

STATE REVENUE DEDICATED FOR SPECIAL PURPOSES: A PROPOSED CONSTITUTIONAL AMENDMENT

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ABSTRACT

The Alaska State budget has decreased in recent years, and because of the lower price of oil, it is not expected to recover in the near term. This smaller budgetary pie may intensify the impulse to protect the funding of individual projects. However, the Alaska Constitution forbids the dedication of taxes for specific purposes. This Essay proposes a state constitutional amendment that would allow such dedications, subject to limits designed to avoid potential problems. The Essay describes the effect the proposal would have had on past decisions of the Alaska Supreme Court and compares the dedication of tax revenue to the “New Property” identified by Charles Reich.

I. INTRODUCTION

“The economic outlook Alaska faces today is dire.”¹ This difficult situation may persist for some years. In 2014, the price of oil declined from \$110 per barrel to \$30.² It has not since recovered and is not expected to do so in the near term.³ Since statehood, on average, about two-thirds of

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1. OFF. OF GOVERNOR MICHAEL J. DUNLEAVY, AN HONEST BUDGET: FISCAL YEAR 2020, at 3 (2020), <https://gov.alaska.gov/wp-content/uploads/sites/2/02132019-FY20BudgetSummary.pdf>.

2. OFF. OF GOVERNOR MICHAEL DUNLEAVY, FY2021 BUDGET OVERVIEW AND 10-YEAR PLAN, at 2 (2019), https://omb.alaska.gov/ombfiles/21_budget/PDFs/FY2021_10_Year_Plan_12-11-19.pdf.

3. *See id.* (stating that although the Alaskan economy had seen earlier cycles of fluctuating oil prices, “[t]he oil price decline in FY 2014. . . was different. Many Alaskans and even industry experts were predicting a one to two-year price downturn followed by another rapid recovery. In the six years since the price of Alaska North Slope (ANS) crude oil dropped from \$110 per barrel, to an average of \$30 per barrel, the price of ANS has struggled to surpass \$60-\$65 per barrel for any meaningful period of time.”); ALASKA DEP’T OF REVENUE, SPRING 2021 REVENUE FORECAST (2021),

the State's unrestricted general fund revenue has been supplied by taxes on petroleum.⁴

Many worthwhile projects are currently at risk of defunding. This Essay proposes a partial solution: the authorization to dedicate tax revenue for special purposes, albeit with limits that avoid the serious problems with revenue dedication that were identified at the Alaska Constitutional Convention.

By law, each year the Governor submits "a fiscal plan with estimates of significant sources and uses of funds for the succeeding 10 fiscal years."⁵ The plan balances "sources and uses of funds held while providing for essential state services and protecting the economic stability of the state."⁶ The 2020 plan estimated no increase in unrestricted state revenues above 2022 levels until 2027.⁷ "The pandemic and resulting economic fallout significantly worsened Alaska's fiscal position."⁸ The plan offered policy choices to improve this position,⁹ but noted "a continued period of uncertainty" as a result of the pandemic.¹⁰

Given this uncertainty, many stakeholders often want to define a slice of the budgetary pie, protect the necessary funds, and preserve any potentially endangered projects. The first such use of a dedicated tax was a gasoline tax, adopted in Oregon in 1919.¹¹ By the time of the Alaska Constitutional Convention, the dedication of tax revenue was the practice in thirty-seven states.¹²

Today, however, this tool is unavailable for Alaska. The

<http://www.tax.alaska.gov/programs/documentviewer/viewer.aspx?1652r> (forecasting the price at \$71 by 2030); ALASKA DEP'T OF REVENUE, PRELIMINARY FALL 2021 FORECAST (2021),

<http://www.tax.alaska.gov/programs/documentviewer/viewer.aspx?1692r> ("The long-run ANS price is assumed to remain flat beyond FY 2023, with nominal prices increasing with inflation to \$90.00 per barrel by FY 2031.").

4. MOUHCINE GUETTABI, BUDGET BASICS 1975-2021, at 10 (2019), https://pubs.iseralaska.org/media/e4a6ab15-5a0c-4695-af5a-3d5c800fd70f/2019_12_16-BudgetBasics.pdf.

