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Research Brief

TO: Senator John Coghill
FROM: Patricia Young, Manager
DATE: April 10, 2015
RE: Constitutional Convention Delegates—Preference for a Strong Executive Influence over State Spending
LRS Report 15.382

You requested information pertaining to the intent of the constitutional convention delegates regarding the power of the executive branch over state spending.

The consensus of the delegates to the constitutional convention appears to have been to emerge with a strong executive. This preference, according to delegate Vic Fischer, resulted largely from the “highly diffused” executive authority and unresponsive government under the territory. Following those comments, he notes as follows:

In this situation, government was neither responsible nor responsive to the people. As a result, convention delegates were ready to make basic structural changes so the people could hold the governor wholly responsible for the conduct of state administration. In balance with a strong legislature and independent judiciary, there was little concern about creating too strong an executive.¹

While the constitution’s Article III (The Executive) is the primary source of the governor’s formal powers, additional powers granted include responsibility for preparation of the executive budget under Section 12 of Article IX (Finance and Taxation), and veto power under Section 15 of Article II (The Legislature).

Attached is a document containing the proceedings from January 11, 1956, the 50th day of the Constitutional Convention. In fairly short order the delegates took up Committee Proposal No. 5, concerning legislative powers and duties. The delegates began their discussion of this topic with the notion of a strong executive and focused on the governor’s veto power over appropriations and whether the normal override vote of two-thirds or the more difficult supermajority vote of three-fourths should be adopted.² That discussion begins on page two.³ Soon after, Steve McCutcheon, chair of the Committee on Legislative Branch, made the following statement:

We feel that in supporting a strong executive arm it should require a greater number than two-thirds of the total number of legislators to override the governor’s veto on a matter of budget because you cannot exercise a strong executive arm unless you have a strong control on the purse strings.

Numerous other references reflect an overarching preference and intention for creating a strong executive.

We hope this is helpful. If you have questions or need additional information, please let us know.

¹ Victor Fischer, *Alaska’s Constitutional Convention* (University of Alaska Press, 1975), pp. 105-106.

² According to Gordon Harrison in *Alaska’s Constitution: A Citizen’s Guide*, 5th edition (Legislative Affairs Agency, 2012), p. 68, the requirement for a supermajority vote to override a veto is unusual among states. Likewise uncommon for the purposes of overrides are the requirement that the legislature vote as one body and the distinction between a bill dealing with substantive law and an appropriation bill.

³ Page references for the attached document do not coincide with the actual transcript pages, which began on January 11, 1956, with page 1737 and ended with page 1867.

ALASKA CONSTITUTIONAL CONVENTION

January 11, 1956

FIFTIETH DAY

PRESIDENT EGAN: The Convention will come to order. We have with us this morning the Reverend Gambell of the Pentecostal Holiness Church in Fairbanks. Reverend Gambell.

REVEREND GAMBELL: O God, we pray that we may hold our liberty in high esteem remembering how Thou has blest this nation. We thank Thee for this wonderful country in which we are privileged to live. Inspire our people to hold sacred this glorious heritage of freedom and rights. Keep us free from jealousy and free from strife within and from wars without. Bless, we pray Thee, each member of this Constitutional Convention. Give wisdom and strength for this great task which is nearing completion, recognizing Thy great Providence and guidance may we say "Hitherto the Lord hath led us." Give us peace through the Prince of Peace, for His sake. Amen.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll.)

CHIEF CLERK: Six absent.

PRESIDENT EGAN: A quorum is present. The Convention will proceed with the regular order of business. Mrs. Sweeney.

SWEENEY: Mr. President, I was wondering if it would not be in order to suggest each morning that as you introduce the minister, that the delegates might retain their seats so that we might have a clear introduction, not only for ourselves but for the record and not to rise until after the introduction.

PRESIDENT EGAN: Thank you very much. Does the special Committee to read the journal have a report to make at this time? Mr. Doogan.

DOOGAN: Journal for the 45th Convention day. Corrections on page 4, after the words "After Recess", insert the following paragraph: "Mr. Hellenthal asked unanimous consent to withdraw his amendment. There being no objection it was so ordered." With this inclusion in the journal I ask unanimous consent that the journal be approved.

