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Hon. William A. Egan
President, Alaska Constitutional Convention

My dear Mr. President:

The attached Constitutional Article entitled "Suffrage and Elections" has been unanimously approved by the Committee on Suffrage, Elections and Apportionment.

Section 1 sets forth the present suffrage qualifications of the 50 year old Act of Congress with two changes: first, the voting age is lowered one year to twenty (20); second, the literacy test is somewhat relaxed to a requirement that qualified voters be able to "read or speak the English language as prescribed by the legislature." This leaves the test of ability to the legislative branch.

The Committee strongly believes that the present Alaskan tested and tried voting law (38-1-2 and 38-l-8 ACLA 1949) with its many decisions should be preserved, hence adopted Section 1 in the form chosen. To depart from the Act of Congress would create uncertainty and provoke needless litigation.

Section 2 is not unusual and is self-explanatory. The Committee believes that permanent registration should be required in urban areas, i.e. municipalities with population over 2,500, leaving the matter in other areas for legislative decision.
Section 3 disenfranchises those convicted of felonies involving moral turpitude, leaving the matter of restoration of civil rights to the responsible agencies of government.

Section 4 preserves the present law.

Respectfully submitted,

John S. Hellenthal
Chairman
Committee on Suffrage, Elections and Apportionment
Constitutional Convention of Alaska

COMMITTEE PROPOSAL NO. 1

Introduced by Committee on Suffrage, Elections and Apportionment

ARTICLE ON SUFFRAGE AND ELECTIONS

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution.

<table>
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<td>Section 1. Every citizen of the United States, who shall have attained the age of 20 years, who is an actual and bona fide resident of Alaska, and who has been such resident continuously during the entire year immediately preceding the election, and who has been such resident continuously for thirty days next preceding the election in the election district in which he votes, and who is able to read or speak the English language as prescribed by the Legislature, unless incapacitated from complying therewith by physical disability only, and who is not barred from voting by any other provision of law, shall be qualified to vote in any State or local election. This section shall not apply to any citizen who legally voted at the general election of November 4, 1924.</td>
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Section 2. The Legislature shall establish a system of permanent voter registration in municipalities with populations over 2,500, and may provide for voting precincts within election districts; it shall provide for absentee voting; it shall prescribe the method of voting at all elections; it shall provide that contested elections be determined by a court of competent jurisdiction.

Section 3. No person judicially determined to be of unsound mind and no person convicted of a felony involving moral turpitude, unless pardoned and restored to his civil rights, shall be qualified to vote in any State or local election.

Section 4. General elections shall be held on the second Tuesday in October and every second year thereafter on the same day, but the Legislature is empowered to change said date.
ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON
JUDICIARY BRANCH

Hon. William A. Egan
President, Alaska Constitutional Convention

My dear Mr. President:

Your Committee on the Judiciary Branch presents for your consideration and adoption its proposed Judiciary Article.

The Committee proposal, while incorporating many of the ideas contained in Convention Proposals Numbered One, Twelve, and Twenty-two which were referred to the Committee, is a Committee substitute.

The Committee has included a section-by-section commentary on the proposed Judiciary Article.

Respectfully submitted,

George M. McLaughlin, Chairman,
Thomas C. Harris,
Maurice T. Johnson,
Irwin L. Metcalf,
Ralph J. Rivers,
R. E. Robertson,
Warren A. Taylor.
Constitutional Convention of Alaska

COMMITTEE PROPOSAL NO. 2

Introduced by Committee on Judiciary Branch

ARTICLE ON THE JUDICIARY

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution.

| Judicial Power | 1 | Section 1. The judicial power of the State is vested in a Supreme Court, a Superior Court, and such other courts as the Legislature may establish. The jurisdiction of the respective courts shall be prescribed by law and the courts shall constitute a unified judicial system for purposes of operation and administration. |
| Supreme Court | 7 | Section 2. The Supreme Court is the highest court of the State with appellate jurisdiction and consists of three justices, one of whom is Chief Justice. The number of justices may be increased by law upon request of the Supreme Court. |
| Superior Court | 12 | Section 3. The Superior Court is the trial court of general jurisdiction and consists of five judges. The number of judges may be changed by law. |
| Nomination and Appointment | 15 | Section 4. Justices of the Supreme Court and judges of the Superior Court are appointed by the Governor on nomination by the Judicial Council as provided in this article. |
Approval or Rejection by Voters.

Section 5. Each justice of the Supreme Court and each judge of the Superior Court shall, at the next general election following a period of three years after his appointment, be subject to approval or rejection by the voters of the State on a non-partisan ballot in the manner provided by law. Every ten years after approval each justice of the Supreme Court, and every six years after approval each judge of the Superior Court, shall again be subject to approval or rejection by the voters in the same manner.

Vacancy in Judicial Office

Section 6. If, at any election, a majority of the voters declare that any justice or judge shall not be retained in office, the office shall become vacant ninety days after the election and shall be filled by the method of selection provided in this article. If a justice or judge fails to file, in advance of the election as prescribed by law, a declaration of his candidacy for election to succeed himself, his office shall become vacant ninety days after the election, and shall be filled by the method of selection provided in this article.

Qualification of Judges

Section 7. To be eligible for appointment, Justices of the Supreme Court and Judges of the Superior Court shall be citizens of the United States and of
the State, who have been admitted to practice law in the State for at least five years and have been residents of the State for at least five years next preceding their respective nominations.

Other Courts

Section 8. Judges of other courts shall be selected in the manner and for the terms and subject to eligibility qualifications to be prescribed by the Legislature.

Selection of Judges

Section 9. Whenever there is a vacancy in an office of Justice of the Supreme Court or Judge of the Superior Court, the Governor shall fill the vacancy by appointing one of not less than two qualified persons who shall have been nominated by a non-partisan judicial council established and organized as provided in this article.

Judicial Council; How Selected

Section 10. The Judicial Council consists of six members chosen in the following manner: On the basis of appropriate area representation the governing body of the organized State bar shall appoint three members of the bar to serve as members of the Judicial Council for terms as specified in this article. Three non-attorney members representing different major areas shall be appointed by the Governor for terms as specified in this article, subject to confirmation by the Senate. The six members so appointed shall be compensated as provided by law.

Judicial Council; How Selected

Section 11. After the members first appointed to the
Judicial Council have submitted to the Governor the names of nominees for appointments to fill the initial vacancies in the Supreme Court, including the office of chief justice, and the justices have been appointed and qualified, the chief justice shall thereafter be ex-officio a seventh member and the chairman of the Judicial Council which shall continue to act by the affirmative vote of at least four of its members in accordance with rules which it shall promulgate governing its own procedure. No member of the Judicial Council, other than the chief justice, may hold any office of the state or of the United States while a member of the Council.

Section 12. The terms of members of the Judicial Council shall be six years, except that the attorney members first selected shall be appointed to terms of one year, three years and five years respectively, and the non-attorney members first selected shall be appointed to terms of two years, four years and six years respectively. In the event of vacancy, a successor shall be appointed to fill the unexpired term in the manner provided for initial appointment.

Section 13. In addition to nominating qualified persons for appointment to fill court vacancies, the Judicial Council shall be responsible for conducting studies from time to time for improvement of the administration.
of justice, including such matters as court structure, rules of procedure and administration of the courts, and for making reports and recommendations to the Supreme Court and the Legislature at intervals of not more than two years. The Judicial Council shall also perform such other specific duties as are assigned to it by law.

Section 14. Whenever the Judicial Council certifies to the Governor that any justice of the Supreme Court appears to be so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a board of three persons to inquire into the circumstances and, on the board's recommendation, the Governor may retire the justice. For judges of other courts, if a judge appears to be so incapacitated as substantially to prevent him from performing his judicial duties, the Judicial Council shall recommend to the Supreme Court that the judge be put under early retirement. After notice and hearing, the Supreme Court by vote of a majority of its members may retire the judge.

Section 15. Except in cases of early retirement because of physical or mental infirmity each justice and judge shall be retired at the age of 70, on such retirement pay as may be prescribed by law, and shall render no further service on the bench, except for special assignments as are provided by court rule. The basis and amount of re-
1 retirement pay for justices and judges who retire or are
2 retired at an earlier age shall be prescribed by law.

Impeachment of
3 Section 16. Impeachment of any justice or judge for mal-
ment of
4 feasance or misfeasance in the performance of his official duties shall be effected as generally prescribed by
5 law for State officials.

Compensation of
6 Section 17. The justices and judges shall receive for
7 their services such compensation as is prescribed by law,
8 which shall not be diminished during their respective
9 terms of office, unless by general law applying to all
10 salaried officers of the State.

Ineligibility to
11 Section 18. No Justice of the Supreme Court or Judge of
Other
12 the Superior Court, while serving as a justice or judge,
13 may practice law, hold office in any political party, or
14 hold any office or position of profit under the United
15 States, or the State or a political subdivision of the
16 State, and shall, if he files for elective public office,
17 thereby forfeit his judicial position. Compensation for
18 service in the State Militia or the armed forces of the
19 United States is not "profit" as that term is here used.

Rule-Making Power
20 Section 19. The Supreme Court shall make and promulgate
21 rules governing the administration of all courts of the
22 State. It shall also make and promulgate rules govern-
23 ing practice and procedure in all civil and criminal
24 cases in all courts, which rules may be changed by the
Legislature only upon a two-thirds vote of the members elected to each house.

Section 20. The Chief Justice of the Supreme Court shall be the administrative head of all the Courts in the State. He may assign judges from one court or division thereof to another for temporary service. For other phases of court administration the Chief Justice shall, with the approval of the Supreme Court, appoint an administrative director to serve at his pleasure and to supervise the administrative operations of the judicial system.
(Sec. 1 Judicial Power)

This section establishes the basic court structure and also provides needed flexibility for future enlargement by the addition of such local or other courts as the Legislature may deem necessary. The concept of a unified court system is in accord with the fundamental and minimum standards of judicial administration approved and supported by the American Bar Association.

(Sec. 2 Supreme Court)

The initial membership of the Supreme Court is fixed at three justices, one of whom is the chief justice. The provision for future enlargement by the Legislature is qualified by the provision that such enlargement be requested by the Court. A similar provision is found in the new constitution of Puerto Rico and is designed to prevent the number of justices from being increased for any purpose other than to meet the needs of judicial business.

(Sec. 3 Superior Court)

The placing of general trial jurisdiction in a single court, with as many judges thereof as may be necessary to handle the volume of cases, is in line with modern development, and is reversing
the former trend toward a complex structure of specialized courts that has so greatly impeded efficient judicial administration in many states. The Legislature will be free, however, to create lower or other courts as may be necessary, and to determine the jurisdiction of courts and the geographical extent of their authority.

(Sec. 4 Nomination and Appointment)

The main features of the plan for judicial selection sponsored by the American Bar Association and embodied in the Missouri Plan, are summarized in the Association's handbook on judicial administration as: "(1) appointment by governor from list submitted by a nominating committee, the nominating and appointing authority being divided between two agencies; (2) periodic submission to the electorate with no opposing candidate, or 'running against the record.'" Both of these features are incorporated in the selection plan here presented.

(Sec. 5 Approval or Rejection)

The American Bar Association's handbook states: "The ideal solution is to provide that, after a specified period of service, and periodically thereafter, the appointee should either come up for reappointment or should go before the people at a general election on the basis of his record and with no opposing candidate. The latter alternative is probably preferable, especially since it retains for the voters an opportunity to participate in the process
of judicial selection in about the only way in which they can effectively do so. The able judge has little to fear from such a system, while it does permit removal of a judge whom experience has shown to be plainly unqualified or who has become unfit to continue on the bench." It can be added that the type of plan here provided has functioned effectively in Missouri and also in California, where a comparable requirement has applied to appellate judges for more than twenty years.

(Sec. 6 Vacancy in Judicial Office)

In order to allow time for selecting a successor as well as for completing the judicial business remaining before a judge's service terminates, a period of 90 days is allowed after the election at which he is rejected or for which he fails to file. The provision for having a justice or judge file a declaration of his intention to be a candidate to succeed himself is a feature of both the Missouri and the California Constitutions. The details of such declaration such as its form and the time limits for its filing are properly, however, left to the Legislature as herein contemplated.

(Sec. 7 Qualification of Judges)

The requirements of citizenship and of minimum periods of membership in the bar and residence are comparable to those in a majority of states. It should be noted that the section refers to admission and residence "in the State", which will, by general provision elsewhere in the Constitution, presumably and necessarily be defined to include the predecessor Territory.
(Sec. 8 Other Courts)

This section confirms and implements the Legislature's authority to create such additional courts as may be needed, with appropriate methods of selection and qualifications for appointment.

(Sec. 9 Selection of Judges)

The appointment of justices and judges by the Governor from a list of several qualified persons selected by a non-partisan nominating agency is an essential feature of both the American Bar Association and the Missouri plans. The Association's handbook suggests that the nominating body should include laymen as well as lawyers, and that "If the state has a judicial council meeting these qualifications it may well serve as the nominating agency". The present article embodies this approach.

(Sec. 10 Judicial Council; How Selected)

Selection of lawyer members by the state bar association and of non-lawyers by the Governor, both groups of members on a geographical representation basis, is a recommended feature of the Missouri Plan and has been adopted herein. The American Bar Association handbook's comments: "Nomination by a body of this sort, composed of high caliber men, should not only produce better judges but also remove any likelihood of improper motivation in their selection."

(Sec. 11 Judicial Council; Chairmanship and Quorum)

Since the establishment of the Judicial Council must precede the nomination of any judges, including the chief justice, the latter
cannot become an ex officio chairman (as he did automatically in Missouri) until after his appointment has been effected. Thereafter, he will serve as a seventh member of the Council. In the event of his incapacity to serve, it is contemplated that rules of the Council will provide for an acting chief justice as his interim successor.

(Sec. 12 Judicial Council; Terms of Office)

This section provides for staggering the initial terms of the Judicial Council so that non-attorney and lawyer members are appointed in alternate years, respectively, and thereafter each successor member will serve for six years. Judge Laurance M. Hyde of the Missouri Supreme Court points out the reason for a similar six-year term in that state as being that, since a governor serves only a four-year term, no one governor will be able to appoint all of the non-lawyer members during any such term, and thereby control to that extent the personnel of the nominating body.

(Sec. 13 Judicial Council; Additional Duties)

This section empowers and directs the Judicial Council, with its experience and vantage-point in the field of judicial administration, to recommend needed improvements in the structure and operation of the court system.