5. ALASKA STAT. § 37.07.020(b) (2021).

6. *Id.* § 37.07.020(b)(2). Alaska law requires a balanced budget. *Id.* § 37.07.020(c) ("Proposed expenditures may not exceed estimated revenue for the succeeding fiscal year.").

7. OFF. OF GOVERNOR MICHAEL J. DUNLEAVY, FY2022 BUDGET OVERVIEW AND 10-YEAR PLAN, at 7 (2020),

https://omb.alaska.gov/ombfiles/22_budget/PDFs/FY2022_10_Year_Plan_12.11.20.pdf. In millions, the plan estimated the state's unrestricted revenue for 2022 as \$4,271.9; for 2027 as \$4,329.5; and for 2031 as \$4565.2. *Id.*

8. *Id.* at 2.

9. *Id.* at 2-6.

10. *Id.* at 4.

11. PUB. ADMIN. SERV., CONSTITUTIONAL STUDIES VOL. IX, at 27 (1955) [hereinafter CONSTITUTIONAL STUDIES].

12. *Id.* at 28.

Constitutional Convention prohibited dedicated taxes.¹³ The convention delegates concluded that, once created, dedicated taxes are too difficult to repeal.¹⁴ “[T]he good that might come from the dedication of funds for a particular purpose was outweighed by the long-term harm to state finances that would result from a broad application of the practice.”¹⁵ Accordingly, the convention identified dedicated taxation as a “fiscal evil.”¹⁶

Still, the political impulse to protect funding remains strong and the idea of dedicating revenue has remained popular.¹⁷ While avoiding the ban on dedication, Alaska has continued to create specified accounts within the State’s general fund.¹⁸ The dedication temptation and its danger to state finances remain.

This Essay proposes an amendment to the Alaska Constitution to permit dedicated taxes, but within defined limits. The measure would secure the funds for popular programs but circumscribe the length, terms, and conditions of the dedication, in order to avoid both the creation of a permanent class of stakeholders and a burden on future legislatures.

II. THE PROPOSED AMENDMENT

The non-dedication clause is brief but powerful: “The proceeds of any state tax or license shall not be dedicated to any special purpose”¹⁹ There are no exceptions, except for mineral revenue dedicated to the Alaska Permanent Fund.²⁰

The proposed amendment would permit dedication of revenue for up to ten years by popular vote and one renewal for an identical term by a vote of the legislature. In detail, the amendment would provide:

1. Revenue may be dedicated for a special purpose within the terms of this section.
2. By a three-fifths majority vote, the legislature may send to the people a proposition to dedicate revenue to a special purpose for

13. ALASKA CONST. art. IX, § 7.

14. *See* Se. Alaska Conservation Council v. State, 202 P.3d 1162, 1168 (Alaska 2009) (citations omitted) (finding that convention delegates were concerned that dedicated taxes would reduce legislative and executive control of taxes and budgets).

15. *Id.* at 1176-77.

16. 6 MINUTES OF THE DAILY PROCEEDINGS: ALASKA CONSTITUTIONAL CONVENTION 111 (Alaska Legis. Council 1965) (Committee on Finance and Taxation Dec. 16, 1955) [hereinafter 6 PACC].

17. *See* discussion *infra* Section III.A-B.

18. *Id.*

19. ALASKA CONST. art. IX, § 7.

20. *Id.* §§ 7, 15.

a period not to exceed ten years. The proposition shall pass upon a simple majority popular vote. The proposition shall identify the dedicated revenue source, its purpose, and its duration. The proposition shall pertain to a single subject.

3. By a simple majority vote, and before expiration of the dedication period, the legislature may renew the original proposition for one period, not to exceed the original term.

4. The dedicated revenue creates a fund. Upon expiration of the dedication period, the unexpended and unobligated balance shall lapse into the general fund.

The content of this proposal reflects a balance of public interests. The ultimate goal of the amendment is to preserve legislative discretion while assuring stable funding for specific projects.