PRESIDENT EGAN: You have heard the report of the special Committee to read the journal. Unanimous consent has been asked by Mr. Doogan to approve the journal. Is there objection? Hearing no objection, it is so ordered. At this time the Chair will refer Committee Proposal No. 7 to the Committee on Engrossment and Enrollment. It had been held over inasmuch as one delegate had served notice of reconsideration of his vote. The

reconsideration was not brought up by the particular delegate and at this time Committee Proposal No. 7 is referred to the Committee on Engrossment and Enrollment. Are there any petitions, memorials or communications from outside the Convention? Are there reports of standing committees? Reports of select committees? Are there any proposals to be introduced at this time? If not, we are down to the unfinished business on our calendar which is Committee Proposal No. 5. Mrs. Hermann.

HERMANN: Mr. President, I was asleep I guess but I have a report on the Nome hearing that I wish to file.

PRESIDENT EGAN: If there is no objection, the report of the hearing will be filed. We have before us Committee Proposal No. 5, Section 15. Are there amendments to Section 15? Mr. Sundborg.

SUNDBORG: Mr. President, if there are no amendments on the Clerk's desk, I have an amendment to Section 15.

PRESIDENT EGAN: Mr. Sundborg, you may offer your amendment. The Chief Clerk may read the proposed amendment as offered by Mr. Sundborg.

CHIEF CLERK: "Section 15, page 5, strike all of line 21 and the first two words on line 22 and insert in lieu thereof the words 'although vetoed'. Strike all of line 24 and 25 on page 5; lines 1, 2 and 3 on page 6 and the word 'entitled' on line 4 of page 6."

SUNDBORG: Mr. President, I move the adoption of the amendment

PRESIDENT EGAN: Mr. Sundborg moves the adoption of the proposed amendment. Is there a second to the motion?

KILCHER: I second the motion.

PRESIDENT EGAN: The motion is open for discussion. Mr. Sundborg.

SUNDBORG: Mr. President, as the proposal has been reported to us by the Committee, it sets up two classes of legislation, one of which requires a two-thirds vote of the legislature to override a veto by the governor and another class which requires a three-fourths vote of the legislature to override the veto. My observation of legislatures, not only of the Alaska legislature, and I think of every session since the 1939 session, and of several other legislatures in action, that it is very rare that any bill, that the veto is overridden by the legislature anyway, and to make it necessary that a three-fourths vote of the legislature be obtained on certain classes of legislation would I think insure that those classes of legislation, once vetoed, would never be overridden by the body. So I believe we ought to stick to the uniform rule that it takes a two-thirds

rule of the legislature rather than a three-fourths vote in some cases. Now, the kinds of bills which would not be subject to overriding of veto by two-thirds vote would be all bills carrying appropriations, and I would say probably that maybe one-third of all the bills that have gone through the Alaska legislature do carry appropriations. It does not mean it would have to be a bill with nothing but appropriations, but it may be a bill setting up a new department, and at the very end of it, it says that an appropriation for so many thousands of dollars for the purposes of carrying out the purpose of this act. That whole bill would fall in the second class that the Committee sets up here and would require a three-fourths vote of the legislature to override the veto, any bill dealing with taxation or any bill affecting payments of money under existing statutes or an item or items in the general appropriations bill. I feel that we would avoid a great deal of confusion, and we would have a better and more workable constitution if we provided as the Alaska Organic Act has always provided. that the veto may be overridden by a two-thirds rather than three-fourths in some cases.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, I have no objection to this motion to strike except for one thing. I think it is generally agreed that a provision for an item veto in appropriations bill is desirable and the further provision that reductions can be made as the need may arise because of lack of revenues. I don't know if Mr. Sundborg intends to follow this

amendment with another one making some provision. Some of us have been working on one. I don't think it is ready to present yet, but I intended to do it the second time around, but with that understanding I will support Mr. Sundborg's amendment. But I would not support it if the intention was to leave this big gap in the veto section. We discussed this in Finance and have left out any reference to an item vetoed in the finance section with the understanding that it would be inserted somewhere else.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: The matter of whether a constitution is better or more workable in one fashion or other is strictly a matter of opinion. I do not agree with Mr. Sundborg's remarks in many respects. It appears to be the intention of this group, at least so far, if we can understand the discussions. that is that there is an intention for a strong executive arm. If I understand the fiscal reorganization of our government here as it took place in the last several years, there is quite a strong device in a budgeting fashion wherein the governor's arm will develop the budget for the state, and in presenting this budgeted item obviously the governor's office will have gone quite thoroughly into all the aspects of the budget for the state and consequently, having put in as much design as will be necessary