(Sec. 14 Retirement for incapacity)

It is becoming increasingly recognized that provision should be made, as this section does, for relieving a judge from his judicial duties when, as very occasionally happens, his retirement for reasons
other than age or misconduct, becomes necessary to protect the administration of justice. Such retirement of a Supreme Court justice should be done only on recommendation of an outside board, rather than by the Supreme Court itself. This procedure is similar to that adopted in the Constitution for Hawaii. For other judges, removal by Supreme Court proceedings will be effective and adequate, as has been provided in the Constitution of Puerto Rico.

(Sec. 15 Retirement for Age)

The retirement laws for state judges have tended increasingly to adopt 70 as the maximum or mandatory retirement age. However, a retired justice or judge may still be called upon, in many states, for temporary service or special assignment, and this section permits such service to be made possible by court rule.

(Sec. 16 Impeachment of Judges)

Procedure for impeachment of justices and judges should, as here provided, be in accord with that for other State officers.

(Sec. 17 Compensation of Judges)

While compensation for justices and judges should be prescribed by law, it should not be susceptible of arbitrary diminution during office. It should be subject to increase as future needs dictate, and should be subject to decrease only when a general reduction applying to all State officers becomes imperative.
(Sec. 18 Ineligibility to Other Offices)

The prohibition against the practice of law or holding other office by full-time justices and judges is a necessary and desirable one, and has been widely advocated. A similar provision was contained in the proposed new Judicial Article for the State of Illinois.

(Sec. 19 Rule-Making Power)

One of the major factors in New Jersey's remarkable achievement in bringing its trial calendars and court business up-to-date, and in simplifying and expediting the administration of justice, has been the vesting of the rule-making power in the Supreme Court, and the exercise of such power by the Court in adapting the Federal Rules of Civil Procedure to state court practice. The American Bar Association has strongly advocated, as its first and keystone recommendation in its program for reform of judicial procedure: "That practice and procedure in the courts should be regulated by rules of court; and that to this end the courts should be given full rule-making powers."

This section places primary responsibility for such rule-making in the Supreme Court, reserving to the Legislature a power to change rules of procedure by a two-thirds vote.

(Sec. 20 Court Administration)

A coequal factor in New Jersey's historic modernization of its judicial system has been the vesting of administrative authority and responsibility in its chief justice, with power to assign judges to courts or areas for temporary service as needed. To assist the
chief justice by supervising the management and housekeeping functions of the courts, both statewide and local, and by furnishing him with accurate and current statistics on court business, an administrative director is essential. This has been demonstrated not only by the economies effected by the Administrative Office of the United States Courts since its establishment in 1939, but also by the fact that nearly a third of the states have since followed the example thus set. Its inclusion in this section will, together with the other provisions contained in this article, place Alaska in the vanguard of jurisdictions whose judicial systems typify the best and most modern principles of efficient judicial administration and will provide the guarantee of a strong, fearless and independent judiciary.
ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON
DIRECT LEGISLATION, AMENDMENT AND REVISION

Hon. William A. Egan
President, Alaska Constitutional Convention

Dear Mr. President:

Your Committee on Direct Legislation, Amendment and Revision presents for your consideration and adoption its proposed Articles on Initiative, Referendum and Recall; and Amendment and Revision.

The Committee proposal, while incorporating many of the ideas contained in Convention Proposals No. 29 and 34, and in other drafts submitted to the Committee, is a Committee substitute.

A section by section commentary of the subject matter has been prepared by your Committee for the use of the Delegates to the Convention.

Respectfully submitted,

E. B. Collins, Chairman
Jack Hinckel
M. R. Marston
Irwin L. Metcalf
Warren A. Taylor
W. O. Smith
Leonard King.
CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 3

Introduced by Committee on Direct Legislation

INITIATIVE, REFERENDUM AND RECALL
AMENDMENT AND REVISION

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution:

ARTICLE ON DIRECT LEGISLATION

Initiative 1

Section 1. The people reserve the power by petition to propose laws and to enact or reject such laws at the polls.

Referendum 4

Section 2. The people reserve the power to require, by petition, that laws enacted by the legislature be submitted to the voters for approval or rejection.

Procedure 7

Section 3. The legislature shall prescribe the procedures to be followed in the exercise of the powers of initiative and referendum, subject to the specific authority reserved herein. No law shall be enacted to hamper, restrict or impair the exercise of powers reserved herein by the people.

Petitions, 13

Section 4. Prior to general circulation, an initiative petition shall be signed by ten qualified electors as sponsors and have the constitutionality certified by the Attorney General. Certification shall be reviewable by the courts. A valid initiative or referendum petition shall be signed by qualified electors equal to eight
percent of the number of votes cast for Governor in the preceding general election at which the Governor was chosen. Petitions shall be filed with the Attorney General, who shall prepare a ballot title, and the adequacy of the ballot title shall be reviewable by the courts. Initiative petitions may be filed at any time. Referendum petitions shall be filed within 90 days after adjournment of the legislative session at which the measure was passed. Laws proposed by the initiative shall be submitted to the voters by ballot title at an election not later than 180 days after the adjournment of the legislative session following the filing of the petition, unless the legislature enacts the measure initiated during the session. The question on referendum shall be submitted to the voters by ballot title not later than 120 days after the filing of a petition against the measure. A majority of the votes cast is necessary for the adoption of an initiated law, or the defeat of a measure referred. No law passed by the initiative may be vetoed by the Governor nor amended or repealed by the legislature for a period of three years.

Restrictions Section 5. Neither the initiative nor referendum may be used as a means of making or defeating appropriations of public funds or earmarking of revenues nor for local or special legislation. Emergency acts are not
Recall

Section 6. Every elected public official in the State, except judicial officers, is subject to recall by the voters of the State or subdivision from which elected. Grounds for recall are malfeasance, misfeasance, nonfeasance, or conviction of a crime involving moral turpitude. The legislature shall prescribe the recall procedures.
ARTICLE ON REVISION AND AMENDMENT

Methods

1. Section 1. Revisions of or amendments to this constitution may be adopted by two succeeding legislatures, or be proposed by constitutional convention or by the legislature.

Proposals by Legislature

2. Section 2. Any legislature may by a two-thirds vote of each house propose amendments to the Constitution. Proposed amendments may be submitted by ballot title prepared by the Attorney General to the voters at the next general election. If a majority of the votes tallied on the question favor the adoption of the amendment, the amendment is adopted.

3. Proposed amendments may be submitted to the next legislature not less than two years after being proposed.

4. If the second legislature by a two-thirds vote of each house favors the adoption of the amendment, the amendment is adopted.

Constitutional Convention

5. Section 3. The legislature may provide for Constitutional Conventions. If any ten-year period elapses during which the legislature has not called a convention, the Governor shall certify the question, "Shall there be a Constitutional Convention?" The question shall be submitted at the first general election following the expiration of such period. If a majority of the ballots cast upon the question are in the affirmative, delegates to the convention shall be
chosen at the next regular election unless the legislature provides for the election of delegates at a special election.

Unless the legislature provides otherwise, the law providing for the Alaska Constitutional Convention of 1955 shall be followed insofar as possible relating to number of members, districts, convention powers, election and certification of delegates, submission and ratification of revisions and ordinances, and other applicable provisions. The appropriation provisions of the law shall be self-executing and shall constitute a first claim on the general fund of the State Treasury. The legislature may provide additional appropriations.
ALASKA CONSTITUTIONAL CONVENTION

Commentary on the Article of Initiative, Referendum
and Recall

(Sec. 1 Initiative)

The initiative is the power of the people to initiate laws themselves and provide for a referendum on such laws without action by the legislature. This section reserves the authority of the people to initiate laws by petition and vote of the people directly.

(Sec. 2 Referendum)

This section permits the people to require that laws passed by the Legislature be referred to a vote of the people before taking effect. This power is known as the Referendum.

(Sec. 3 Procedure)

Many constitutions, in the states which make provision for the use of the initiative and referendum, contain a great degree of detail relating to the exercise of the initiative and referendum. This section permits the legislature to provide by law for some details, but provides that the legislature may not restrict the substantive rights guaranteed in Section 4, nor to require procedures more difficult than provided in Section 4.

(Sec. 4 Petition, Ballot title; election; vote required)

This section sets forth certain substantive provisions and minimum procedures affecting the exercise of the initiative
and referendum. To prevent waste of money on elections for laws that are unconstitutional, sponsors are required to submit a proposed law to the Attorney General for certification of its constitutionality, subject to court review, prior to the circulation of petitions. The provision is intended to stop, at the initial stage, the circulation of petitions for laws that would, even if approved by the voters, result in expensive court action.

If the legislature adopts a measure that is the subject of the initiative, the measure does not have to be submitted to the people.

Additional details of procedure may be provided by the legislature subject to the limits imposed by this section. The procedure outlined has the advantage of brevity while ensuring the substantive rights to the people.

(Sec. 5 Restrictions)

The exercise of the initiative is a fundamental right of the people, but special interest groups should not be permitted to unduly hamper the operation of government. The restrictions in Section 5 will prevent the abuses and problems that have sometimes arisen in the states permitting initiative and referendum. Neither the initiative nor referendum can be used with regard to emergency legislation, appropriations, or measures earmarking taxes and other revenues, or for special or local laws that are of interest to only one group of people or people in only one portion of the state.
(Sec. 6 Recall)

The right of the people to remove elected officials is preserved. The Legislature is directed to provide the methods to be used.
Commentary on the Article on Amendment and Revision

(Sec. 1 Methods)

This section outlines three methods by which the constitution may be amended or revised. (1) By action of two separate legislatures directly; (2) by action of one legislature and referral to the people; and (3) by constitutional convention.

(Sec. 2 Proposals by Legislature)

The Legislature, by a two-thirds vote, may submit a proposed amendment to a vote at a general election. Use of general election is intended to insure a substantial vote on the question.

An alternate method is provided which permits the legislature, by a two-thirds vote, to submit a proposed amendment to the next legislature, but not to a succeeding session of the same legislature. If the second legislature adopts the amendment by a two-thirds vote it becomes part of the constitution without referring it to a vote of the people.

(Sec. 3 Constitutional Convention)

The legislature is empowered to call a convention, but if the legislature does not provide for a convention each ten years, the question is submitted to the people at the following general election.

The legislature is authorized to prescribe the procedures and powers of a convention; but if it does not make such provisions, the law calling this convention will be followed insofar as practicable.
CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 4

Introduced by Committee on Recommendations and Resolutions

LOCATION OF STATE CAPITAL, AND PROCEDURE FOR CHANGE THEREOF

RESOLVED, that the following ordinance be ordained:

1. Section 1. The seat of government shall be Juneau, which is established as the capital of the State until changed as hereinafter provided.

2. Section 2. At the first regular session of the Legislature held ten years after this Constitution becomes effective, the legislature shall provide by law for making and publicizing a study of the public advantages, for selection as a site for the seat of government, of various communities which may petition the Legislature for selection as the seat of government, and for submitting, at the next general election after the study is made and publicized, to the qualified voters of the State the question of the selection of a site for the seat of government of the State. The community receiving 65 percent or more of the qualified votes cast at the election shall become the seat of government of the State. If no community receives at least 65 percent of the qualified votes, the question shall be submitted to the qualified voters at the next general election in
respect to the two communities receiving the larger number of votes at the first election, and the community receiving 55 percent or more of the qualified votes cast shall become the seat of government of the State.
Hon. William A. Egan  
President, Alaska Constitutional Convention  

Dear Mr. President:  

Your Committee on Legislative Branch submits the attached proposed Article, together with a commentary and explanation of its reasons for its decisions.  

The committee considered Delegate Proposals Numbers 23 and 25 and incorporated some of their provisions in its report.  

Respectfully submitted,  

Steve McCutcheon, Chairman  
John McNees, Secretary  
George D. Cooper  
Helen Fischer  
Jack Hinckel  
Eldor Lee  

I do not concur as to Sections 13, 14, 15, and 21.  

Dora M. Sweeney
Constitutional Convention of Alaska

COMMITTEE PROPOSAL NO. 5

Introduced by Committee on Legislative Branch

LEGISLATIVE POWERS AND DUTIES

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution.

ARTICLE ON LEGISLATIVE BRANCH

Legislative Power

1 Section 1. The legislative power and authority of the state is vested in a legislature, which consists of a Senate of not more than 20 members and a House of Representatives of not more than 40 members.

Qualifications of Members

2 A senator shall be at least 25 years of age and have resided in Alaska at least 3 years, and in the district to be represented at least one year, immediately prior to filing for office, and shall otherwise be a qualified elector.

3 A representative shall be at least 21 years of age and have resided in Alaska at least 3 years, and in the district to be represented at least one year, immediately prior to filing for office, and shall otherwise be a qualified elector.

Election; Terms

4 Section 3. Members of the legislature shall be elected on the day provided for general elections, and their terms of office shall begin on the fourth Monday of the following January. The term of office of members of the
House of Representatives is two years. The term of office of members of the Senate is four years, and one-half of the members shall be elected each two years.

Section 4. Any vacancy in the legislature shall be filled for the unexpired term in such manner as may be prescribed by law, or, if no provision be made by law, by appointment by the governor for the unexpired term.

Section 5. No member of the legislature shall hold any other office which has been created, or the salary or emoluments of which have been increased while he was a member of the legislature, during the term for which he was elected and for one year after the expiration of such term. No legislator or other elective or appointive officer of this state shall file or run for election to any other state office until his services have been terminated, but a member of one house of the legislature may be nominated and elected to the other house. This section shall not apply to positions of employment in or elections to any constitutional convention.

Section 6. No member of the legislature shall be held to answer before any other tribunal for any statement made or action taken in the exercise of his legislative functions; and members of the legislature shall, in all cases except felony or breach of the peace, be privileged from arrest during their attendance at the sessions of their
Section 7. Each member of the legislature shall receive an annual salary equal to one-third of the salary of the Governor, and shall be entitled to travel expenses in going to and returning from sessions. The presiding officers of the respective houses may receive an additional salary, and members of the legislature may receive a per diem allowance for expenses while in session, as the legislature may direct.

Section 8. The legislature shall convene on the fourth Monday in January each year. Neither house may adjourn or recess for a period longer than three days without the concurrence of the other.

Section 9. Special sessions may be called by the Governor. Special sessions may be ordered by a vote of two-thirds of the legislators, through a poll directed by the legislative council, which shall cause the legislature to assemble in special session. When the legislature is convened in special session by the Governor there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor. No special session shall be of longer duration than thirty days.

Section 10. There shall be a legislative council and such other interim committees as the legislature may
establish. The council and other committees may meet between sessions and perform such duties and employ other persons as the legislature may direct or permit. Members of the council and other committees may receive an allowance for expenses during the performance of their duties.