III. HISTORIC BACKDROP AND THE POLITICAL ISSUES OF DEDICATED FUNDS

A. Preserving Legislative Discretion

The primary challenge with allowing for dedicated funds is preventing good intentions from engulfing the state budget. In 1955, twenty-seven percent of the Alaska territorial budget was earmarked for specified purposes, "primarily for schools and roads."²¹ Although this percentage was among the lowest in the nation,²² convention delegates saw this as the beginning of a problem.²³ The delegates looked to the examples of other western states to analyze how earmarking affected their respective budgets.²⁴ In Colorado about "ninety per cent of tax collections [were] earmarked."²⁵ In Texas the figure was eighty-five²⁶ or ninety²⁷ percent, and in Kansas eighty.²⁸

Two states, Georgia and New Jersey, had made progress toward abolishing earmarks.²⁹ However, "[a]ttempts to reverse the trend toward dedication ha[d] encountered considerable resistance from the benefitting

21. 6 PACC, *supra* note 16, at 111; 4 MINUTES OF THE DAILY PROCEEDINGS: ALASKA CONSTITUTIONAL CONVENTION 2368 (Alaska Legis. Council 1965) (statement of Del. Dorothy Awes on Jan. 17, 1956) [hereinafter 4 PACC].

22. *Id.*

23. CONSTITUTIONAL STUDIES, *supra* note 11, at 28.

24. *Id.*

25. *Id.*

26. *Id.*

27. 4 PACC, *supra* note 21, at 2368.

28. CONSTITUTIONAL STUDIES, *supra* note 11, at 28.

29. *Id.* at 29.

interests.”³⁰ This resistance touched the fundamentals of what a government is. One staff paper for the constitutional convention quoted the Governor of New Jersey as stating that New Jersey’s Highway Department, supported by a dedicated fund, was, “in effect, a government unto itself, instead of being part of an integrated state administrative system.”³¹

Basic considerations of fairness and equity favor proliferation of accounts dedicated to specific purposes. The convention delegates recognized the political momentum that such accounts create:

If allocation is permitted for one interest the denial of it to another is difficult, and the more special funds are set up the more difficult it becomes to deny other requests until the point is reached where neither the governor nor the legislature has any real control over the finances of the state.³²

Considerations of equitable treatment are legitimate. Why should the state favor one group with a steady stream of revenue, but exclude all others? This kind of dedication could thus quickly remove all practical legislative discretion over funds.

During deliberations, convention delegates nevertheless recognized the benefits of earmarking. For one, “certain [projects] like capital improvements are more apt to be taken care of if you allow earmarking.”³³ There is also the political benefit of raising funds for a specific, popular goal, rather than a general tax hike.³⁴ Such taxes reduce taxpayer resistance by guaranteeing that the funds generated would be used to benefit those who paid it.³⁵ But the loss of legislative discretion ultimately bore too many risks for the delegates, and the constitutional prohibition was adopted.

B. The Dedication Temptation

Although the prohibition is the law in name, in practice Alaska already allows for some fund dedications within specified accounts.

30. *Id.*

31. *Id.*

32. 6 PACC, *supra* note 16, at 111.

33. 4 PACC, *supra* note 21, at 2368 (statement of Del. Dorothy Awes on Jan. 17, 1956).

34. Delegates Frank Peratrovich and Marvin Marston pointed to the popularity of such projects. *Id.* at 2369–70. Delegate Marston was particularly effusive: “We [in Spenard] have happy dollars going in that treasury because it is earmarked for roads and happy dollars are the best kind of dollars” *Id.* at 2370.

35. CONSTITUTIONAL STUDIES, *supra* note 11, at 27.

Because good and worthy causes are perennial and universal, there is a consistent and pervasive incentive to dedicate funds. Such accounts have been used in the state for decades; in 1975 the Attorney General, discussing the dedication of state revenue from the sale or lease of natural resources, observed that “[t]he situation the Convention expressly sought to avoid [the dedication of revenue] is precisely the situation that is developing.”³⁶ In a 2003 report, the Institute for Social and Economic Research listed almost forty accounts within the state general fund that were nominally assigned to particular programs.³⁷

The creation of such accounts continues today. Examples include the Arctic Winter Games Team Alaska trust (2001),³⁸ the alcohol and other drug abuse treatment and prevention fund (2002),³⁹ youth courts (2010),⁴⁰ revenue derived from the refined fuel surcharge (2015),⁴¹ and the peace officer and firefighters survivors’ fund (2017).⁴² The special accounts avoid the non-dedication clause by providing that nothing in the creation of the fund dedicates money for a specific purpose.⁴³

