATORS

COGHILL
DUNCAN
ELIASON
FISCHER
STURGULEWSKI
ZHAROFF
KERTTULA

INTERIOR REGIONAL FISH & GAME COUNCIL

c/o ADF&G, DIVISION OF BOARDS, P.O. BOX 3-2000, JUNEAU, ALASKA 99802 PHONE: (907) 465-4110

March 2, 1988

The Hon. Sen. Kenneth Fanning
P.O. Box V, Mail Stop 3100
Juneau, AK 99811

Re: SB 115, SB 188, SB 233, SB 397, SB 398

Dear Sir:

The Koyukuk River Fish and Game Advisory Committee met in Allakaket February 16, 1988. With a quorum present the Committee discussed some currently pending legislation and voted to make the following written comments to legislators.

SB 115. The Koyukuk River Advisory Committee unanimously opposes the opening of the Dalton Highway to the public. During hearings held before the road was built, local people granted the road right-of-way only so the pipeline could be built; not to grant public access to this area. Non-local people should only be allowed in restricted areas. The committee opposes development that will hurt our livelihood and our way of life.

SB 188. The Koyukuk River Advisory Committee would not like to see legal qualifications and requirements that would make it necessary to have a formal education in order to be a Board member. Also, the committee agreed there are already paid professional advisors to the Board of Fisheries. The committee would like to see local hearings required so the Board would be more responsive to this area.

SB 233. The Koyukuk River Advisory Committee would be willing to pay an amount of money for a hunting and fishing license equal to the amount of money it costs the State of Alaska to issue the license. The committee would not like to see the tag fees raised. The committee did not feel a comment on general hunting and fishing license fees was appropriate as most hunt with the .25 license. The committee does not support raising of tag fees.

SB 397. The Koyukuk River Advisory Committee would like to see a law passed that would prevent harassment of hunters and trappers.

SB 398. The Koyukuk River Advisory Committee would like to see a law passed that would make fur sealing certificates confidential as specified in this proposed legislation.

Thank you for your attention to these matters.

Sincerely,

Larry Edwards

Larry Edwards, Chairman
Koyukuk River Advisory Committee
%1300 College Rd.
Fairbanks, AK 99701

cc: Sen. Johne Binkley
Sen. John B. Coghill
Sen. Willie Hensley
Rep. Richard Shultz
Rep. Kay F. Wallis

Feb. 19

Paul,

- In 21 states, the use or possession of tobacco products by minors is prohibited.
- In 4 of these states, minors smoking or in possession of cigarettes are required to give the source of the cigarettes.
- In 17, other penalties -- such as fines -- apply to minors. See examples from New Hampshire and Hawaii which follow. Fine for first offense is $25 in NH and $10 in HI.

On the NAMA/minors' smoking behavior question, the fullest citation NAMA has are those indicated by arrows on the pages from the "Operation Alert 1986" material which follows.

Since a couple of the citations say "based on studies" it is not clear whether the data are taken directly or have been extrapolated or calculated by NAMA from those studies.

If you have any questions, give me a call.