Section 11. The Houses of each legislature shall adopt uniform rules of procedure. Each house shall have the power to choose its officers and employees, shall be the judge of the elections and qualifications of its members; and each house shall keep a journal of its proceedings. A majority of the members of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent members. The legislature shall have the power to regulate lobbying.

Section 12. The legislature shall direct by law in what manner and in what court suits may be brought against the state or agencies thereof.

Section 13. All civil officers of this state shall be liable for impeachment by the legislature. A motion for impeachment shall arise in the Senate and shall be by two-thirds vote of all the Senators. Such motion shall list fully the basis for the proceeding. The trial on impeachment shall be conducted before the house of representatives, and a Justice of the Supreme Court designated by the Court shall preside. A vote of two-thirds of all the members of
the house of representatives is required to render a judgment of impeachment. Judgment of impeachment shall not extend beyond removal from office, but shall not prevent punishment of such officer by the courts on charges growing out of the same matter.

Section 14. Any civil officer, except the Governor, may be removed for cause which need not be sufficient ground for impeachment. The cause or causes shall be stated at length in a concurrent resolution and entered on the journal of each house. The resolution must be passed by vote of a majority of the members of each house. No officer shall be removed unless he has been served with a statement of the cause alleged, and had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the journals.

Section 15. The governor shall have the power to veto bills passed by the legislature. If the Governor vetoes a bill he shall return it to the house of representatives together with his objections. The legislature sitting as one body shall reconsider the passage of the bill. Bills not carrying appropriations or affecting the expenditure of monies shall become law by a two-thirds vote of the total number of legislators to which the state is entitled. Bills carrying appropriations, dealing with taxation or affecting payments of monies under existing statutes, or
an item or items in the general appropriations bill shall become law upon the affirmative vote of three-fourths of the total number of legislators to which the state is entitled. The vote on reconsideration of a vetoed bill shall be entered on the journals of both houses. While the legislature is in session, if the Governor neither signs nor vetoes a bill within fifteen days (Sundays excepted) after it is delivered to him, it shall become law without his signature. If the legislature is not in session and the Governor neither signs nor vetoes a bill within twenty days (Sundays excepted) after it has been presented to him, the same shall be law in like manner as if he had signed it.

Section 16. The legislature shall establish the procedure for enactment of bills into law, and no bill shall become law without a vote of a majority of the membership of each house, and the yeas and nays on final passage shall be entered in the journal. Every bill, except bills for appropriations and bills for codification, revision, or rearrangement of existing laws, shall be confined to one subject, which shall be expressed in the title. Bills for appropriations shall be confined to appropriations.

Section 17. No law passed by the legislature, except the general appropriation act, shall take effect until ninety days after the adjournment of the session at which it was
enacted, unless in case of emergency, which emergency must
be expressed in the act, the legislature shall, by a vote
of two-thirds of all the members of each house, otherwise
direct.

Section 18. The legislature shall pass no local or special
act in any case where a general act can be made applicable,
and whether a general act can be made applicable shall be
a matter for judicial determination. No local act shall
take effect until approved by a majority of the qualified
voters voting thereon in the district to be affected.

Section 19. No appropriation shall be made for other than
a public purpose; nor to any denominational or sectarian
institution or association.

Section 20. No obligation or liability of any person,
association or corporation held or owned by the state, or
any municipal corporation therein, shall ever be ex-
changed, transferred, remitted, released or postponed, or
in any way diminished by the legislature nor shall such
liability or obligation be extinguished except by the
payment thereof into the proper treasury.

Section 21. Any bill failing of passage by the legislature
may be submitted to referendum by order of the Governor
either in its original form or with such amendments which
were considered by the legislature, as he may designate.
Any bill which, having passed the legislature, is returned
there-to by the Governor with objections and, upon reconsideration is not approved by the majorities required by this constitution, may be submitted to referendum by a majority of all the members sitting as one body. Bills thus submitted to referendum shall be voted on at the next succeeding regular election occurring at least sixty days after action is taken to submit them, unless the legislature shall provide for their submission at an earlier date. This section shall not apply to bills containing appropriations, raising or earmarking revenues, nor to local or special bills.

Section 22. The legislature shall never pass any law which affects the freedom of religious worship nor shall any inhabitant of this state be molested in person or property on account of his or her mode of religious worship.

Section 23. The state of Alaska and its people do agree that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of the Act of Admission of this state, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights) the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the
United States in trust for said natives; that all such lands or other property, belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe and except when held by individual natives in fee without restrictions on alienation; and that no taxes shall be imposed by the State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restriction on alienation; and no legislative act by the State of Alaska shall be taken thereon. Nothing in this section shall prevent this state from accepting any payments in lieu of taxes that may be authorized by the Congress.

Section 24. The legislature shall not pass any act which taxes the property and lands of citizens of the United States residing without the state at a higher rate than the lands and other property belonging to residents of the State of Alaska.

Section 25. There shall be a Board of Apportionment to be composed of one member elected from each house and
three members of the public appointed by the Governor;
and the Chief Justice shall preside, without a vote. In
the event that either house shall fail to elect a member
of the board the governor shall appoint one member of that
house to serve on the Board of Apportionment. Any three
members of the Board constitute a quorum, but no reappor­
tionment shall take effect without the affirmative vote
of three members. The Board shall have the power to
reapportion and redistrict both the house and the senate,
ot oftener than once in six years but at least once each
twelve years, and the Supreme Court shall issue an order
fixing the boundaries and the number of members to be
elected in each Senatorial and House District.
(Sec. 1 Size of Houses)

There seems to be widespread opinion that small houses focus the attention of the people upon the legislature better than do large ones, for the personalities and voting records of a few legislators may be understood by the public but they will not make the effort necessary to keep up with large houses. In small houses, moreover, the members may grow to know one another well and to proceed with the minimum formality. Instead of setting the number, therefore, it is here set at a maximum with no minimum.

(Sec. 2 Age and Residence)

The age and residence requirements for senators and representatives are set low in order to induce young people to take an early and active part in the democratic process.

(Sec. 3 Election Day and Term)

The election day is to be provided by act of the legislature, and the date at which legislators take their seats is the same as in the Territorial Legislature. The term of two years for members of the House and four for the Senate is common in the majority of states.
(Sec. 4 Vacancies)

The Legislature is permitted under the proposed wording to pro­vide for special elections if it cares to use such a more expensive method than appointment by the governor for the unexpired term.

(Sec. 5 Dual Officeholding)

It is generally agreed that the temptation to create jobs or to increase the salary in existing jobs which legislators would then accept ought to be removed. There have been instances in which legislators have virtually coerced governors into appointing them to state offices as the price for their acting on the governor's program; such deals would be prevented by requiring a year to elapse before eligibility. This section, furthermore, would prevent any state official from using his office or expense account as a vehicle for campaigning for another office.

(Sec. 6 Legislative Immunity)

This immunity from actions of slander for words spoken in debate is an ancient and necessary protection for members of parliaments. The wording is almost the same as that in the United States Constitution.

(Sec. 7 Salary and Travel)

Most states have not paid legislators respectable salaries, and then the citizens have often been disappointed when their legislators were not respectable, either. Good salaries will not automatically
produce good legislators; rather, they make their selection possible. Poor salaries, on the other hand, tend to produce two types of legislators: Those who have private means, and who are, consequently, likely to be upper-class in their attitudes; and, second, those who are on the payroll of some outside interest and who are sent to the legislature to vote as that interest desires. Such legislators are, in some states, called "the inside lobby". The interests that control these legislators do not want them to vote for higher legislative salaries, lest they get too independent, and this opposition is added to the sentiment that the poorly paid legislators are not worth more than they are paid. A consequence is that the legislature, which ought to be the forum of the people, has come to be that branch of the state government that the people have held in the lowest regard. The people's business is sufficiently important so that men should make careers of being legislators, as they make careers of being in Congress; and we should pay them enough to make careers possible and respectable.

Since the governor occupies a single, conspicuous office, payment of more adequate salaries to governors has generally been possible, and the states have therefore attracted many fine men as candidates. But since the value of money changes over the years, it is undesirable to put dollar amounts in a constitution. Instead, it appears that both objectives (higher salaries and no dollar amounts) may be reached at once by tying the salaries of governors and legislators together.

(Sec. 8 Regular Sessions)

Having paid legislators so poorly that they got poor legislators,
some states have sought to cure that evil by limiting the number of
days the legislature could remain in session on the theory that the
less the legislators were at the capitol the less harm they could do.
This is essentially an anti-democratic view, for it presumes that the
representatives of the people ought not to be available to represent
them except for short and limited periods. It seems better to pay
legislators well and then to trust them to stay in session as long
as necessary. As our states increase in population, the 30-day and
60-day sessions set in some constitutions have become more and more
obviously inadequate, and to do the necessary business such tricks have
had to be resorted to as setting phoney legislative days, stopping the
clock, forcing the governor to call special sessions, and so on.

The date for the meeting (the fourth Monday in January) is the
date used by the Territorial Legislature.

The requirement that neither house may adjourn without the consent
of the other is universal. It is necessary to prevent one house from
stopping the public business by adjourning.

(Sec. 9 Special Sessions)

Some constitutions permit only the executive to call special
sessions, but if the governor has performed some questionable action
when the legislature is not in session he can prevent or postpone
being queried about it by refusing to call a special session. The
newer constitutions have, therefore, set up some arrangement by which
the legislators may without him produce a special session.
The other provisions of this section are almost standard constitutional equipment.

(Sec. 10 Legislative Council and Interim Committees)

Provision for these is also now almost standard. Their authorization is desirable lest a question be raised about the legislature's constitutional ability to designate committees to act when the legislature is no longer in session.

(Sec. 11 Rules)

Different sets of rules have occasionally led to trickery and often have led to citizen confusion. It is difficult for a citizen to understand why one house cannot do what the other can do. To avoid these situations both houses are required to adopt uniform rules.

The other provisions of this section are usual in constitutions, except perhaps for the regulation of lobbying. That power is here specifically given to the legislature, because in some jurisdictions cases have arisen to challenge the right of the legislature, under the freedom of petition rights, to regulate the behavior of lobbyists.

(Sec. 12 Suits against the State)

Congress has by law permitted suits by aggrieved or injured citizens against the United States, and most states permit under various restrictions suits against municipalities and other local governments. It is no longer regarded as justice for the states to preserve absolute immunity against legal action for injuries its agents may commit.
(Sec. 13 Impeachment)

This section provides that all civil officers are subject to impeachment and removal from office by the legislature. In order to avoid unwarranted use of this power by the legislature the section provides that the Senate shall bring the action by a two-thirds vote. Since the Senate is composed of members with four-year terms it is expected that the Senators will not be over-hasty in bringing the impeachment proceeding. Because an impeachment proceeding is essentially a judicial action, one of the Justices of the Supreme Court will preside during the trial before the House of Representatives.

(Sec. 14 Joint Address)

Removal of officers, other than the Governor, by concurrent resolution of the legislature is authorized by this section. State Legislatures have not used the method of joint address too frequently. It permits the removal of officers for causes less than the high crimes that are usually the basis for impeachment proceedings; for example, removal on joint address permits removal for negligence, senility, or other inability.

(Sec. 15 Veto by Governor)

In many state constitutions, and in Alaska at present, the time allowed to the Governor for consideration of bills is so short that he is often unable to give them full and careful study. This section provides that the Governor will have fifteen days to sign or veto a bill while the legislature is in session and twenty days when the legislature
is not in session. With the extended time allowed, the Governor is required to take positive action to sign or veto a bill, or the bill becomes law without his signature.

A two-thirds vote of the members of both houses sitting as one body is required to override a veto on ordinary bills. However, on revenue and appropriation bills, which affect the Governor's budget program, a majority of three-fourths is required to override a veto.

(Sec. 16 Bills: enactment)

Instead of incorporating specific requirements for the form and procedure of enacting bills, this section, like the United States Constitution, leaves this matter to the legislature. However, the section requires that the votes on final passage shall be recorded, and that bills shall be confined to one subject, except for revisions or consolidations and appropriation bills, which may cover many subjects. The use of riders on appropriation bills is prohibited, because of the abuses that have arisen in the Congress and in some states which do not have such a restriction.

(Sec. 17 Time of Taking Effect)

In order that a single date may be established when all bills, except emergency measures, will become laws, this section provides that the laws passed by any session will take effect 90 days after adjournment of each session. Exceptions are provided for the general appropriation bill, and, by a special two-thirds majority, any emergency measure. The emergency is required to be stated in the bill which will
tend to prevent use of this device for measures that are not, in fact, emergency legislation needed to prevent the disruption of governmental processes.

(Sec. 18 Local or Special Acts Prohibited)

The legislature is prohibited from passing any local or special act when a general act can be made applicable. The question of whether a general act can be made applicable is made a matter of judicial determination. This method seems to be much better than attempting to enumerate the kinds of local or special acts that are prohibited. Local acts when permitted are required to be submitted to the voters of the district to be affected before taking effect as law.

(Sec. 19 Appropriation Restriction)

This section prohibits appropriations for other than public purposes and to sectarian or denominational institutions or associations. Your Committee knows that several proposals to this convention relate to a "public purpose" clause. Your Committee believes that some agreement must be reached as to just what language should be adopted to carry out the desires of this convention.

(Sec. 20 Remission of Taxes Prohibited)

This section prohibits the remission of taxes by the State or any municipal corporation. The section is added to ensure that no advantage will be gained by delinquent taxpayers.
(Sec. 21 Referendum)

Despite attempts to ensure a harmonious legislative-executive relationship by other sections of this Article, it is always possible that at times a deadlock will occur where a bill deemed necessary by the Governor will fail of passage, or a bill which a majority of the Legislature deems necessary but for which it cannot obtain the special majority required to override a veto. This section permits either the Governor or the Legislature to resolve such a deadlock by submitting the bill to a vote of the people. The provision does not apply to revenue or appropriation measures, nor to local or special legislation.

(Sec. 22, 23, 24)

These sections contain language which is directed by the enabling acts to be in the state constitution. Section 23 makes clear that the state may accept payments in lieu of taxes from the Federal government.

(Sec. 25 Board of Apportionment)

A board is set up here to eliminate delays in apportionment and reapportionment. All branches of the state government are involved in its selection, and its determinations are enforceable by the Supreme Court.
Hon. William A. Egan, President
Alaska Constitutional Convention

Dear President Egan:

Your Committee on Local Government herewith presents the proposed article on local government for consideration by the Convention. Also attached is a commentary on the proposed article.

Respectfully submitted,

John H. Rosswog, Chairman
John M. Cross
James P. Doogan
Victor Fischer
Eldor R. Lee
Maynard D. Londborg
Victor C. Rivers
CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 6

Introduced by Committee on Local Government

LOCAL GOVERNMENT

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution.