Together, the legislative creation of special accounts and court decisions that apply the non-dedication clause⁴⁴ suggest that the inclination to dedicate taxes appears in budgets both fat and lean. The difference in the state budget today is the unanticipated duration of the lean period.⁴⁵

36. Dedication of Revenues Derived from the Lease or Sale of Natural Resources, 9 Op. Alaska Att’y Gen. 22 (1975).

37. Inst. of Soc. & Econ. Rsch., *General Funds, Index to Funds*, THE ALASKA CITIZEN’S GUIDE TO THE BUDGET, §§ 6.3, 6.8 (2003), <https://iseralaska.org/projects/citizens-guide-to-the-budget/> (web material was archived in 2019, but may be downloaded at the link).

38. Finance Trust Funds, 2001 Alaska Sess. Laws ch. 21 § 1 (codified as amended at ALASKA STAT. § 37.14.600 (2021)).

39. Revenue and Taxation Alcoholic Beverages, 2002 Alaska Sess. Laws ch. 116 § 4, (codified as amended at ALASKA STAT. § 43.60.050 (2021)). The tax on alcoholic beverages, section 43.60, was first enacted in 1933. 2020 ALASKA DEP’T OF REVENUE, ALCOHOLIC BEVERAGE TAX ANN. REP. However, the fund itself dates from 2002. *Id.*

40. Delinquent Children Fines and Penalties, 2010 Alaska Sess. Laws ch. 110 § 3 (codified as amended at ALASKA STAT. § 47.12.410 (2021)).

41. Fuel—Motor Fuel Taxes—Surcharges, 2015 Alaska Sess. Laws ch. 37 § 2 (codified as amended at ALASKA STAT. § 43.40.007 (2021)).

42. Peace Officer and Firefighters Survivors’ Fund, 2017 Alaska Sess. Laws ch. 14 § 1 (codified as amended at ALASKA STAT. § 39.60.010 (2021)).

43. *E.g.*, ALASKA STAT. § 37.14.600(c) (2021) (winter games); *id.* § 37.05.580(c) (tobacco use); *id.* § 47.12.410 (youth courts); *id.* § 43.40.007 (fuel surcharge); *id.* § 39.60.010(e) (peace officer survivors’).

44. *See* discussion *infra* Section IV.A.

45. *See supra* note 3 and accompanying text.

C. The Property Right in a Dedicated Tax

Though these kinds of accounts act as a workaround for the dedicated funds prohibition, they cannot eliminate the issues associated with dedicated funds. The problem originates in the property-like quality of a dedicated tax. With considerable insight, the Alaska Public Administration Service observed in its “Constitutional Studies” for the Alaska Statehood Committee:

The dedication of revenue leads a particular group of taxpayers to feel that revenues derived from certain licenses or fees belong to them as a group, hence they tend to consent more readily to the imposition of such taxes but will resist *en masse* any attempt at diversion, regardless of the worthiness of the purpose.⁴⁶

The Public Administration Service anticipated the development, benefits, and risks of government-created entitlements. In 1964, Charles Reich termed such wealth “The New Property.”⁴⁷ “New Property” is most closely associated with public welfare benefits, licenses, and permits,⁴⁸ but Reich identified a variety of government-created assets, including the use of public resources.⁴⁹

Entitlements create valuable property for individuals.⁵⁰ In such property, Reich saw the same impetus for political support as the statehood committee had seen a decade earlier. “As government largess has grown in importance, quite naturally there has been pressure for the protection of individual interests in it.”⁵¹ Similarly, dedicated tax revenue creates a group of stakeholders who share a common interest; the effect is the same. The challenge here is to find a balance: to create a property interest and its opportunities, while minimizing the potential risks to the public. The best answer will adjust the nature of the dedication itself until the chances of fulfilling the intended public interest are maximized.

IV. EFFECTS OF THE PROPOSED AMENDMENT ON CURRENT LAW

A. The Effect of the New Provision on Past Court Decisions

The non-dedication clause has been the subject of four opinions of the Alaska Supreme Court. In each case, the court either held the subject

46. CONSTITUTIONAL STUDIES, *supra* note 11, at 30.

47. Charles A. Reich, *The New Property*, 73 YALE L.J. 733 (1964).

48. *Id.* at 734.