Paula

cc: Nan Cooper
2/22/88
JirDorne

TOBACCO SALES TO AND USE BY MINORS: STATE RESTRICTIONS

	Sales to minors		Use or Possession	
	Prohibited	Age	Prohibited	Age
Alabama (a)	Yes	Under 18	No provision	—
Alaska	Yes	Under 16	No provision	--
Arizona	Yes	Under 18	Yes (1)	Under 18
Arkansas	Yes (2)	Under 18	No provision	—
California	Yes (3)	Under 18	Yes	(4)
Colorado	~~No provision~~	under 18 (1987)	No provision	—
Connecticut	Yes	Under ~~16~~ 18 (1987)	No provision	—
Delaware	Yes	Under 17	No provision	--
District of Columbia	Yes	Under 16	No provision	—
Florida	Yes	Under 18	(6)	Under 18
Georgia	~~No provision~~	Under 17 7/1/87	~~Yes~~ No provision	—
Hawaii	Yes	Under ~~18~~ 19 1/1/88	Yes ~~No provision~~	--
Idaho	Yes	Under 18	Yes (1)	Under 18
Illinois	Yes (5)	Under 18	Yes (1)	Under 18
Indiana	Yes	Under ~~18~~ 18 1987	No provision	—
Iowa	Yes (5)	Under 18	(6) (7)	Under 18
Kansas(a)	Yes	Under 18	Yes	Under 18
Kentucky	No provision	--	No provision	—
Louisiana	No provision	—	No provision	--
Maine	Yes	Under 18	No provision	--
Maryland	Yes (5)	Under 16	No provision	--
Massachusetts	Yes (2)	Under 18	No provision	--
Michigan	Yes	Under 18	Yes	Under 18
Minnesota	Yes	Under 18	Yes	Under 18
Mississippi	Yes (5)	Under 18	No provision	—
Missouri	No provision	--	No provision	--
Montana	No provision	—	No provision	—
Nebraska	Yes	Under 18	Yes	Under 18
Nevada	Yes (5)(3)	Under 18	No provision	—
'86 New Hampshire (d)	~~No provision~~ —	<- under 18	Yes ~~No provision~~	--
'87.1 New Jersey	Yes	Under ~~18~~ 18 7/1/88	~~No provision~~ under 18	
New Mexico	Yes (5)(8)	Under 18	No provision	--
New York	Yes	Under 18	No provision	--
North Carolina(a)	Yes	Under 17	No provision	--
North Dakota	Yes	Under 18	Yes	Under 18
Ohio	Yes	Under 18	No provision	--
Oklahoma	Yes	Under 18	(6)	Under 18
Oregon	Yes	Under 18	Yes	Under 18
Pennsylvania	Yes	Under 16	No provision	—
Rhode Island '87	Yes	Under 16	Yes	Under 16
South Carolina	Yes	Under 18	(6)	Under 18
South Dakota (b)(c)	Yes	Under 18	Yes	Under 18
Tennessee	Yes	Under 18	Yes ~~No provision~~	—
Texas	Yes (5)	Under 16	No provision	--
Utah	Yes	Under 19	No provision	—
Vermont	Yes (5)	Under 17	No provision	--
'86 Virginia	~~No provision~~	under 16 '87	No provision	—
Washington	Yes	Under 18	No provision	--
West Virginia	Yes	Under 18	Yes	Under 18
Wisconsin	No provision	--	No provision	--
Wyoming	Yes	Under 18	No provision	—

(a) Restriction limited to cigarettes and cigarette papers or wrappers only.
(b) Municipalities authorized to prohibit the sale or gift of cigarettes and their use by minors.
(c) Restriction limited to smokeless tobacco products.
(d) Sale and distribution to, and purchase by, persons less than 18 prohibited; effective 1/1/87.
(1) Includes a prohibition against the purchase of cigarettes by minors (in Illinois without written order of parent or guardian), as well as use or possession.
(2) If other than by parent or guardian.
(3) However, inmates in State correction institutions 16 or over, with consent of parent or guardian, may be furnished tobacco and tobacco products.
(4) 18 and over, in junior college, if not permitted by Governing Board.
(5) Except by consent (generally written) of parent or guardian.
(6) Minors smoking or in possession of cigarettes are required to give source of cigarettes; use or possession not otherwise regulated.
(7) In addition, high school students may not smoke.
(8) And any pupil of any school in State.

Chapter 162,
Laws of New Hampshire

II. No person shall sell tobacco products or distribute promotional samples of any tobacco product to a person under 18 years of age. No person under 18 years of age shall purchase tobacco products.

III. The commissioner of revenue administration shall furnish, upon issuing or renewing a retailer's license under RSA 78:2, a sign reading "State law prohibits the sale of tobacco products to persons under age 18. Warning: Violators of this provision may be subject to fine." The sign shall be posted at any location where tobacco products are sold or distributed. The commissioner of revenue administration shall adopt rules under RSA 541-A relative to placement of these warning signs in areas where tobacco products are sold or distributed.

IV. Any person who violates paragraph II of this section shall be guilty of a violation and shall be punished by a fine of not more than $25 for the first offense, and not more than $50 for the second and subsequent offenses. No person 12 years of age or younger shall be prosecuted under this section.

V. The commissioner of revenue administration shall adopt rules under RSA 541-A relative to the enforcement and administration of this section.

78:12-c Person Misrepresenting Age. A person who falsely represents his age for the purpose of procuring tobacco products and who procures such tobacco products shall be guilty of a violation and subject to the fines set forth in RSA 78:12-b, IV.

[62]3 Effective Date. This act shall take effect January 1, 1987.