ARTICLE ON LOCAL GOVERNMENT

Purpose and Liberal Construction
1 Section 1. The purposes of this Article are to secure the maximum amount of local self-govern-
ment consistent with the state's responsibilities to the whole people and the state's membership in the Union, and to provide a framework which will accommodate future development and prevent the pyra-
miding of independent tax-levying local government units. A liberal construction shall be given to the provisions of this Article in order that these purposes may be progressively achieved.

Local Government System
11 Section 2. The local government system of the state shall consist of two categories. These cate-
gories shall be known as boroughs and cities and all local government powers shall be vested in them.

Boroughs
15 Section 3. Boroughs shall be established according to such standards and in such manner as the legislature may provide. These standards shall include, but not
be limited to, such factors as population, geography, economy and transportation. Each borough shall embrace, to the maximum extent possible, an area and population with common interests. The entire area of the state shall be divided into boroughs. The legislature shall provide for three types of boroughs to be known as boroughs of the first class, boroughs of the second class, and boroughs of the third class. A minimum of three boroughs each of the first and second classes shall be established. The legislature shall provide the methods by which boroughs may be merged, consolidated, dissolved, reclassified or otherwise changed.

Section 4. The powers and functions appropriate to the local government requirements of each of the three classes of boroughs shall be conferred by law or charter. The descending order, in terms of powers and functions, shall be from the first through the third class. Boroughs of the first class shall be, and boroughs of the second class may be, municipal corporations.

Section 5. The governing body of the borough shall be the assembly. It shall be composed of members of the city council or councils and of additional members from the area outside the city or cities.
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<tr>
<th>Service Areas</th>
<th>Cities</th>
<th>Jurisdiction of Boroughs and Cities</th>
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<td>1 but within the borough to be selected in the manner and in the number to be prescribed by law or charter.</td>
<td>16 Section 7. A city shall be a municipal corporation and shall be incorporated according to standards established by law. It shall be a part of the borough in which it is located. The governing body of a city shall be a council and may exercise such powers and functions as may be conferred by law or charter. Cities may be merged, consolidated, dissolved, or classified in a manner provided by law.</td>
<td>24 Section 8. The city council's jurisdiction shall extend to those matters which involve the area within the city. The assembly's jurisdiction shall extend</td>
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to those matters involving the whole or any portion of
the borough.

Section 9. The power of local government taxation
shall be exercised only by boroughs and cities.

Section 10. The qualified voters of any municipal
corporation are hereby vested with the power to adopt
or repeal a home rule charter of government in a
manner provided by law and to amend the charter in a
manner provided by the charter. In the absence of
such legislation, the governing body of a municipal
corporation in which the adoption of a charter is
proposed shall provide for the procedure to be fol­
lowed in the preparation, approval, or rejection of
the charter. Consideration shall be given in the
drafting of charters to such factors as representation
on the basis of population and area, adjustment of
existing indebtedness, and differential taxation based
upon benefits to be derived. All charters, or parts
thereof and amendments thereto, shall be submitted to
the qualified voters of the municipal corporation and
shall not become effective unless approved by a
majority of the qualified voters voting on the specific
question.

Section 11. A municipal corporation which adopts
a charter may exercise all legislative powers which
are not prohibited by this constitution, by law, or by its charter.

Section 12. The legislature shall provide optional forms of government for those municipal corporations which do not adopt charters. An authorized optional form may be adopted or abandoned by majority vote of the qualified voters of a municipal corporation voting thereon.

Section 13. The legislature shall provide for the rearrangement of local government boundaries to the end that those boundaries may be adjusted as conditions may require. The legislature shall establish a special agency which, on its own motion or on petition, in a manner prescribed by law shall consider all questions relating to the rearrangement of local government boundaries and the terms and conditions upon which such rearrangements may be made. This agency in its consideration of boundary rearrangements shall work toward the end that local government units embrace social, economic, and geographic areas which will make possible the maximum realization of the purpose of this Article. Decisions of this agency shall be final within 45 days after the convening of the next regular session of the legislature unless disapproved by the legislature prior to that time.
Section 14. Agreements may be made by any local government with any other local government, with the state or with the United States for a cooperative or joint administration of any of its functions or powers, and the legislature may facilitate such agreements. Any city may, subject to such limitations as established by law or charter, transfer to the borough in which it is located any of its functions or powers and may similarly revoke the transfer of any such functions or powers.

Section 15. The legislature shall provide an agency which shall render assistance and advice to local governments, collect and publish information relating to local government on a state-wide basis, review the activities of local governments, and perform such other duties as may be prescribed by law.

Section 16. The legislature shall provide for the integration of the special districts exercising local government powers with the government of the borough at the time the boroughs are established.

Section 17. Increased local government expenditures arising out of legislative acts shall not become effective until approved by the local government or until funds sufficient to meet the increased expenditures are granted by the state to the local governments.
Section 18. The legislature, in passing laws relating to cities and boroughs, may act only by laws which are of general terms and effects.
ALASKA CONSTITUTIONAL CONVENTION

GENERAL DISCUSSION OF LOCAL GOVERNMENT UNDER PROPOSED ARTICLE

The committee on local government aimed at providing a maximum of self-government to people in all parts of Alaska. To meet this goal, two basic local government units were established—boroughs and cities. This framework is designed to accommodate today's needs and tomorrow's growth and development.

The proposed article is based upon experiences in the territory, the states, Canada and other countries. Proven principles and practices were brought together to establish a system of local government for the state of Alaska. It is a system which, in essence, many states have been attempting to achieve by modernizing existing units. We are fortunate in being able to start more or less from scratch.

The "borough", area-wise, is the larger of the two local government units. Cities would be located within the boundaries of the boroughs. The relationship between the two emphasizes mutual interest and cooperation.

Principles Underlying Proposed Local Government System:

1. Self-government—The proposed article bridges the gap now existing in many parts of Alaska. It opens the way to democratic self-government for people now ruled directly from the
capital of the territory or even Washington, D. C. The proposed article allows some degree of self-determination in local affairs whether in urban or sparsely populated areas. The highest form of self-government is exercised under home rule charters which cities and first class boroughs could secure.

2. **One basic local government system**—The proposed article vests all local government authority in boroughs and cities. It prevents creation of numerous types of local units which can become not only complicated but unworkable.

3. **Prevention of overlapping taxing authorities**—The proposed article grants local taxing power exclusively to boroughs and cities. This will allow consideration of all local needs in the levying of taxes and the allocation of funds. It will lead to balanced taxation. Single interest agencies with taxing authority often do not realize needs other than their own.

4. **Flexibility**—The proposed article provides a local government framework adaptable to different areas of the state as well as changes that occur with the passage of time. It allows classification of units on the basis of ability to provide and finance local services. It allows optional administrative forms, adoption of home rule charters, boundary changes, etc.

5. **State interest**—The proposed article recognizes that the state has a very definite interest in and concern with local
affairs. For example, the credit of the state is indirectly involved in local financial matters and local units are the agencies through which many state functions are performed. The proposal therefore gives the state power to establish and classify boroughs, to alter boundaries of local units, to prescribe powers of non-charter governments, to withhold authority from home-rule boroughs and cities and to exercise advisory and review functions.

The Borough

Under terms of the proposed article, all of Alaska would be subdivided into boroughs. Each would cover a large geographic area with common economic, social and political interests. Boundaries are to be established by the state.

The borough will fill the gap so often caused by the absence of a unit sufficiently large enough to deal with a particular local government problem. For instance, such needs as schools, health service, police protection, recording, could be met at the borough level or in smaller areas within the borough.

Areas in Alaska vary widely as to economy, population size and density, means of transportation, financial ability to support local government and other factors. Therefore, three classes of boroughs were created to allow for variations.

A borough of the first class would offer the largest amount of authority and self-government to its citizens through adoption of home rule charters. The third class borough would have the most
limited scope, with the state performing most of the local functions. It could remain unorganized. A governing body might be elected to act in an advisory capacity to the state in cases where the state is providing funds to perform local services. The second class borough is granted powers falling in the range between the other two classes.

The governing body of the borough is to be known as the assembly. The basis for representation would be established by the legislature or by charter in the case of first class boroughs. Apportionment could be on the basis of population or area or both. Cities within boroughs would be represented by city council members.

("Burough" means a place organized for local government purposes. It was adopted by the committee after many names were reviewed. The committee felt it desirable to avoid any term, such as "county", already encumbered with detailed legal definitions or having a definite connotation in people's minds.)

Cities

The status of existing cities is not changed under the proposed article. Future incorporations would be governed by the legislature. Cities will have authority to adopt home rule charters.

Borough-City Relationships

The borough is created as a form of area government. Many boroughs of Alaska will have no cities within them. Others might include one or more cities, which would be part of the borough.
The borough would have no control over internal affairs of cities within its boundaries. The borough's jurisdiction would cover matters involving the borough as a whole, matters involving portions of the borough outside of cities and matters jointly involving the city and a surrounding area.

The committee believes that maximum cooperation between boroughs and cities and integration of their mutual functions will provide residents with best services at least cost. Provisions in this article facilitating mutual action include authority for cooperative agreements, for the transfer of functions from one unit to another and for establishment of service areas. Coordination will also be fostered by the provision that the city's representatives on the borough governing body be members of the city council since they know what the city can offer and are familiar with city needs.

Service Areas

Need may arise within a portion of a borough for services not required throughout its entire jurisdiction. These might include road improvements, fire protection, education, utilities. Any one service could be provided through establishment of a service area within which taxes, assessments or charges could be levied to cover the special cost.

Service areas would be under the jurisdiction of the borough's assembly. Thus all local taxes would be levied by a single agency. The borough assembly could, of course, establish advisory or admin-
istrative boards within service areas. For example, what is today an independent school district could exist within a borough. But budgetary review authority and allocation of funds would rest with the borough governing body rather than the city council. (It would also be possible to constitute the whole borough a school district.)

Boundaries

Under the proposed article the state establishes the original borough boundary lines. While this authority is left with the legislature, the local government committee envisions it would be done only after thorough study and consideration of economic, geographic, social and political factors.

Provision is also made for changes in the boundaries of boroughs and cities. Under the proposed article the legislature would establish a state agency or commission for this purpose. The local government committee believes boundaries should be left flexible to allow for changing conditions. Particularly in the case of boroughs, Alaska would thus avoid one of the pitfalls of stateside county government where boundaries are frozen by constitution or tradition.

Boundary changes could be made by the state agency upon petition or upon its own motion. The legislature would prescribe conditions for making changes and would be granted a veto power over all changes.

The advantage of the proposed method lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against the boundary change can be analyzed objectively.
The committee did not believe boundary questions should be placed in the hands of the court since this is a non-judicial matter.

**Application To Small Communities**

One of the local government problems in Alaska today is the inability of small communities to organize for provision of just one or a few local services. By authorizing the establishment of service areas within boroughs, the proposed article makes it possible for a small unincorporated community or a relatively isolated area to meet a specific local need.

Through establishment of service areas and assumption of administrative or advisory responsibility, the citizens of small communities or rural areas will be preparing themselves for full self-government. The committee felt the state has a particular responsibility to delegate authority in the administration of state financed local functions as well as to provide assistance and advice.
Hon. William A. Egan, President
Alaska Constitutional Convention

Dear President Egan:

Your Committee on Local Government herewith presents the revised proposed article on local government for consideration by the Convention. Also attached is a commentary on the proposed article.

Respectfully submitted,

John H. Rosswog, Chairman
John M. Cross
James P. Doogan
Victor Fischer
Eldor R. Lee
Maynard D. Longborg
Victor C. Rivers
CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 6/a

Introduced by Committee on Local Government

LOCAL GOVERNMENT

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution.

ARTICLE ON LOCAL GOVERNMENT

| Purpose and Liberal Construction | 1 | Section 1. The purposes of this Article are to secure the maximum amount of local self-govern- |
|                                | 2 | ment consistent with the interests and welfare of all the people of the state, and to provide |
|                                | 3 | a framework which will accommodate future development and prevent the duplication and overlapping |
|                                | 4 | of independent tax-levying local government units. |
|                                | 5 | A liberal construction shall be given to the provisions of this Article in order that these purposes may be achieved. |
| Local Government Power         | 11 | Section 2. All local government powers shall be vested in boroughs and cities. The state may delegate taxing powers only to organized boroughs and cities. |
| Boroughs                       | 15 | Section 3. Boroughs shall be established according to such standards and in such manner |
as the legislature may provide. These standards shall include, but not be limited to, such factors as population, geography, economy and transportation. Each borough shall embrace, to the maximum extent possible, an area and population with common interests. The entire area of the state shall be divided into boroughs which may be either organized or unorganized. The legislature shall classify boroughs and provide the methods by which they may be organized, incorporated, merged, consolidated, dissolved, reclassified or otherwise changed.

Powers of Boroughs

Section 4. The powers and functions appropriate to the local government requirements of each class of borough shall be conferred by law,

Assembly

Section 5. The governing body of the organized borough shall be the assembly. The composition of the assembly shall be prescribed by law provided that each city shall be represented by persons who are members of its city council and that the additional members shall be elected by the voters living outside the cities.

Service Areas

Section 6. Service areas to provide special services within portions of an organized borough may be established, altered or abolished by the
assembly, subject to the provisions of law. The assembly may authorize the levying of such taxes, charges or assessments within a service area as may be necessary to finance the activities. No new service area shall be created when, in the judgment of the assembly, the objectives of Section 1 of this Article would be better served by giving a new function or functions to an existing service area, incorporation of the area as a city, or annexation of the area to a city.

Section 7. The Legislature shall provide for the performance of necessary functions in unorganized boroughs, allowing for a maximum of local participation and responsibility.

Section 8. A city shall be incorporated according to standards established by law. It shall be a part of the borough in which it is located. The governing body of a city shall be a council which shall have such powers and functions as may be conferred by law or charter. Cities may be merged, consolidated, dissolved, or classified in a manner provided by law.

Section 9. The qualified voters of any borough of the first class or of any city of the first class may adopt, amend or repeal a home
rule charter of government in a manner provided
by law. In the absence of such legislation, the
governing body of a borough or city of the first
class in which the adoption of a charter is
proposed shall provide for the procedure to be
followed in the preparation, approval, or
rejection of the charter. All charters, or parts
thereof and amendments thereto, shall be submitted
to the qualified voters of the borough or city
and shall not become effective unless approved by
a majority of the qualified voters voting on the
specific question.

Section 10. The legislature may extend
home rule to other classes of boroughs and cities.

Section 11. A home rule borough or city may
exercise all legislative powers which are not
prohibited by this constitution, by law or by its
charter.