49. *Id.* at 736.

50. *Id.*

51. *Id.* at 739.

statute unconstitutional or upheld the statute after finding the clause inapplicable.⁵² The amendment proposed in this Essay would enable lawmakers to successfully recraft each of the statutes challenged in these cases.

1. *State v. Alex*⁵³

In *Alex*, the court held the challenged statute to be an unconstitutional dedication.⁵⁴ The law created “an assessment on the sale of salmon by commercial fishermen to processors.”⁵⁵ A local “qualified regional association” administered the assessment, whose purpose was to provide revenue for the association’s financing the development of fisheries.⁵⁶ Assessments on salmon sales were approved by a vote of the association members and then reviewed for reasonableness by the Commissioner of Commerce and Economic Development.⁵⁷ The court held that the assessment was a “tax” for purposes of article IX, section 7, and thus an unlawful dedication.⁵⁸

The delegation of legislative power to the regional associations was further held unconstitutional as an improper delegation of the legislature’s taxing power, prohibited under the Alaska Constitution, article X, section 2.⁵⁹ “The legislature . . . may not create an independent entity with authority to decide whether to impose the tax.”⁶⁰

Under the proposed amendment, the same assessment would survive as a lawful dedication for a special purpose, but would still require redrafting to avoid the delegation of the taxing power to an entity besides a city or borough.

52. However, the court has twice upheld statutes despite challenges based on the non-dedication clause. *See State v. Ketchikan Gateway Borough*, 366 P.3d 86, 98–101 (Alaska 2016) (upholding a school funding formula that required local government contribution); *Myers v. Alaska Hous. Fin. Corp.*, 68 P.3d 386, 387–88 (Alaska 2003) (finding the state legislature earmarking funds from an anticipated settlement to be used for education did not violate the non-dedication clause).

53. 646 P.2d 203 (Alaska 1982).

54. *Id.* at 207–11.

55. *Id.* at 205.

56. *Id.*

57. *Id.*

58. *Id.* at 210. State attempts to protect the assessment as a valid exercise of enumerated powers, in this case state control of its natural resources, were held to be without merit. *Id.* at 210–11. The proposed amendment would have two effects: first, it would moot this issue because a mechanism would be available to dedicate revenue; second, it would not alter the ruling that the enumerated powers do not themselves authorize dedication.

59. *Id.* at 213.

60. *Id.* at 211. The delegation to the Commissioner of Commerce and Economic Development was also challenged. *Id.* In light of its ruling that invalidated the delegation to the associations, the court did not reach the question of the delegation to the commissioner. *Id.*

2. *Sonneman v. Hickel*⁶¹

Sonneman involved a challenge to the Alaska Marine Highway System Fund.⁶² The court upheld most of the act.⁶³ However, one section limited state departmental power to request that the fund be appropriated for capital improvements; the court held that this section was a violation of the non-dedication clause.⁶⁴

The statute created “the Alaska Marine Highway System Fund as a special account in the general fund.”⁶⁵ The marine highway system deposited the gross revenue earned from operating the ferry system into this account.⁶⁶ The legislature could appropriate amounts from the account back to the marine highway system,⁶⁷ which was within the Department of Transportation and Public Facilities.⁶⁸

Problems arose in the constraints on departmental discretion. There were accounting restrictions on the financial condition of the fund and the size of the capital funds request.⁶⁹ The Department could request that the legislature appropriate money from the fund for capital improvements to the marine highway system, but only under certain conditions.⁷⁰

The court cited the purposes set by the constitutional convention: “As the [convention] debates make clear, all departments were to be ‘in the same position’ as competitors for funds with the need to ‘sell their viewpoint along with everyone else.’”⁷¹ The proposed amendment would permit such restrictions on departmental requests. With the change put forth here, the dedication process would avoid the prohibition and the same provision would be lawful.

3. *Southeast Alaska Conservation Council v. State*⁷²

In *Southeast Alaska Conservation Council (SEACC)*, the challenged provision granted the University of Alaska title to certain land and

61. 836 P.2d 936 (Alaska 1992).

62. *Id.* at 937.