Approved May 28, 1986
Effective January 1, 1987

years. It shall likewise be unlawful for persons under the age of eighteen years to purchase such tobacco products."

SECTION 4. Section 445-213, Hawaii Revised Statutes, is amended to read as follows:

"§445-213 Penalty. Any person violating section 445-212 shall be fined not more than $100[, and if the offense is committed by any dealer licensed to sell tobacco the dealer after the second offense shall forfeit the dealer's license.] for the first offense. Any subsequent offenses shall subject the person to a fine not less than $100 nor more than $1,000. Any person under the age of eighteen violating section 445-212 shall be fined $10 for the first offense. Any subsequent offense shall subject the violator to a fine of $50, no part of which shall be suspended, or the person shall be required to perform not less than forty-eight hours nor more than seventy-two hours of community service during hours when the person is not employed and is not attending school."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

Available Studies And Information

The most comprehensive research on teen-age smoking habits and behavior are the 1968, 1970, 1972 and 1974 Teen-Age Smoking studies undertaken by the National Clearinghouse for Smoking and Health and the 1963 Gilbert Youth Research Study. In addition, the Technical Information Office of the Clearinghouse maintains an extensive computerized file for the years 1970 through 1975 on teen-age smoking literature. A study of all these sources shows that

> *smoking by teen-agers has declined since 1963 and that the main factors which influence teen-age smoking continue to be "whether a teen-ager's parents smoke," "peer group examples and pressures," and "the desire to be adult."* Results of the only known research on sources where teen-agers obtain their cigarettes, the Gilbert Study and the 1972-74 National Clearinghouse study, differ in some respects but they demonstrate conclusively that *vending machines play virtually no role in teen-age smoking or purchase of cigarettes* by teen-agers.

Where Teen-Agers Obtain Their Cigarettes

Only 1 in 10 teen-age smokers purchases his cigarettes (10.4 per cent of those "who currently smoke cigarettes").

Only 1.9 per cent of *all* teen-agers (ages 12-18) purchase their cigarettes. Of those who "smoke currently," 89.2 per cent obtain their cigarettes *from friends,* 94.1 per cent *from relatives,* and 98.4 per cent from *"other sources"* (which do *not* include "purchases").*

(The reason for the overlap in sources is that teen-agers said they obtain cigarettes from several of the above sources).

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*According to Chilton Research Services, which conducted the comprehensive 1972-74 "Teen-Age Smoking" study for the National Institutes of Health of the U.S. Department of HEW.

The Gilbert Youth Research Study, conducted in 1963, dealt specifically with "purchasing habits."* It showed that *72.2 per cent of teen-agers who smoked obtained their cigarettes most frequently by purchasing them.* This is significantly higher than the U.S. government-sponsored research of 11 years later (cited above).

The Gilbert Study also showed that of those who "most frequently obtained their cigarettes through purchase, *73.1 per cent bought them most frequently over the counter"* primarily in drug stores, supermarkets and small food stores.

Vending Machines As A Source For Teen-Age Smokers

Only 10.4 per cent of teen-age smokers purchase their cigarettes.** Only a fraction of this "one-tenth of teen smokers segment" could possibly be using vending machines as a source.

If one applies the Gilbert findings*** to the U.S. Government study results of 1974, 21.4 per cent of the 10.4 per cent who purchase cigarettes would be *less than 2.5 per cent.*

> Therefore *fewer than 2.5 per cent of teen-agers who currently smoke purchase their cigarettes from vending machines.* Conversely, *97.5 per cent of teen-agers who smoke obtain their cigarettes from sources other than vending machines* (friends, relatives, other sources such as drug stores, supermarkets, etc.).

---

*Interviews with 1,988 teen-agers 13 through 18 years old.

**1974 U.S. Government Teen-Age Smoking Study.

***Gilbert showed that only 21.4 per cent of the teen-age cigarette purchasers most frequently buy from vending machines.

SMOKING HABITS OF MINORS

- Slightly less than 2 out of 10 high school seniors smoke cigarettes regularly. 13.8% smoke a half-a-pack-a-day or more and 7.3% a pack-a-day or more.

- 61.2% of high school seniors believe smoking one or more packs of cigarettes per day is a great risk and 71% disapprove of people 18 years of age and older who smoke one or more packs of cigarettes a day.

- Only 22% of seniors report that most or all of their friends smoke.