Section 12. The legislature shall establish
a local boundary commission and regulate its
activities. The commission may, on its own motion
or on petition, consider any proposed boundary
change and present it to the legislature during
the first ten days of any regular session. Any
such change shall become effective at the end of

- 4 -
Section 13. Subject to procedures and limitations prescribed by law, agreements may be made by any local government with any other local government, with the state or with the United States for a cooperative or joint administration of any of its functions or powers. Any city may, subject to such limitations as established by law or charter, transfer to the borough in which it is located any of its functions or powers and may similarly revoke the transfer of any such functions or powers.

Section 14. Provision shall be made by law for an agency in the executive branch of the government which shall render assistance and advice to local governments and charter drafting agencies, collect and publish information relating to local government on a state-wide basis, review the activities of local governments, and perform such other duties as may be prescribed by law.
Section 15. The legislature shall provide for the integration of special districts performing local government functions with the government of a borough at the time the borough is organized.
Since the Territory of Alaska has no provisions for home rule and the people are governed directly from Washington, D.C. and the Capita of the territory, the Committee on Local Government is proposing this Article with the purpose of enabling the people in any part of Alaska to achieve a maximum amount of home rule for themselves. Studies were made of systems used in the United States, Canada and some European countries. The provisions of this article are intended to be self executing so far as possible. The plan is designed to accommodate today's needs and tomorrow's growth, and provides flexibility to meet the need for local government in all parts of Alaska.

We have not tried to detail the mechanics of setting up units of Local Government, but have tried to prepare a framework within which the Legislature of the State of Alaska can provide by law for local government and home rule.

Section 1. This section states the purpose and intent of this Article; to promote democratic self-government below the state level, guarding the interests and welfare of all concerned in a framework which will foster orderly development and prevent the abuses of duplication and overlapping of taxing entities.
Section 2. The purpose of this section is self-explanatory. It provides for no more than two levels of local government and local taxing power.

Section 3. Authorization of the legislature to divide the whole state into boroughs, some of which will doubtless remain for some time without fully organized governments. It provides for classification and alteration of boroughs.

Section 4. The legislature may make laws outlining the powers and functions appropriate to each class of borough.

Section 5. This section provides for representation of both rural and urban areas in the assembly, which is the governing body of the borough. Cities are to be represented on the assembly by certain members of their Councils to insure close cooperation between boroughs and cities. The actual method of apportionment is to be provided by the Legislature.

Section 6. Authorizes the borough assembly to establish special service areas, supported primarily by those benefited from such services.

Section 7. The State is authorized to provide for necessary services in unorganized boroughs with a maximum of local participation even in the smallest communities.

Section 6. This section provides for the incorporation, classification, government and powers of cities in accordance with law.
Section 9. Constitutional authority is given to first class boroughs and cities to adopt, repeal or amend home rule charters as the need arises. This is a self executing clause.

Section 10. This section provides that the legislature by law may extend home rule to any other classes of boroughs and cities.

Section 11. Home rule boroughs or cities have the power by their own law to govern themselves entirely unless otherwise prohibited by Constitutional or statutory law, or by their charters.

Section 12. This section provides for an agency that shall concern itself exclusively with local boundary questions. Boundary changes recommended by the agency are to be effective unless disapproved by the legislature.

Section 13. Boroughs and cities may make inter-governmental agreements with other boroughs, cities, the state and the United States, giving greater flexibility and closer cooperation between various levels of government.

Section 14. This section provides for an agency in the executive branch to help the people and local officials in the various parts of the State obtain by their own efforts the kind of local self-government they need and can afford. The agency will carry on a continuing study to assist the people and the Legislature in determining what changes may be necessary from time to time in the interest of better local government for all.
Section 15. The legislature is directed to bring special districts within the jurisdiction of organized boroughs as contemplated by this Article.

The name Borough was chosen from Black's Law Dictionary which states that a Borough is "a place for local government purposes." County was not used because of a wish to avoid undesirable connotations that attach to it and also because of its weak legal status in many states.
Hon. William A. Egan  
President, Alaska Constitutional Convention

Dear Mr. President:

Your Committee on Preamble and Bill of Rights transmits here-with a proposed Preamble, an Article containing a Declaration of Rights, and an Article on Health, Education, and Welfare, and recommends their adoption by the convention. A commentary follows each of the proposed articles.

Two minority reports are attached, one by Delegates McNealy, Armstrong and Hentschel suggesting an article to prohibit wiretapping and the other by Mr. Hentschel suggesting an article on collective bargaining.

The Committee made the following disposition of the delegates' proposals referred to this Committee:

Proposal No. 2: Incorporated in part in the Declaration of Rights and the Article on Education.

Proposal No. 6: Sections 6, 10, 11, 12 and 13 have been referred back to the floor. This Committee felt it had no jurisdiction on these subjects. The remainder of the sections were considered. The Committee adopted sections 3 and 7 with some changes. The rest of the proposal was not considered to be constitutional material.
Proposal No. 9: Section five of this proposal was reported back to the floor as not being within the terms of reference of this committee. Other articles of this proposition were included in the committee report.

Proposal No. 13: This proposal was incorporated in the Declaration of Rights with some changes.

Proposal No. 16: This proposal was a suggested preamble. The text was considered and was incorporated in part in the report of the committee.

Proposal No. 17: Sections 1, 2, 3, and 5 were adopted in substance in the Proposal on Health, Welfare and Education. Section 4 was rejected as not proper constitutional material. Section 8 is a general provision that will be considered in another section of the Constitution.

Proposal No. 19: The article on the Distribution of Power was rejected as not being necessary in this Constitution. Such an article would attempt to limit the executive, judicial and legislative branches in an unrealistic way. Complete separation has never existed and would not exist under this provision.

Proposal No. 21: Mr. Harris asked that this proposal be amended by the exclusion of the phrase dealing with labor because he did
not intend it to be a right to work provision. The committee consid­
ered the proposal as amended and included some of the material in the
Declaration of Rights.

Proposal No. 31: This proposal was considered and rejected on
the basis that these matters were outside the terms of reference of
this Committee.

Proposal No. 38: The committee considered this proposal and in­
cluded sections 1 and 2 in substance in the Declaration of Rights.
Section 3 was partly rejected as not being constitutional material
and the balance was included in the Declaration of Rights.

Respectfully submitted,
Dorothy Awes, Chairman
Ada B. Wien
R. Rolland Armstrong
Seaborn J. Buckalew
James P. Doogan
John Hellenthal
Robert J. McNealy
ALASKA CONSTITUTIONAL CONVENTION

COMMITTEE PROPOSAL NO. 7

Introduced by the Committee on the
Preamble and Bill of Rights

RESOLVED: That the following be agreed upon as part of the
Alaska State Constitution.

PREAMBLE, Article on Declaration of Rights, and
Article on Health, Education and Welfare.

1 We, the people of the State of Alaska, grateful to Almighty
2 God for our civil and religious liberty, seeking His con­
3 tinued blessing upon our endeavors to secure and transmit
4 these liberties unimpaired to posterity, do ordain and estab­
5 lish this Constitution.

ARTICLE

DECLARATION OF RIGHTS

8 Rights of
9 Man
10 Section 1. This constitution is to promote the gen­
11 eral welfare of the people, and is dedicated to the
12 principle that all persons have a natural right to
life, liberty, the pursuit of happiness and the en­
13 joyment of the gains of their own industry; that all
persons are equal and are entitled to equal rights
and opportunities under the law. These rights carry
with them corresponding duties to the people and to
the state.

Source and

Aim of Poli-
tical Power

Section 2. All political power is inherent in the
people. All government originates with the people,
is founded upon their will only, and is instituted
solely for the good of the people as a whole.

Civil

Rights

Section 3. No person is to be denied the enjoy-
ment of any civil or political right because of race,
color, creed or national origin. The legislature
shall provide appropriate legislation in accord here-
with.

Freedom of

Speech and

Press; Assem-
ble and

Petition

Section 4. Every person may freely speak, write,
and publish on all subjects, being responsible for
the abuse of that liberty. The right of the people
peaceably to assemble and to petition the government
or any department thereof shall never be abridged.

Freedom of

Religion

Section 5. No law shall be made respecting an
establishment of religion or prohibiting the free ex-
ercise thereof.

Due

Process

Section 6. No person shall be deprived of life,
liberty or property without due process of law.

Grand Juries,

Section 7. The grand jury shall consist of twelve
Indictments
citizens, any nine of whom concurring may find an
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special privileges or immunities shall be passed, and no conviction shall work corruption of blood or forfeiture of estate. The administration of criminal justice shall be founded on principles of reformation, and not vindictiveness.

Section 11. The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Section 12. In all criminal prosecutions the accused has the right to a speedy and public trial, by an impartial jury. In courts not of record the jury may consist of not more than twelve nor less than six persons. The accused is also entitled to be informed of the nature and cause of the accusation; to be released on bail, except for capital offenses; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Section 13. In suits at common law, where the amount in controversy exceeds two hundred and fifty dollars, the right of trial by jury is preserved, ex-
Section 14. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion, invasion or imminent peril, the public safety requires it.

Section 15. A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. The military shall be in strict subordination to the civil power. No soldier, in time of peace shall be quartered in any house without the consent of the owner or occupant, nor in time of war, except as prescribed by law.

Section 16. Treason against the State shall consist only in levyng war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Section 17. Private property shall not be taken or damaged for public use without just compensation.
Section 18. There shall be no imprisonment for debt, except in cases where there is a strong presumption of fraud.

Section 19. The enumeration of rights in this constitution shall not impair or deny others retained by the people.
Constitutional Convention
Committee Proposal/7
December 15, 1955

ALASKA CONSTITUTIONAL CONVENTION

COMMITTEE PROPOSAL NO. 7

ARTICLE

HEALTH, EDUCATION AND WELFARE

1. Public Education Section 1. The State shall establish and maintain by general law a system of public schools which shall be open to all children of the State and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private institution.

2. Public Health

3. Public Welfare

4. Substandard Areas and Public Housing

5. Section 2. The State shall provide for the promotion and protection of public health.

6. Section 3. The State may provide for public welfare for persons unable to maintain a standard of living compatible with health and human dignity.

7. Section 4. The State may provide for and assist in the clearance, development and rehabilitation of substandard areas and for public housing.
1. We believe that the following should be inserted as a sentence following the first sentence of Section 10, to-wit:

"Wire tapping or obtaining unauthorized information by other technical means or devices is prohibited. Evidence obtained in violation of this section shall be inadmissible in the courts."

2. We reach this conclusion because we believe that this practice is prohibited by implication by the 4th Amendment to the Federal Constitution. The United States Supreme Court has reached the same conclusion. We are of the opinion that had this practice been possible and prevalent in the days of the founding Fathers it would have been expressly prohibited by name.

R. J. McNealy
R. Rolland Armstrong
J. Hellenthal
MINORITY REPORT

1. Persons in society have the moral and legal right to organize and bargain collectively in democratic and peaceful manner.

2. The right of man to organize into free associations of his own choosing is necessitated by the common good and is a fundamental, civil, natural and philosophical right that strengthens the general welfare.

3. The right to bargain collectively carries with it the correlative right of the majority of the group to bind the minority by and to the provisions of security agreements fairly arrived at.

4. Therefore the following section should be included in the Declaration of Rights:

"Persons in private employment and those employed by the State or local governments, when engaged in proprietary and non-governmental activity, and groups of persons, shall have the right to organize and bargain collectively. Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing."

John Hellenthal
Commentary on the Preamble and the Declaration of Rights

(Sections 1 and 2 Rights of Man. Sources and Aim of Political Power)

These sections affirm the sovereignty of the people and the origin of government.

(Section 3 Civil Rights)

In this paragraph we have provided for the equal enjoyment of the rights of all people regardless of race, color or national origin. This section obligates the legislature to implement the provision by legislation. At present, we have Civil Rights Legislation in the Territorial statutes, which the legislature shall retain or improve. It is impossible and unwise to enumerate in this Constitution all of the places where and conditions under which civil rights must be guaranteed.

(Section 4 Freedom of Speech and Press; Assembly and Petition.)

This provision, like the provision in the Federal Constitution, guarantees the freedom of speech, press, assembly and the right to petition the government. This right to petition is broader than in the Federal Constitution, which limits the right to petition to grievances.
(Sections 5 and 6 Freedom of Religion. Due Process)

These sections are identical with the Federal Constitution. A statement on use of public funds for religious and other private schools is part of the article on Education.

(Section 7 Grand Jury)

The grand jury is preserved, for all purposes, particularly for investigation of public officials. A grand jury of twelve is provided as adequate for performance of its functions. The article provides for alternative procedure of indictment or information, and allows the judge to call the grand jury at any time. Many states have found the same or similar procedure to be most satisfactory.

(Section 8 Double Jeopardy: Self Incrimination)

This section is the same as the Federal Constitution with one exception. In the clause pertaining to self incrimination, the phrase "criminal proceeding" is used rather than the more limited phrase "criminal case" of the Federal Document.

(Section 9 Excessive Bail, Unusual Punishment)

This statement on excessive bail is identical with the United States Constitution.

(Section 10 Prohibited State Action)

In general the Federal Constitution is followed in this statement. In addition, the section prohibits any law granting any special privilege or immunity. Considerable time was spent on the matter
(Section 11 Searches and Seizures)

The general language of the Federal Constitution is used. A prohibition against wire tapping was reviewed, but was not considered to be constitutional material.

(Section 12 Criminal Matters: Trial by Jury, Rights of Accused)

This section protects the rights of the accused in criminal cases. The legislature may provide for a jury of not more than twelve and not less than six in courts not of record; experience has shown this to be adequate protection of the rights of the accused in such courts. It also gives the defendant the opportunity to be released on bail except in capital offences.

(Section 13 Civil Cases: Trial by Jury)

This section preserves the right to trial by jury in Civil suits where the amount in controversy exceeds two hundred fifty dollars. The legislature may provide for a jury of not less than six in courts not of record and that a verdict may be handed down by not less than 3/4 of the jury. These qualifications have proven satisfactory in other jurisdictions. Experience shows this to be a desirable provision.

(Section 14 Habeas Corpus)

This section is identical with the Federal Constitution, with the exception of the additional phrase "imminent peril." This addition brings this declaration into conformity with circumstances which may have to be met under modern warfare.
(Section 15  Militia. Right to Bear Arms.)

This section is identical with the Federal Constitution, except for the addition of the provision on the subordination of the military to the civil power, which appears in the majority of state documents.

(Section 16  Treason)

This is identical with Article III, Section 3 of the United States Constitution.

(Section 17  Eminent Domain)

This section is identical with the Federal Constitution, except for the addition of the words "or damaged." These words were added in recognition of the fact that property may be damaged or made worthless as an incident of the taking of other property for public use. It is our belief that the property owner should be compensated for such injury.