63. *Id.*

64. *Id.*

65. *Id.* at 937–38.

66. *Id.* at 938.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.* To request money, “the legislature must have made an annual appropriation from the fund,” the fund must be ten percent larger than the sum of gross revenues and non-lapsable general fund appropriations, and the requested capital appropriations cannot be more than fifty percent of the remaining balance after the annual appropriation. *Id.*

71. *Id.* at 940 (quoting 4 PACC, *supra* note 21, at 2364–67 (statements of Del. Barrie White)).

72. 202 P.3d 1162 (Alaska 2009).

dedicated the funds generated to a university endowment fund.⁷³ Once again, the court struck down the provision as an unconstitutional dedication.⁷⁴

The endowment became the subject of much legislative controversy and litigation over several years.⁷⁵ When the dust settled, the act conveyed to the university ownership of the land identified by the “University of Alaska Land Grant List 2005.”⁷⁶ All “net income derived from the . . . land selected by and conveyed to the University . . . was to be . . . held in the University’s endowment trust fund (ETF).”⁷⁷ The law mandated that the principal of the endowment be held in perpetuity, and that “[t]he total return from the [ETF would] be used exclusively for the University of Alaska.”⁷⁸ The court held that this endowment violated the non-dedication clause.⁷⁹

Within some practical limits, an endowment fund similar to that in *SEACC* could be created under the proposed amendment. The proposed amendment has firm time limits. A land sale as in *SEACC* might effectively limit title transfers to a term of years, and leases to relatively brief periods. Probably the smoothest way to create an endowment fund would be to designate the state lands whose income would pour into the dedicated fund, without attempting a title transfer to the university.

4. *Wielechowski v. Alaska*⁸⁰

The court in *Wielechowski* held that the non-dedication clause did not apply to the revenue raised from an established, permanent fund.⁸¹

In 1976, the voters approved the creation of the Alaska Permanent Fund by amendment to the state constitution.⁸² The same amendment changed the non-dedication clause; unlike other funds in the state treasury, the legislature could lawfully direct revenue streams from mineral resources to the new permanent fund.⁸³

Wielechowski presented the dedication question from the other direction: given that revenue can be dedicated for deposit into the permanent fund, may the revenue produced by the fund be similarly

73. *Id.* at 1165–66.

74. *Id.* at 1165.

75. *Id.* at 1165–66.

76. *Id.* at 1166.

77. *Id.*

78. *Id.*

79. *Id.* at 1164.

80. 403 P.3d 1141 (Alaska 2017).

81. *Id.* at 1143.

82. ALASKA CONST. art. IX, § 15.

83. *Wielechowski*, 403 P.3d at 1143.

dedicated?⁸⁴ If the court had answered yes, the effect would have been to sidestep a governor's veto. The subject funds would have been dedicated and so outside the definition of annual appropriations, and thus free from the governor's veto.⁸⁵

The court's detailed analysis examined the framers' intent at the constitutional convention, the intent of the voters in 1976, and the plain meaning of the permanent fund exception added to the non-dedication clause.⁸⁶ The opinion twice calls upon the phrase "fiscal evil," first used at the constitutional convention to describe dedicated funds.⁸⁷ The court found that revenue produced by the permanent fund was subject to the non-dedication clause, and unprotected from a gubernatorial veto.⁸⁸

Dedicating revenue from the Alaska Permanent Fund could indeed be accomplished by a constitutional amendment as proposed here. However, the body of law creating and surrounding the fund is so complex that a new amendment should avoid any further complexity; it should not permit dedication of appropriations from the fund.

B. Circumscribing the Dedication and Preserving the Public Interest

The restrictions on dedication are sufficient to mitigate the property-like characteristics of dedicated revenue. There would be no such thing as a permanent dedication, and the dual votes of the legislature and the people reduce the risk of dedications for narrow purposes.

The requirement of a three-fifths vote in the legislature is more likely to assure a strong, statewide interest in the specific dedication.⁸⁹ Given the disapproval of the constitutional convention to dedicated funds, the consensus to overturn that decision, even on a limited basis, should be firm and clear. The requirement of a popular vote both shows such a consensus and assures that the dedication represents more than simple horse-trading among members of the legislature.