- Studies conducted over the past twenty-five years demonstrate conclusively that vending machines play virtually no role in teenage smoking or purchase of cigarettes by teenagers. 97% of all teenagers never purchase cigarettes from vending machines.

(based on studies: Drugs and American High School students: 1975 - 1983, U. S. Department of Health and Human Services, Public Health Service; Teenage Smoking, U. S. Department of Health, Education and Welfare, Public Health Service Pub. No. (NIH) 76-931; Teen-Age Cigarette Purchasing and Smoking Habits in the U. S. A., 1963, Gilbert Marketing Group, Inc.)

8 OUT OF 10 CIGARETTE VENDING MACHINES LOCATED WHERE MINORS ARE NOT ALLOWED

Bars, Cocktail Lounges	31%	OTHER LOCATIONS	
Industrial Plants	27%	Restaurants	13%
Offices	12%	Service Stations, Government-Military, Retail Stores, Transportation Terminals, Rec-Bowling Centers, Misc.	9.5%
Hotels/Motels	4%		
Universities/Colleges	3.5%		
TOTAL	77.5%		22.5%

Source: N A M A nationwide cigarette vending machines placement study representing 590 vending companies operating in virtually every state. Conducted, March 1986.

VENDING'S SHARE OF CIGARETTE MARKET

- Approximately 7% of the total annual domestic cigarette sales of 28.8 billion packs is transacted through vending machines. (Sources: N A M A Operating Ratio Report; TI Tobacco Industry Profile 1986)

Compiled by: National Automatic Merchandising Association
20 N. Wacker Drive, Chicago, IL 60606
(312) 346-0370

11.2387lb

Whether parents smoke is the most important influence on teenagers' smoking. In 1974 U.S. Government research by the Department of Health, Education and Welfare and subsequent studies found that *when both parents smoke, teenagers are twice as likely to smoke as when neither parent smokes.* The extensive literature of behavioral research on file at the Centers for Disease control in Atlanta, Georgia reveals that parental and sibling smoking habits, teenage peers' influence and the desire to appear adult are the most important factors in creating the smoking habit in teenagers. These findings are confirmed by the National Institute on Drug Abuse study *Drugs and American High School Students 1975-1983,* U. S. Department of Health and Human Services, Public Health Service.

The majority of cigarette vending machines are located in cocktail lounges and bars, where minors are not admitted, and in places of employment (factories and offices) where teenagers usually do not have access. This is not by accident. These locations happen to be the most profitable for vending machines and this has been the case for many years. Most of the typical places patronized by teenagers, such as fast food chains, do not sell cigarettes.

The Six Step Self-Regulation Program for Vending

The vending industry has long recognized its responsibility to prevent minors' purchasing cigarettes from vending machines. Vending companies, aware of the laws which prohibit sales of cigarettes to minors, have long conducted their business under an industry Code of Self-Regulation designed to make sure cigarette vending machines are *not* a source of cigarettes for minors.

Here is a brief statement of the six-step Self-Regulation Program used by vending companies (since 1962):

1. Survey the entire cigarette operation to determine the location of those machines to which minors are likely to have access. As part of this survey maintain a permanent file record for each machine location.

2. Post "Minors are Forbidden" decals conspicuously on all machines.

3. Post on each machine the name, address, and phone number of the operator.

4. Solicit the location owner's cooperation to prevent minors from purchasing from machines to which minors have access. Reposition machines, where necessary, to assure adequate supervision.

5. Remove machines from locations where the sales of cigarettes to minors cannot be prevented.

SMOKING HABITS OF MINORS

- Slightly less than 2 out of 10 high school seniors smoke cigarettes regularly. 13.8% smoke a half-a-pack-a-day or more and 7.3% a pack-a-day or more.
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- Only 22% of seniors report that most or all of their friends smoke.
- Studies conducted over the past twenty-five years demonstrate conclusively that vending machines play virtually no role in teenage smoking or purchase of cigarettes by teenagers. 97% of all teenagers never purchase cigarettes from vending machines.

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TOTAL	77.5%		22.5%

Source: N A M A nationwide cigarette vending machines placement study representing 590 vending companies operating in virtually every state. Conducted, March 1986.

VENDING'S SHARE OF CIGARETTE MARKET

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The 6-Step Self-Regulation Program For Cigarette Machine Operators

The sale of cigarettes to minors is prohibited by State law in all but a few of the States. Complete observance of the law is a "must".

Each operator should:

1. Survey his entire cigarette operation to determine the location of those machines to which minors are likely to have access.