(Section 18  Imprisonment for Debt)

Many of the state constitutions provide a prohibition of imprisonment for debt. The qualifying phrase "where there is a strong presumption of fraud", is included to prevent persons having fraudulent intent from incurring debts and fleeing the State without making payment.
(Section 1 Education)

This paragraph on Education provides for the establishment and maintenance of the system of public schools and other educational institutions. They will be free from sectarian control. These statements follow closely that of H. R. 2535.

This section prohibits the direct use of public funds for religious and other private institutions.

(Sections 2 and 3 Health and Welfare)

These sections authorize the legislature to provide for health and welfare as the need arises.

(Section 4 Substandard Areas and Public Housing)

It is necessary to have a statement relative to these subjects, so the legislature has necessary authority to act when action is desirable.
ALASKA CONSTITUTIONAL CONVENTION

REPORT OF THE COMMITTEE ON RESOURCES

Hon. William A. Egan, President
Alaska Constitutional Convention

Dear Mr. President:

Your Committee on Resources presents for your consideration and adoption its proposed Article on Resources.

The Committee proposal, while incorporating many of the ideas contained in Convention proposals, is a Committee proposal and is unanimously endorsed by the Committee.

A section by section commentary on the subject matter has been prepared by your Committee for the use of the Delegates to the Convention.

Respectfully submitted,

W. O. Smith, Chairman
Burke Riley
John Boswell
Ada B. Wien
Leonard King
B. D. Stewart
Peter R. Reader
Barrie M. White
Truman C. Emberg
CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 8

Introduced by Committee on Resources

STATE LANDS AND NATURAL RESOURCES

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution:

ARTICLE ON STATE LANDS AND NATURAL RESOURCES

It is the policy of the State to

foster and encourage settlement and development

through the maximum use and availability of its

resources consistent with the public interest and

the avoidance of waste, and to that end it is the

intent of this Article to extend to all peoples the

opportunity of participation in Alaska's heritage.

Section 1. The State of Alaska has the power to

provide for the utilization, conservation and

balanced development of all of the natural resources,

including aesthetic features, of the land and waters

belonging to the State for the maximum benefit of

its people.

Section 2. Forests, fisheries, wildlife and

other replenishable resources belonging to the State

Committee Proposal No. 8
(Tentative)
<table>
<thead>
<tr>
<th>Section</th>
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<tr>
<td>1</td>
<td>General Reservations shall be administered, utilized and maintained on the sustained yield principle in order to achieve the highest beneficial public use.</td>
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<td>2</td>
<td>Section 3. Game fish, wildlife, fisheries and waters, wherever occurring in their natural states within the State or its jurisdiction, are reserved to the people for common use.</td>
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<td>3</td>
<td>Section 4. Facilities, improvements and services may be provided to assure greater utilization, development, reclamation and settlement of the State lands, and fuller utilization and development of the fisheries and waters of the State.</td>
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<td>4</td>
<td>Section 5. Laws and regulations made for the use of natural resources shall bear equally on all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.</td>
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<tr>
<td>5</td>
<td>Section 6. Sites, objects, and areas of natural beauty or of historic, cultural or scientific interest may be acquired, preserved, and administered for the use, enjoyment and welfare of the people, under the laws of the State.</td>
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<tr>
<td>6</td>
<td>Section 7. Lands and interests therein possessed or acquired by the State, including submerged and tidal lands, and not used or intended exclusively for</td>
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</table>
governmental purposes or for reserved sites and areas, constitute the State public domain. Such lands and interests therein are to be held in trust for the people of the State. These lands and interests may be disposed of only in accordance with provisions of applicable acts of Congress, including the Act admitting Alaska to the Union, this Constitution and the laws of the State.

The Legislature shall make provision for the selection, classification and administration of lands in the State public domain, and the several uses thereof, in such manner as will give maximum use and public benefit.

Section 6. The Legislature may authorize the leasing of any lands and interests therein in the State public domain, subject to the following conditions:

Leases

In granting leaseholds and in administering the State public domain and interests therein, the various potential uses of the land shall be considered. Leases shall state use, conditions and tenure, to enable reasonable concurrent uses in the lands and waters of the State. The Legislature shall provide, among other conditions, for payment
by the party at fault for damage or injury arising from noncompliance with terms governing concurrent use, for forfeiture in the event of breach of conditions and, generally, for enforcement of terms.

Section 9. The Legislature may authorize the sale or grant of State lands or interests therein, subject to the following conditions:

All sales or grants of State land or interests therein shall contain such reservations to the State of all mineral resources as are required by the Congress, access thereto, and access to all other resources generally reserved to the people; except that the reservation of access shall not impair the owners' full beneficial use, prevent the control of trespass nor preclude compensation for damage.

Section 10. Disposals or leases of state lands or interests therein shall be preceded by such public notice and other appropriate safeguards of the public interest as the Legislature shall determine. Each such transaction shall be subject to review or audit, as prescribed by law.
Creation of Mineral Rights

Section 11. Discovery and appropriation shall be the basis for establishing a right in those minerals heretofore subject to location under the Federal Mining Laws and now reserved to the State. Prior discovery and filing shall give prior right to such minerals and to issuance of permits, licenses, lease-holds, or patents if authorized by the Congress, for the extraction thereof. Continuance of such right shall depend upon beneficial use as prescribed by law.

Prospecting permits giving exclusive right of exploration for specific periods and areas may be provided for exploration conducted for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, and other Mineral Leasing Act minerals and for the use of geophysical, geochemical and similar methods of prospecting for all minerals. Issuance, type, and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulphur and other Mineral Leasing Act minerals shall be as provided by Law.

Surface uses of the land shall be limited to those uses necessary to the extraction of the mineral deposits, and continuance of such right shall depend upon beneficial use as prescribed by law.
Creation of Water Rights

Section 12. All surface and sub-surface waters, reserved to the people for common use, shall be subject to appropriation for beneficial use as prescribed by law. Priority of appropriation shall give prior right. An appropriation of water, except for municipal water supply, shall be limited to stated uses and be subject to concurrent appropriation for other beneficial uses and to the general reservation of fish and wildlife to the people for common use.

Access to Navigable Waters

Section 13. Free access to the navigable waters of the State shall not be denied any person resident of Alaska or of any State or Territory of the United States, except that the State may by general law regulate and limit such access for other beneficial or public purposes.

No Exclusive Right of Fishery

Section 14. There shall be no exclusive right or special privilege of fishery created or authorized in the natural waters of the State.

Preferences Among Beneficial Uses

Section 15. The Legislature shall provide for determination of the order of preference of the beneficial uses of the waters of the State and of the State public domain in order to realize the highest public purpose in terms of the potentialities of each locality. No person shall be involuntarily
| 1 | divested of his right to use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial or public use and then only by operation of law. |
| 2 | |
| 3 | |
| 4 | |
| 5 | Section 16. Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources. |
| 6 | |
| 7 | |
| 8 | |
| 9 | Section 17. The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska. |
| 10 | |
| 11 | |
| 12 | |
| 13 | Section 18. The specific provisions of this Article shall not limit the powers of the State in relation to the utilization, development and conservation of natural resources except as specifically provided herein. |
| 14 | |
| 15 | |
| 16 | |
| 17 | |
(Sec. 1 States' Proprietary Interest)

This section is a general grant of authority to the State for the utilization and development of all resources over which the State has a proprietary interest. This includes all game fish, wildlife, fisheries, waters and those lands and related land uses including mineral rights, etc., that may be acquired by the State through grants from the United States or by other means. Authority over private lands and resource interests is not provided in this Article except as that authority is generally reserved in Section 18.

(Sec. 2 Sustained Yield)

Sustained yield is recognized as a principle applicable to the administration of plant and animal life subject to the immediate authority of the State. This provision applies generally to wildlife and fisheries anywhere in the State and to the forests and other replenishable resources including grass which occurs on lands in the State public domain. This principle is qualified in terms of "the highest beneficial public use" in recognition of its not being in the public interest to preserve certain parasitic or predatory organisms destructive of more beneficial plant and animal life. The reference of this section is to the State of Alaska, and not to any particular parcel of land or any particular body of water.
(Sec. 3 General Reservations)

Game fish, wildlife, fisheries and water are recognized as belonging to the State so long as in a natural state. These resources are subject to a private right only when they have been acquired or utilized as provided by law. For example, a private person has no right to buy and sell wild animals in their natural state, but once an animal is taken in compliance with law, it becomes the property of the taker, subject to use or disposition within the law. This provision does not apply to the domestication of fur-bearing animals or other animals subject to intensive culture or the fish in private ponds. The ownership of water is generally recognized as vesting in the state. Private rights can be acquired only to the use of water.

(Sec. 4 General Authorization for Facilities, Improvements and Services)

This general authorization is made to facilitate the development of the State's natural resources. In localities where lands are susceptible to general agricultural development, the State would have authority to undertake improvements in providing roads or improvements on the land in preparation for settlement of the land. Where improvements or facilities may be essential to the development of fisheries and water resources, the state would have the authority to undertake those developments. Such developments could require the services of technical specialists and advisors who can assist citizens of the State on technical problems involving the
improvement of production and resource utilization in much the same way that the farm agent has worked on problems of agricultural production and the Forest Service has rendered aid to private owners of standing timber.

(Sec. 5 **Uniform Application**)  
This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to the disposition of the State.

(Sec. 6 **Special Acquisition and Reservations**)  
General authority is granted the State to acquire special sites, objects or areas of scenic, historic, cultural or scientific interest, to reserve similar sites, objects or areas in the state public lands and to administer these special sites, objects, and areas for general public use. These sites, objects or areas might ultimately become state monuments or parks.

(Sec. 7 **State Public Domain**)  
This section defines the State public domain to include all lands and interests therein that are acquired by the State except for (1) lands used or intended to be used exclusively for governmental operations and (2) those sites and areas that have been acquired or reserved for special scenic, historic, cultural or scientific interests. The lands, and interests therein, in the State Public Domain are to be held in trust for the people of the state until disposed of in accordance with provisions of federal
law, the State Constitution and State Law. Should terms of enabling legislation covering grants of lands to the State be modified before passage, the language of this section would avoid necessity of amending the Constitution.

General authority is granted to the Legislature to provide for the selection, classification and administration of the State Public Domain. The Enabling Bill provides for State selection of granted lands. Classification, or examination by whatever means, will be the process whereby the State determines what lands it will wish to select. The Legislature is given general authority to provide for the general administration of the State public domain in order to assure maximum use and public benefit in the several uses of those lands.

(Sec. 8 Leases)

The Legislature is authorized to lease State lands or interests therein. In granting leases, the potential uses of the land are to be considered so that maximum benefit can be derived. Each lease shall state the particular use or uses to be made of the lands as well as the conditions of the use and the term or tenure of the lease in order to facilitate reasonable concurrent use by others if occasion arises. "Reasonableness" of concurrent uses implies that possibilities of conflict in use should be kept to a minimum. Provisions of liability, forfeiture and other means of enforcement of the lease are to be provided in the instrument.
(Sec. 9 Sales and Grants)

Sales and grants of State lands and interests therein are generally authorized with provision for reservation of mineral rights and for reservations of access. The reservation of mineral rights is prompted by provisions of the Enabling Bill. Mineral deposits in such lands shall be subject to lease by the State as the Legislature may direct.

The reservation of mineral rights in the proposal is in conformity with the proposed enabling bill, H.R. 2535, of the 84th Congress.

Reservation of access is required on all grants or sales of state land so as to assure access to reserved mineral rights and to those resources generally reserved to the people by Section 3 of the proposal. While reserving access, the section explicitly provides that these rights of access shall not impair the owner's full beneficial use, shall permit the control of trespass and allow for compensation for damages done to the owner of the land.

(Sec. 10 Public Notices and Safeguards)

Certain safeguards of the public interest are essential in public land transactions. Such transactions may vary in importance from routine matters to those of substantial value. If general constitutional provisions impose too rigid requirements, the land administration can become hopelessly ensnared in red tape. As a result this section of the Constitution provides for the Legislature to establish public notice, review or audit and other safeguards to
protect the public interest. As requirements change and many transactions become routine, appropriate modifications can be made in procedures if rigid requirements are not specified in the Constitutions itself.

(Sec. 11 Creation of Mineral Rights)

With the restrictions on the sale, grant or patent of mineral lands as provided in the proposed Enabling Bill and in Section 9 of the proposal, this section recognizes the established pattern of mining rights as applied to a system of leaseholds or limited patents. This established system of mining law recognizes the preferential right of a prospector to a mineral deposit on the basis of discovery and appropriation. Appropriation involves both location and filing. All mining law requires continued beneficial use (assessment work) to maintain a mining claim.

These elements of mining law were described by Costigan in his standard works on American Mining Law when he stated, "They (mining laws) all recognize discovery followed by appropriation, as the foundation to the possessor's title and development by working as the condition of its retention." This conception underlies the statement of mineral rights contained in Section 11.

Exceptions to these general rules applicable to mineral rights have become recognized through the Mineral Leasing Act of 1920 as amended. The fuel minerals of oil, gas, oil-shale and coal and phosphates, potash and other non-metallic minerals have been developed under a lease system which involves exclusive right
to prospect certain areas over a given period of time subject to payment of certain royalties if commercial development is undertaken. This is the reason for making exceptions of these non-metallic minerals and for the newer forms of geophysical and geochemical prospecting. Otherwise the right of an ordinary prospector to search for mineral deposits is fully recognized and he is recognized as having a preferential right to the appropriate permit, license or lease, for the extraction of these mineral deposits. The prospector’s preferential right would presumably be transferable in the same manner that a claim can be conveyed today.

Section 11 is so phrased as to permit patenting of claims on state land should Congress remove the anticipated restrictions and the Legislature so provide. However in adapting the ideas behind the Act of July 23, 1955 to Alaskan conditions, restrictions are placed upon claims and patents so that the surface uses of the land shall be limited to those uses necessary to the extraction of the mineral deposits and so long as beneficial use is maintained. The land will be available for construction of mining works, the disposition of mining wastes and for the timber necessary in mine construction. However, forests on these lands would not be generally available to the mineral claimant. The further requirement of beneficial use is to assure that the lands patented for mineral purposes will revert to public control when for example, mining has ceased, the mineral deposits have been exhausted or the property abandoned, which situations would depend on legislative definition of "beneficial use".
(Sec. 12 Creation of Water Right)

This section provides for the prior-appropriation system of water rights generally used in the western states and in Alaska. The prior appropriation system recognizes the principle of "first come; first served", or "first in time; first in right" which is also the basic principle of mining law. Here again the concept of appropriation involves filing an application for stated quantities of water for stated uses at specific locations. The preservation of a prior appropriation right to water requires continued beneficial use. Concurrent use is recognized to assure maximum utilization. Water used for the generation of hydroelectric power for example is also subject to appropriation for domestic consumption or other uses that do not conflict with those for which prior appropriations have been made. Appropriations are subject to the general reservation of fish and wildlife provided in Section 3 so that reservoirs shall not exclude fish and wildlife remaining in natural states from coming under the provision of their general reservation to the people.