The ten-year time limit circumscribes the ownership quality of the dedicated fund, while preserving the opportunity to fulfill a variety of public interests. Larger systemic and cultural issues are less likely to be

84. *Id.* at 1146.

85. *See id.* at 1143 (stating the permanent fund "is subject to normal appropriation and veto budgetary processes").

86. *Id.* at 1148–52.

87. *Id.* at 1144, 1147.

88. *Id.* at 1143.

89. "Supermajorities are intended to prevent a 'tyranny of the majority,' and also encourage deliberation and compromise as proponents attempt to gather enough votes to reach a supermajority." Nat'l Conf. of State Legislatures, *Supermajority Vote Requirements*, <https://www.ncsl.org/research/elections-and-campaigns/supermajority-vote-requirements.aspx> (last visited Nov. 14, 2021).

resolved within such time limits, and thus would remain within the power of the legislature to address. The legislature could deny such larger issues as access to the ballot. The dedicated fund could exist for ten years on first enactment, and potentially for twenty years if renewed. This time frame would allow the legislature to evaluate the efficacy of the fund over the long-term, while also providing stable support for the specific cause.

A time limit also requires that proponents consider whether a dedication of revenue is worthwhile in light of its intended purpose.⁹⁰ The proponent would have to select only those projects that qualified. A revenue stream is assured for no more than ten years, with renewal only a possibility, and then for no more than another ten years. Given these time limits, proponents must ask themselves: is the game worth the candle?

Perhaps the most important function of the ten-year limit is to dissolve the permanence of the new arrangement. If the project and its tax will exist in perpetuity, then it becomes a property interest of the class of stakeholders. The forms of government largess surveyed by Charles Reich generally assume some degree of permanence, forfeited only upon some type of misconduct.⁹¹ The ten-year limit prevents the stakeholder class from concluding that there exists a part of the state budget that is forever their own.

To avoid excessive dedications, the purpose of each ballot proposition is limited to a single subject. The constitution limits legislative bills to a single subject;⁹² a proposed dedication is simply another bill, just scheduled for a popular vote. Proposals sent to the people should not become a method of sidestepping this constitutional restriction.

The single-subject limit will help assure that proposals focus on issues of statewide interest. Otherwise, the political temptation may be to assemble propositions until a statewide majority is manufactured out of a combination of local and regional issues.⁹³ Such an assemblage of many dedicated funds would threaten the legislative discretion that the Constitutional Convention sought to protect.

90. There is no overriding consideration which dictates a period of ten years. Ten seems to be the fulcrum where two factors balance. As the time period rises above ten years, the dedication begins to take on the characteristics of a permanent government program; as the time period shortens below ten years, it becomes less likely that a worthwhile program could be set up and operated within the more limited time frame.

91. Reich, *supra* note 47, at 734-46.

92. See ALASKA CONST. art. II, § 13 (restricting each bill in the legislature to a single subject).

93. See *Gellert v. State*, 522 P.2d 1120, 1122 (Alaska 1974) ("It is generally agreed that the primary aim of 'one subject' provisions in state constitutions is the restraint of log-rolling in the legislative process.").

The risk of the single-subject rule is that it might result in ballot propositions that are too narrow. The dedication might be too narrow to ever garner a majority vote, or, if passed, too narrow to accomplish a worthwhile purpose. This risk is best covered by the requirement of a three-fifths majority vote in the legislature; an excessively narrow proposition is unlikely to pass.

The flexibility of the proposed amendment permits focus on the problem and allows the design of an appropriate solution. The dedication might be set to expire after a period shorter than ten years. The taxes might be set to expire when a stated dollar amount has been deposited to the fund. A new fund might dedicate half of an already-existing revenue stream and leave the remainder to the ordinary appropriations process.

Finally, state revenue not dedicated pursuant to the terms of the amendment would remain subject to the non-dedication prohibition of article IX, section 7.

V. CONCLUSION

Alaska's budgetary challenge is likely to continue for the foreseeable future. Many worthwhile programs will see reductions or elimination, despite their popularity or their importance to a group of stakeholders. This proposal is intended to open a discussion to meet this challenge. The dedication of revenue can be permitted and limited to preserve the intentions of the founders while raising predictable and stable revenue for special purposes.