   As part of this survey maintain a permanent file record for each machine on location.

2. Post "Minors Are Forbidden" decals conspicuously on all machines.

3. Post on each machine the name, address, and phone number of the operator.

4. Solicit the location owner's cooperation to prevent minors from purchasing from machines to which minors have access. Reposition machines, where necessary, to assure adequate supervision.

5. Remove machines from locations where the sale of cigarettes to minors cannot be prevented.

6. Cooperate with competitors to achieve area-wide compliance of preventing the purchase of cigarettes by minors from vending machines. (As part of this step, establish local group liaison with police officials and offer cooperation in the enforcement of "sales to minors" laws.)

Published by National Automatic Merchandising Association.

NJ

SALES RESTRICTIONS

(a) Should unsupervised vending machine sales of cigarettes be banned or restricted?

- Legislation or policies prohibiting access by adult smokers to vending machines or to other retail sources are flagrant encroachment on the public's freedom to choose and the right of merchants to vend a lawful product. Some 10 percent of all cigarettes are sold through vending machines. Those sales account for approximately 23 percent of total sales of the average vending operation.

- Proponents of vending machine bans and cigarette minimum-age purchase laws often link the two. Advocates of vending restrictions -- including The American Medical Association -- claim the machines are a major source of cigarettes for minors. Machines cannot distinguish between adults and minors and therefore circumvent state laws banning sale of tobacco products to minors, they argue. The contention that vending machines are a major source of cigarettes for minors is demonstrably incorrect.

- A National Automatic Merchandising Association (NAMA) nationwide survey in early 1986 found virtually all cigarette vending machines are in locations not frequented by minors. The majority of cigarette vending machines are located in cocktail lounges and bars, where minors are not admitted, and in places of employment (e.g., factories and offices) where teenagers usually do not have access. This is not by accident. These locations happen to be the most profitable for vending machines. Most of the typical places patronized by teenagers, such as fast food chains, do not sell

Sales Restrictions (cont'd.)

- The vending industry has long recognized its responsibility to prevent minors' purchasing cigarettes from vending machines. Vending companies, aware of the laws which prohibit sales of cigarettes to minors, have long conducted their business under an industry Code of Self-Regulation designed to make sure cigarette vending machines are not a source of cigarettes for minors.

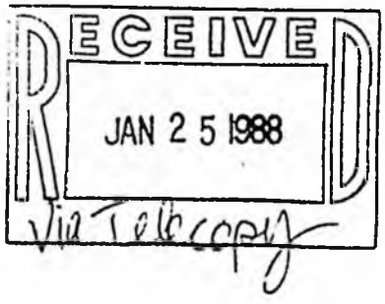
- Banning or restricting vending sales would have little effect on teenage smoking. NAMA surveys have found few teenage smokers obtain cigarettes from vending machines. Fewer than 2.5 percent of cigarette vending machines sales are to teenagers, according to NAMA.

- Cigarette manufacturers have long opposed smoking by young people, believing smoking is a choice to be made freely by mature and informed individuals.

- Cigarette manufacturers oppose as unfair restraint of trade legislation that would limit or ban sale to adult customers of a legal product through vending machines or retail outlets.

VENDING MACHINES AND CIGARETTE PURCHASES BY MINORS

Less Than 2 Out of 10 Teenagers Smoke
97 Percent of Teenagers
Never Buy From Vending Machines
Most Cigarette Vending Machines
Are Located in Establishments
Where Minors Are Not Admitted



Compiled From Major Research Studies And Published By

National Automatic Merchandising Association

20 North Wacker Drive, Chicago, IL 60606

VENDING MACHINES AND CIGARETTE PURCHASES BY MINORS

The discussion on smoking and health has intensified in recent months, augmented by the proposals of the American Medical Association in December, 1985 that cigarette advertising and the sale of cigarettes from vending machines be banned. Those who contend that smoking is dangerous to health have tried to convince cigarette smokers to stop smoking through various means, including multiple warning labels on cigarette packs, ever increasing cigarette excise taxes, and restrictions on smoking in public places and at work. The net result of these efforts has, on the whole, been disappointing to those who oppose smoking.

Consequently, special attention is being aimed at teenagers to discourage them from starting to smoke. In the past there were only a few attempts to restrict the placement and use of cigarette vending machines, but now the American Medical Association House of Delegates has adopted a resolution to draft model legislation designed to ban cigarette sales through vending machiens throughout the country.