to develop not only the expenditures but the revenues necessary to meet them, we in the Committee felt that there was a necessity to require a greater number if the proposition of the house meeting in joint session were to stand, a greater number required to override the veto on money matters. Now, the fact that there are many, many bills as Mr. Sundborg says, that will be carrying appropriations, it is my opinion that as we get into our new state legislature that the chances of many bills carrying individual appropriations, as there has been in the past in the Alaska legislature, will not stand. That practice will probably be abolished and the bills carrying appropriations for new departments will come at once, and they will come either through the budgeting office from the governor or they will derive from the appropriations or finance committee of the house or senate, and will be considered in the light of the total revenues and the total of expenditures of the state, rather than in the hodgepodge fashion in the past. If it is the desire of Mr. Sundborg to make this a uniform veto overriding procedure, then of course he will have to abandon the idea that the veto will be considered by both houses of the session together. We feel that in supporting a strong executive arm it should require a greater number than two-thirds of the total number of legislators to override the governor's veto on a matter of budget because you cannot exercise a strong executive arm unless you have a strong control on the purse strings.

PRESIDENT EGAN: Mr. Rivers.

V. RIVERS: Mr. President, I also want to mention that I think that possibly under this act the appropriations bills will be handled separately under an appropriation bill. In fact, in Section 16 it says bills except for appropriations shall be confined to appropriations. Now, the effect of that will be that a lot of independent bills carrying appropriations will be merely passed as enabling acts and then later on the appropriations will all come in under appropriation bills, at which time it will be in a pattern similar to that handled in Congress. In the past there has been a great many bills that came in during the session which carried appropriations, and for that reason it was very hard to determine how much money had been authorized and committed and what money should then go into general appropriation bills against those that carried special appropriations. I favor this procedure and I favor also the three-fourths majority to override a veto in the matter of appropriations because we have now diluted the veto power on one hand and are trying to stiffen it in regard to moneys on the other. I want to point out here there is a great deal of difference between the power to tax and appropriate and spend money, and the power to legislate as our founding fathers found when they rebelled against the taxation procedures of the mother country which was at that time England, and they would permit and allow the legislation but they did fight and oppose the taxation, and so here again we have the distinction between the

power to tax and spend, as against the power to legislate, and I think the Committee has rightly adopted a provision in regard to the appropriation and spending of money which would allow somewhat more power to lie in the strong executive.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Sundborg be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will "signify by saying "aye", all opposed by saying "no". The noes have it and the proposed amendment has failed of adoption. Mr. Barr.

BARR: I have an amendment on the Clerk's desk I would like to have read.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment as offered by Mr. Barr.

CHIEF CLERK: "Section 15, line 17, after the word 'Legislature' and the period, strike the rest of line 17 and all of lines 18, 19 and 20 except the last word 'Bills' and substitute the following: 'within five days after vetoing a bill, the governor shall return it to its house of origin for further action, and if passed by a two-thirds majority, it shall be transmitted to the other house for its consideration, and if like action is taken it shall become law.' Line 23, strike the words 'the state' and substitute the words 'each house'. Page 6, line 3, strike the words 'the state' and substitute the words 'each house'."

MCNEES: Point of order, Mr. President, I believe this action was taken last night. The verbiage only has been changed.

MCCUTCHEON: Mr. President, I submit that this is a close point of order. The only difference in the matter that has been submitted is the fact he has changed it from a period of being returned to five days. I submit it as a close point of order, but I challenge it on the basis of the fact that it is the material that has been considered.

PRESIDENT EGAN: It has close resemblance to another amendment, but as Mr. McCutcheon says there might be a point there that should be referred to the Rules Committee because of that one thing. The Chair just is not completely certain. Mr. Barr.

BARR: I do not remember the exact wording of Mr. Johnson's amendment but I believe that this one also specifies that it shall be returned to the house of origin. I believe that there are two points different in that.

PRESIDENT EGAN: The Chair will refer this question to the

Rules Committee. The Convention will be at ease. The Convention will come to order. Mr. Barr.

BARR: I believe the Rules Committee has a report to make first.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, in the absence of the Chairman of the Rules Committee, I have presided, and I report on behalf of the Rules Committee that we believe that Mr. Barr's motion in effect is exactly the same motion that was made last night and defeated, and for that reason, although we recognize that it is a mighty close question, we consider that Mr. Barr's motion is out of order and that the point of order is well taken. We feel that Mr. Barr has another remedy which he can use if he so desires.