(Sec. 13 Access to Navigable Waters)

This section assures free access to the navigable waters of the state for "any person resident of Alaska or any state or territory of the United States." However such access may be limited by other beneficial purposes such as the construction of dam or other water-works. Since the control of navigable waters
is a Federal question within the province of Congressional authority, any actions taken by the Federal government would supersede this constitutional provision.

(Sec. 14 No Exclusive Right of Fishery)

This section is intended to serve as a substitute for the provision prohibiting the several right of fisheries in the White Act. Instead of using the terminology of that Act the purposes sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the State.

(Sec. 15 Preferences Among Beneficial Uses)

This is a basic provision found in the resource codes and constitutions of several of the Western States. Orders of preference are usually made for water uses such as domestic or industrial consumption, irrigation, fisheries, hydro-electric power production, etc. With Alaska's diversity of conditions, provision was made to vary the determination of priorities of use according to the potentialities of any particular locality, area or region. Again this provision is limited in bearing on the waters of the State and on the State Public Domain where the state maintains its proprietary interest, and not upon private or federal land holdings.

The provision for divestment of right allows eminent domain proceedings to be used in permitting a higher use only. As among users of the same order of priority, the power of condemnation cannot be used. Under this type of provision the state may have granted a mining lease for placer mining in a river bed. If the
stream had important hydro-electric potentialities a power company might desire to use a site, which would cause the flooding of the mine. If the hydro-electric development was determined to be a higher beneficial use, the mining properties might be acquired by appropriate legal action with just compensation for the interests and improvements of the conflicting mining use.

The last sentence, protecting any person from involuntary divestment of property rights and interests, is generally applicable to any established right and might be relied upon to protect persons who claim possessory rights to tidelands in coastal areas where substantial improvements have been made in docks, wharves or other waterfront facilities and homes.

(Sec. 16 Private Ways of Necessity)

This provision was borrowed from the Wyoming Constitution and modified to meet Alaskan conditions. The Wyoming provision states, "Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes, or ditches on or across the lands of others for agricultural, mining, domestic or sanitary purposes, nor in any case without due compensation." In that arid state this provision was developed to assure access to water supply even though it might be necessary for a private person to secure easement across adjoining private lands. Since the adoption of the Wyoming Constitution, a number of western states have
included a similar provision in their constitutions. Since the problem of essential access in Alaska is not limited to water supply as in Wyoming this article makes only a general provision for the use of eminent domain proceedings to provide essential access for extraction and utilization of natural resources.

(Sec. 17 State Boundaries)
This is the same boundary statement set forth in H.R. 2535.

(Sec. 18 Residual Powers)
The Article on State Lands and Natural Resources is primarily concerned with the State's proprietary interests in the State public lands, waters, wildlife and fisheries. This section explicitly states that the other provisions in the Article on State Lands and Natural Resources shall not limit the exercise of the general police powers of the State to provide for the utilization, development and conservation of natural resources in general, including those in private ownership.

Regulation of stream pollution, the prohibition of fish-traps and fire control in timber areas are illustrations of action taken under general public police powers to provide for public health, safety or the general welfare which may affect resource development, utilization or conservation on both public and private lands.
Constitutional Convention
Committee Proposal 8/a
Date: January 16, 1956

ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON RESOURCES

Hon. William A. Egan, President
Alaska Constitutional Convention

Your Committee on Natural Resources submits for considera-
tion of the Convention the attached proposed Article No. 8, as
a Committee Substitute for tentative committee Proposal No. 8
earlier submitted. Accompanying said Proposal is a revised
Commentary.

The Committee has considered the following Delegate
Proposals and reports on them as follows:

Sections 1 & 2 of Proposal 5 have been incorporated in
part in the Committee Proposal.

Section 3 was not incorporated in the Committee Proposal
and, in the Committee's opinion, might properly be
considered by the Committee on Resolutions.

Section 13, Proposal No. 6 is believed to be more
properly the concern of Finance, Ordinances and
Transitional Matters.

In the Committee proposal matters proposed in delegate
Proposal No. 7 are touched upon in part and the way left clear
for such future Legislative action as may be desired.

The Committee recommends for reference to the Resolutions
Committee and to the next Territorial Legislature the proposition that the Territorial Legislature put in motion, through its Legislative Council or otherwise, a comprehensive study of necessary legislation in the resources field to implement this proposed Article. It is recognized that in most respects Legislation based on such study will be the province of the State Legislature, yet the Committee feels that the undertaking will be of such scope and magnitude that early attention should be given it.

Sections 5 & 6 of Proposal No. 9 are in part incorporated in Section 6 of the Committee Proposal.

Sections 6 & 7 of Proposal 17 are in substance incorporated in this Proposal.

Proposal 18 is in part incorporated in Section 10 of this Proposal.

Proposal 26 was considered beyond the province of the Committee and without the scope of the Constitution. However, the Committee recommends that the Convention adopt a suitable resolution addressed to appropriate Federal agencies now in position to remedy the situation which Proposal 26 seeks to reach.

Sections 1, 3, 4, and 5 of Proposal 30 are covered generally in this Proposal, while Sections 2 and 6 are not.

Proposal 32 is merged in this proposal.
Both before and since the submission of Proposal 33, the abolition of fishtraps received the Committee's searching attention. While the Committee Proposal does not mention traps, the Committee urges an expression in this respect by the Convention, and recommends that the Convention adopt an appropriate Resolution or Ordinance as a means of hastening the abolition of traps.

Respectfully submitted,

W. O. Smith, Chairman
Burke Riley
John C. Boswell
Ada B. Wien
Leonard King
B. D. Stewart
Peter L. Reader
Barrie M. White, Jr.
Truman C. Emberg
CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 8/A

Introduced by Committee on Resources

STATE LANDS AND NATURAL RESOURCES

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution:

ARTICLE ON STATE LANDS AND NATURAL RESOURCES

It is the policy of the State to foster and encourage settlement and development through the maximum use and availability of its natural resources consistent with the public interest and the avoidance of waste. To that end it is the intent of this Article to extend to all peoples the opportunity of participation in Alaska's heritage.

Section 1. The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the territory of Alaska.

Section 2. The State of Alaska shall provide for the utilization, conservation and development of all of the natural resources, including land and waters belonging to the State, in accordance with provisions of applicable acts of Congress, including the act admitting Alaska to the Union, this Constitution, and
the laws of the State, for the maximum benefit of its people.

Section 3. Forests, fish, wildlife, grasslands and other replenishable resources belonging to the State shall be administered, utilized and maintained on the sustained yield principle.

Section 4. Fish, wildlife, and waters, wherever occurring in their natural states, are reserved to the people for common use.

Section 5. Regulation and administration of the commercial fisheries and of the wildlife, including game fish, shall be delegated to a commission, or to separate commissions, under such terms as the legislature shall prescribe.

Section 6. Facilities, improvements and services may be provided to assure greater utilization, development, reclamation and settlement of lands, and fuller utilization and development of the fisheries, wildlife and waters.

Section 7. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.
Section 8. Sites, objects, and areas of natural beauty or of historic, cultural, recreational or scientific interest may be acquired, preserved, and administered for the use, enjoyment and welfare of the people, under the laws of the State, and may be reserved from the State public domain.

Section 9. Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, and not used or intended exclusively for governmental purposes, constitute the State public domain. The Legislature shall make provision for the selection and administration of lands in the State public domain.

Section 10. The Legislature may provide for the leasing of any part of the public domain, or interests therein, subject to reasonable concurrent uses. Leases shall provide, among other conditions, for payment by the party at fault for damage or injury arising from noncompliance with terms governing concurrent use, for forfeiture in the event of breach of conditions and, generally, for enforcement of terms.

Section 11. The Legislature may provide for the sale or grant of State lands or interests therein, and establish sales-procedures subject to the following conditions;
All sales or grants of State land or interests therein shall contain such reservations to the State of all mineral or water resources as are required by the Congress, or the State, and shall provide for access thereto, and to all other resources reserved to the people; except that the reservation of access shall not impair the owners' beneficial use, prevent the control of trespass, nor preclude compensation for damage.

Section 12. Disposals or leases of state lands or interests therein shall be preceded by such public notice and other appropriate safeguards of the public interest as the Legislature shall prescribe.

Section 13. Discovery and appropriation shall be the basis for establishing a right in those minerals subject to location under the Federal mining laws in the year 1955 and now reserved to the State, as well as to all other metallic minerals reserved to the State. Prior discovery, location and filing shall, as prescribed by law, give prior right to such minerals and to issuance of permits, licenses, leaseholds, deeds, or patents if authorized by the Congress, and by the State, for the extraction thereof. Except as title to mineral lands shall have been conveyed by the State, continuance of such right shall depend upon performance of annual
labor, on payment of fees, rents, or royalties, or such other requirements as may be prescribed by the Legislature.

Surface use of such lands, by the mineral claimant, shall be limited to those necessary to the extraction and basic processing of mineral deposits.

The Legislature shall provide for the issuance, type, and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulphur, pumice, and other minerals as may be prescribed by law.

Leases and prospecting permits giving exclusive right of exploration for specific periods and areas may be authorized for exploration conducted for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other non-metallic minerals as may be prescribed by law; and for the use of geophysical, geochemical and similar methods of prospecting for all minerals.

Section 14. All waters reserved to the people for common use shall be subject to appropriation. Priority of appropriation shall give prior right. An appropriation of water, except for public water supply, shall be limited to stated purposes and subject to preferences of beneficial uses, concurrent or otherwise, as prescribed by the Legislature, and to the general reservation of fish and wild life.
Section 15. Free access to the navigable or public waters of the State shall not be denied any resident of Alaska or citizen of the United States, except that the State may by general law regulate and limit such access for other beneficial or public purposes.

Section 16. There shall be no exclusive right or special privilege of fishery created or authorized in the natural waters of the State.

Section 17. No person shall be involuntarily divested of his right to use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial or public use and then only by operation of law.

Section 18. Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources.

Section 19. The enumeration of specified powers shall not be construed as limitations on other implied powers of the State in relation to the utilization, development and conservation of natural resources, except as specifically provided herein.
(Sec. 1 State Boundaries)

This is the same boundary statement set forth in H.R. 2535.

(Sec. 2 States' Proprietary Interest)

This section is a general grant of authority to the State for the utilization and development of all resources over which the State has a proprietary interest. This includes all game fish, wildlife, fisheries, waters and those lands and related land uses including mineral rights, etc., that may be acquired by the State through grants from the United States or by other means. Authority over private lands and resource interests is not provided in this Article except as that authority is generally reserved in Section 18.

(Sec. 3 Sustained Yield)

Sustained yield is recognized as a principle applicable to the administration of plant and animal life subject to the immediate authority of the State. This provision applies generally to wildlife and fisheries anywhere in the State and to the forests and other replenishable resources including grass which occurs on lands in the State public domain. This principle is qualified in terms of "the highest beneficial public use" in recognition of its not being in the public interest to preserve certain parasitic or predatory organisms destructive of more beneficial plant and animal life. The
reference of this section is to the State of Alaska, and not to any particular parcel of land or any particular body of water.

(Sec. 4 General Reservations)

Game fish, wildlife, fisheries, and water are recognized as belonging to the State so long as in a natural state. These resources are subject to a private right only when they have been acquired or utilized as provided by law. For example, a private person has no right to buy and sell wild animals in their natural state, but once an animal is taken in compliance with law, it becomes the property of the taker, subject to use or disposition within the law. This provision does not apply to the domestication of fur-bearing animals or other animals subject to intensive culture, to fish in private ponds, or to registered trap lines if authorized by law. The ownership of water is generally recognized as vesting in the state. Private rights can be acquired only to the use of water.

(Sec. 5 Fish and Game Management)

Management of fish and game resources, and the regulation thereof, are by this section to be the responsibility of a commission, or commissions. Composition and tenure of commissions is not mentioned, because the Committee did not wish to fix membership rigidly in the Constitution, and because the "staggered term" concept is firmly established in Alaska's Board system.

(Sec. 6 General Authorization for Facilities, Improvements and Services)

This general authorization is made to facilitate the development of the State's natural resources. In localities where lands
are susceptible to general agricultural development, the State would have authority to undertake improvements by providing roads or improvements on the land in preparation for settlement. Where improvements or facilities may be essential to the development of fisheries and water resources, the state would have the authority to undertake those developments. Such developments could require the services of technical specialists and advisors who can assist citizens of the State on technical problems involving the improvement of production and resource utilization in much the same way that the farm agent has worked on problems of agricultural production and the Forest Service has rendered aid to private owners of standing timber. The section is not, however, intended as an authorization for the State's entering business in competition with private industry.

(Sec. 7 Uniform Application)

This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to disposition by the State.

(Sec. 8 Special Acquisition and Reservations)

General authority is granted the State to acquire special sites, objects or areas of scenic, historic, cultural or scientific or recreational interest, to reserve similar sites, objects or areas in the state public lands and to administer these special sites, objects, and areas for general public use. These sites, objects or areas might ultimately become state monuments or parks.
(Sec. 9 State Public Domain)

The State public domain is defined to include all lands and interests therein that are acquired by the State except for (1) lands used or intended to be used exclusively for governmental operations, and (2) those sites and areas that have been acquired or reserved for special scenic, historic, cultural, recreational, or scientific interest. The lands, and interests therein, in the State Public Domain may be disposed of in accordance with provisions of federal law, the State Constitution and State Law. Should terms of enabling legislation covering grants of lands to the State be modified before passage, the language of this section would avoid necessity of amending the Constitution.

General authority is granted to the Legislature to provide for the selection and administration of the State Public Domain. The Enabling Bill provides for State selection of granted lands. The Legislature is given general authority to provide for the general administration of the State public domain in order to assure maximum use and public benefit in the several uses of those lands.

(Sec. 10 Leases)

The Legislature is authorized to lease State lands or interests therein. In granting leases, the potential uses of the land are to be considered so that maximum benefit can be derived. Each lease shall state the particular use or uses to be made of the lands as well as the conditions of the use and the term or tenure of the lease in order to facilitate reasonable concurrent use by others if occasion arises. "Reasonableness" of concurrent uses
implies that possibilities of conflict in use should be kept to a minimum. Provisions of liability, forfeiture and other means of enforcement of the lease are to be provided in the instrument.