Vending Machines Falsely Accused

The American Medical Association and others who have advocated legislative restrictions on cigarette vending machines falsely claim that vending machines are a major source of cigarettes for minors. They allege that since the machines cannot distinguish between adults and teenagers, cigarette vending machines must be a major source of cigarettes for teenagers, and that they circumvent state laws which prohibit the sale of tobacco products to minors.

This allegation ignores the facts. The fallacy will be recognized by anyone who understands how vending machines retail cigarettes. Here are the facts!

Facts About Teenage Smoking and Sources of Cigarettes

Current and past studies published by the U.S. Government and other show that:

- less than 2 out of 10 teenagers smoke
- 97% of teenagers never buy from vending machines
- only 7% of high school seniors smoke a pack or more a day

Whether parents smoke is the most important influence on teenagers' smoking. In 1974 U.S. Government research by the Department of Health, Education and Welfare and subsequent studies found that *when both parents smoke, teenagers are twice as likely to smoke as when neither parent smokes.* The extensive literature of behavioral research on file at the Centers for Disease control in Atlanta, Georgia reveals that parental and sibling smoking habits, teenage peers' influence and the desire to appear adult are the most important factors in creating the smoking habit in teenagers. These findings are confirmed by the National Institute on Drug Abuse study *Drugs and American High School Students 1975-1983*, U. S. Department of Health and Human Services, Public Health Service.

The majority of cigarette vending machines are located in cocktail lounges and bars, where minors are not admitted, and in places of employment (factories and offices) where teenagers usually do not have access. This is no: by accident. These locations happen to be the most profitable for vending machines and this has been the case for many years. Most of the typical places patronized by teenagers, such as fast food chains, do not sell cigarettes.

The Six Step Self-Regulation Program for Vending

The vending industry has long recognized its responsibility to prevent minors' purchasing cigarettes from vending machines. Vending companies, aware of the laws which prohibit sales of cigarettes to minors, have long conducted their business under an industry Code of Self-Regulation designed to make sure cigarette vending machines are *not* a source of cigarettes for minors.

Here is a brief statement of the six-step Self-Regulation Program used by vending companies (since 1962):

1. Survey the entire cigarette operation to determine the location of those machines to which minors are likely to have access. As part of this survey maintain a permanent file record for each machine location.

2. Post "Minors are Forbidden" decals conspicuously on all machines.

3. Post on each machine the name, address, and phone number of the operator.

4. Solicit the location owner's cooperation to prevent minors from purchasing from machines to which minors have access. Reposition machines, where necessary, to assure adequate supervision.

5. Remove machines from locations where the sales of cigarettes to minors cannot be prevented.

6. Cooperate with competitors to achieve area-wide compliance of preventing the purchase of cigarettes by minors from vending machines. (As part of this step, establish local group liaison with police officials and offer cooperation in the enforcement of "sales to minors" laws).

Conclusion:

Accusations against cigarette vending machines related to teenage smoking have no basis in fact. The vending industry continues to recognize its responsibilities through self-regulation (even though few teenagers actually purchase cigarettes from vending machines). It stands ready to cooperate with all groups to make sure that its record of responsible conduct and compliance with established laws is maintained in fact and in spirit.

New York

May 18, 1987

STATEMENT ON AB 5546 -- A BILL
CONCERNING VENDING MACHINE SALES OF TOBACCO PRODUCTS

BEFORE THE COMMITTEE ON COMMERCE,
INDUSTRY AND ECONOMIC DEVELOPMENT

On March 3, 1987, Assemblyman Grannis introduced a bill (AB 5546) that would ban vending machine sales of cigarettes and other tobacco products except "where the admittance of persons under the age of eighteen is expressly prohibited." A first violation would be punishable by a fine of up to $250. Subsequent violations would be punishable by fines of up to $500.

SUMMARY

AB 5546 is unwarranted and unwise. Existing law forbids sales of tobacco to minors, and enforcement of this prohibition should be attempted before more drastic measures are tried. The proposed legislation effectively would eliminate vending machine sales of tobacco in the State. Such sales account for a substantial share of all vending machine revenues. There is no basis for dealing such a severe blow to the vending machine industry in the State.

DISCUSSION

Under New York law, it is a class B misdemeanor to sell or cause to be sold tobacco in any form to a child less