(Sec. 11 Sales and Grants)

Sales and grants of State lands and interests therein are generally authorized with provision for reservation of mineral rights and for reservations of access. The reservation of mineral rights is prompted by provisions of H.R. 2535, the current Enabling Bill.

Reservation of access is required on all grants or sales of state land so as to assure access to reserved mineral rights and to those resources generally reserved to the people by Section 3 of the proposal. While reserving access, the section explicitly provides that these rights of access shall not impair the owner's beneficial use, shall permit the control of trespass and allow for compensation for damages done to the owner of the land.

(Sec. 12 Public Notices and Safeguards of the Public Interest)

Certain safeguards of the public interest are essential in public land transactions. Such transactions may vary in importance from routine matters to those of substantial value. If general constitutional provisions impose too rigid requirements, the land administration can become hopelessly ensnared in red tape. As a result this section of the Constitution provides for the Legislature to establish public notice, and other safeguards to protect the public interest. As requirements change and many transactions become routine, appropriate modifications can be made in procedures if rigid requirements are not specified in the Constitution itself.
(Sec. 13 Mineral Rights)

With the restrictions on the sale, grant or patent of mineral lands as provided in the proposed Enabling Bill and in Section 9 of the proposal, this section recognizes the established pattern of mining rights whether applied to a system of leaseholds or patents. This established system of mining law recognizes the preferential right of a prospector to a mineral deposit on the basis of discovery and appropriation. Appropriation involves both location and filing. All mining law requires continued beneficial use (assessment work) to maintain a mining claim.

These elements of mining law were described by Costigan in his standard works on American Mining Law when he stated, "They (mining laws) all recognize discovery followed by appropriation, as the foundation to the possessor's title and development by working as the condition of its retention". This conception underlies the statement of mineral rights contained in Section 13.

Exceptions to these general rules applicable to mineral rights have become recognized through the Federal Mineral Leasing Act of 1920, as amended, and other special legislation for Alaska. The fuel minerals of oil, gas, oil-shale, and coal and phosphates, potash and other non-metallic minerals have been developed under a lease system which involves exclusive right to prospect certain areas over a given period of time subject to payment of certain royalties if commercial development is undertaken. This is the reason for making exceptions of these non-metallic minerals and for the newer forms of geophysical and geochemical prospecting. Otherwise the
right of an ordinary prospector to search for mineral deposits is fully recognized and he is recognized as having a preferential right to the appropriate permit, license, lease or patent if possible, for the extraction of these mineral deposits. The prospector's preferential right would presumably be transferable in the same manner that a claim can be conveyed today.

Section 13 is so phrased as to permit patenting of claims on state land should Congress remove the anticipated restrictions and the Legislature so provide. However in adapting the ideas behind the Act of July 23, 1955 to Alaskan conditions, restrictions are placed upon claims and patents so that the surface uses of the land shall be limited to those uses necessary to the extraction and basic processing of mineral deposits. The land will be available for construction of mining works, the disposition of mining wastes and for the timber necessary in mine construction. However, forests on these lands would not be generally available to the mineral claimant. The further requirement of assessment work, operation, or payments is to assure that the lands claimed for mineral purposes will revert to public control when for example, mining has ceased, the mineral deposits have been exhausted or the property abandoned.

(Sec. 14 Water Rights)

This section provides for the prior-appropriation system of water rights generally used in the western states and in Alaska. The prior appropriation system recognizes the principle of "first come; first served", or "first in time; first in right" which is also

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the basic principle of mining law. Here again the concept of appropriation involves filing an application for stated quantities of water for stated uses at specific locations. The preservation of a prior appropriation right to water requires continued beneficial use. Concurrent use is recognized to assure maximum utilization. Water used for the generation of hydro-electric power, for example, is also subject to appropriation for domestic consumption or other uses that do not conflict with those for which prior appropriations have been made. Appropriations are subject to the general reservation of fish and wildlife provided in Section 3 so that reservoirs shall not exclude fish and wildlife remaining in natural states from coming under the provision of their general reservation to the people.

Preference among beneficial uses is a basic provision found in the resource codes and constitutions of several of the Western States. Orders of preference are usually made for water uses such as domestic or industrial consumption, irrigation, fisheries, mining, hydro-electric power production, etc.

The provision for divestment of right allows eminent domain proceedings to be used in permitting a higher use only. As among users of the same order of priority, the power of condemnation cannot be used. Under this type of provision the state may have granted a mining lease for placer mining in a river bed. If the stream had important hydro-electric potentialities a power company might desire to use a site, which would cause the flooding of the mine. If the hydro-electric development was determined to be a higher beneficial
use, the mining properties might be acquired by appropriate legal action with just compensation for the interests and improvements of the conflicting mining use.

(Sec. 15 Access to Navigable Waters)

This section assures free access to the navigable waters of the state for "any person resident of Alaska or citizen of the United States." However, such access may be limited by other beneficial purposes such as the construction of dam or other water-works. Since the control of navigable waters is a Federal question within the province of Congressional authority, any actions taken by the Federal government would supersede this constitutional provision.

(Sec. 16 No Exclusive Right of Fishery)

This section is intended to serve as a substitute for the provision prohibiting the several right of fisheries in the White Act. Instead of using the terminology of that Act the purposes sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the State.

(Sec. 17 Divestment of Rights)

This section, protecting any person from involuntary divestment of property rights and interests, is generally applicable to any established right and might be relied upon to protect persons who claim possessory rights to tidelands in coastal areas where substantial improvements have been made in docks, wharves or other waterfront facilities and homes.
(Sec. 18 Private Ways of Necessity)

This provision was borrowed from the Wyoming Constitution and modified to meet Alaskan conditions. The Wyoming provision states, "Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes, or ditches on or across the lands of others for agricultural, mining, domestic or sanitary purposes, nor in any case without due compensation." In that arid state this provision was developed to assure access to water supply even though it might be necessary for a private person to secure easement across adjoining private lands. Since the adoption of the Wyoming Constitution, a number of western states have included a similar provision in their constitutions. Since the problem of essential access in Alaska is not limited to water supply as in Wyoming, this article makes only a general provision for the use of eminent domain proceedings to provide essential access for extraction and utilization of natural resources.

(Sec. 19 Residual Powers)

The Article on State Lands and Natural Resources is primarily concerned with the State's proprietary interests in the State public lands, waters, wildlife and fisheries. This section explicitly states that the other provisions in the Article on State Lands and Natural Resources shall not limit the exercise of the general police powers of the State to provide for the utilization, development and conservation of natural resources in general, including those in private ownership.
Regulation of stream pollution, the prohibition of fish-traps and fire control in timber areas are illustrations of action taken under general public police powers to provide for public health, safety or the general welfare which may affect resource development, utilization or conservation on both public and private lands.
Hon. William A. Egan
President, Alaska Constitutional Convention

My dear Mr. President:

Your Committee on Finance and Taxation presents for consideration of the Convention its proposed article on Finance and Taxation.

Your Committee considered and incorporated in this report many of the ideas contained in Convention proposals numbered 3, 4, 6 (Sections 8, 10, 11, and 12), 20 and 41.

We include a section-by-section commentary on the proposed article.

Respectfully submitted,

Leslie Nerland, Chairman
Dorothy J. Awes
Frank Barr
James Nolan
Frank Peratrovich
Chris Poulsen
Barrie M. White, Jr.
Constitutional Convention of Alaska

COMMITTEE PROPOSAL NO. 9

Introduced by Committee on Finance and Taxation

ARTICLE ON FINANCE AND TAXATION

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution

**Taxing Power**

1. Section 1. The power of taxation shall never be surrendered; and shall never be suspended or contracted away, except as provided herein.

**Taxation of non-residents**

2. Section 2. The lands and other property belonging to citizens of the United States residing without the State shall never be taxed at a higher rate than the lands and other property belonging to the residents of the State.

3. Section 3. The legislature shall establish the standards for assessment of all property assessed locally or by the State.

**Exemptions from Taxation**

4. Section 4. The real and personal property of the State and of its political subdivisions shall be exempt from taxation under such conditions and with such exceptions as the legislature may direct. All or any portion of property used exclusively for
non-profit religious, charitable, cemetery, or educational purposes as defined by law, is exempt from taxation.

Other exemptions of like or different kind may be granted by general law; and until otherwise provided by law, all exemptions from taxation validly granted are retained.

Section 5. No tax shall be imposed upon any lands or other property owned or acquired by the United States, except as allowed by Federal law. Immunity to taxation extends to all property owned by natives which is held in trust by the United States, or over which the United States has complete jurisdiction. Immunity to taxation does not apply to property of individual natives when held in fee without restrictions on alienation.

Section 6. Private leaseholds, contracts, or other interests in land or property owned or held by the United States shall be taxable to the extent of the interests.

Section 7. No tax shall be levied or appropriation of public money made or public property transferred, nor shall the public credit be used, except for a public purpose.

Section 8. All revenues shall be deposited in the State treasury without allocation for special purposes,
except where state participation in Federal programs will thereby be denied. This provision shall not prohibit the continuance of any allocation for special purposes existing upon the date of ratification of this Constitution by the people of Alaska.

Section 9. No debt shall be contracted by or in behalf of the State, or any political subdivision thereof, unless the debt shall be authorized by law for capital improvements specified therein and be approved by a majority of the qualified voters of the State or of the respective political subdivision voting on the question, provided that the State may by law contract debt for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting national catastrophies, or redeeming outstanding indebtedness of the State at the time this Constitution becomes effective.

Section 10. The State may by law borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues of that year, but all debt so contracted shall be paid within one year.

Section 11. The restrictions in this Constitution on the contraction of debt do not apply to refunding indebtedness of the State or any political subdivision thereof; to indebtedness incurred under revenue bond
sections of the state or political subdivision, or by a public corporation, when the only security for such indebtedness is the revenues of the enterprise or public corporation; or to indebtedness incurred under special improvement statutes when the only security for such indebtedness is the properties benefited or improved or the assessments thereon.

Section 12. At such time as may be prescribed by law, the governor shall submit to the legislature a budget setting forth a complete plan of proposed expenditures and anticipated income of all departments, offices and agencies of the State for the next fiscal year. At the time of submitting the budget to the legislature, the governor shall also submit a general appropriation bill to authorize all proposed expenditures set forth in the budget. At the same time he shall submit to the legislature a bill or bills covering all recommendations in the budget for new or additional revenues.

Section 13. No money shall be withdrawn from the treasury except in accordance with appropriations made by law, nor shall any obligation for the payment of money be incurred except as authorized by law. All appropriated funds unexpended at the end of a period of
time specified by law shall be returned to the state treasury.

Section 14. The legislature shall appoint an auditor who is a certified public accountant and who shall serve during its pleasure. It is the duty of the auditor to conduct such post-audits as may be prescribed by law and to report to the governor and the legislature.

Section 15. The debts and liabilities of the Territory of Alaska shall be assumed and paid by the State of Alaska, and debts owed to the Territory of Alaska shall be collected by the State. Assets of the Territory of Alaska shall become assets of the State.
ALASKA CONSTITUTIONAL CONVENTION

Commentary on the Article on Finance and Taxation

(Sec. 1 Taxing Power)

The power to tax is never to be surrendered, but under terms that may be established by the legislature, it may be suspended or temporarily contracted away. This could include industrial incentives, for example.

(Sec. 2 Taxation of Non-residents)

This section and its wording is required by the latest proposed enabling act, H.R. 2535.

(Sec. 3 Uniform Standards for Assessment)

The legislature is authorized to set up, notwithstanding home rule or any system for the selection of assessors, uniform standards of assessment.

(Sec. 4 Exemptions from Taxation)

All property owned by the state and its subdivisions is exempt from taxation unless the legislature directs otherwise. An exception from tax immunity might be appropriate if a government engaged in what is normally a private business, such as operating a ski resort, a moving picture theater, or a swimming pool.

The second sentence of this section is intended to exempt from taxation that part of the property of religious, charitable, cemetery, or educational organizations which is actually used for these purposes, as the legislature may direct. But their property used for other
purposes would be taxable, for example, an office building owned by a college as part of its endowment.

The legislature is authorized to make further tax exemptions to encourage, among other purposes, new industry, and all valid current exemptions are continued.

(Sec. 5 Taxation of United States Property)

This section is required by the latest proposed enabling act, H.R. 2535. Even if it were not included, the state could not, under a long line of U.S. Supreme Court cases, tax federal property.

(Sec. 6 Taxation of Private Interests in U.S. Property)

Taxation is permitted of private interests in land or property owned or held by the United States.

(Sec. 7 Public Purpose Clause)

Public purpose clauses are common to most constitutions, and are included to prevent appropriation of public funds for private purposes.

(Sec. 8 Earmarking of Revenues Restricted)

The allocation of certain revenues to special purposes is prohibited, with two exceptions: (1) if required in order to participate in a federal program or (2) if the earmarking is in existence at the time of ratification of the constitution. Even those persons or interests who seek the dedication of revenues for their own projects will admit that the earmarking of taxes or fees for other interests is a fiscal evil. But 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. In one Rocky Mountain state the legislature
is free to appropriate only 17 per cent of the tax collections; the rest are dedicated. In Alaska at present, 27% of territorial funds are earmarked, primarily for school construction and roads.

(Sec. 9 Debt Contraction)

This section forbids state or local debt except in special emergencies or for the purpose of making capital improvements, the proposals for which must be approved by the voters.

(Sec. 10 Tax Anticipation Notes)

This section permits the state to borrow in anticipation of taxes in any fiscal year money to meet appropriations.

(Sec. 11 Refunding and Revenue Debt)

In a period when interest rates fall, a government may save large amounts of money if it can pay off its old high-rate obligations with new funds borrowed at lower rates. This process, here permitted, is called refunding, and the restrictions on the contraction of original debt are unnecessary; they are here made inapplicable. When the state or its subdivisions can contract debts for special purposes (for example, to build a toll bridge) without pledging more than the improvement or the revenues from the enterprise, such debt is permitted without referendum. This provision is sometimes necessary if a state is to take advantage of federal loans at particularly favorable rates.

(Sec. 12 Budget)

This section requires the governor to submit a complete budget and an appropriation bill to authorize the expenditures he proposes. This process is now standard.
(Sec. 13 Expenditures)
The requirement of appropriation before expenditure is also standard. The second sentence requires the recapture of unexpended balances.

(Sec. 14 Auditor)
The auditor is commonly regarded as a legislative officer, and his appointment is here vested in the legislature.

(Sec. 15 Debts and Assets)
This section provides for the state to take over the debts to and of the Territory of Alaska, as well as its assets.