

**House Judiciary Committee
HJR 18 – Proposed Constitutional Amendment
to Elect the Attorney General**

Response to Questions

During the House Judiciary Committee meeting on February 19, committee members asked the following questions. Response from the Bill's sponsor are attached:

Representative Millett — Requested a summary of the Constitutional Convention minutes as they relate to the selection of the Attorney General to provide a historic perspective as to the mindset of the framers.

Representative LeDoux asked — Why did you use the “Qualifications to be a Superior Court Judge” for the qualifications of the Attorney General?

Representative Keller — Discussed a question from the State Affairs Committee relating to the removal of the Attorney General, if HJR 18 is passed.

Representative Millett — Asked for a history of what other states have done in changing how the Attorney General is selected? Is anyone else doing this? Are we alone in this effort?

Committee members — Asked about the past legislation in Alaska attempting to accomplish a similar goal.

Responses to these questions are attached in the following order:

- Alaska Constitutional Convention – Attorney General Discussion
- Past Constitutional Amendment Ballot Measures
- Qualifications for the Attorney General
- Removal From Office
- How States have selected/ and select the Attorney General
- Binder contains previous legislation dating back to 1982

Alaska Constitution and the Attorney General

Historic Discussion

Constitutional Convention

The Constitution adopted during the Alaska Constitutional Convention (Feb. 6, 1956 in Fairbanks), and the current constitution, have no specific reference to the office of the Attorney General. Since the constitution has been ratified by the voters there have been no amendments made to either add or delete references to the Attorney General in the Constitution.

There is a general reference to the Executive Branch Department Heads, of which the Attorney General is the head of the Department of Law (see notes on Constitutional Convention Minutes).

Constitutional Convention Minutes Summary

Minutes from the Constitutional Convention are available at —

<https://www.alaska.edu/creatingalaska/constitutional-convention/>

(Not printed due to the length of the minutes)

Highlights relating to the office of the Attorney General

Day 42 — Dec. 19, 1955

Members discussed having a strong executive with the power to appoint all his department heads (including the Attorney General). And the power of the executive to remove at the governor's will.

Day 50 — Jan. 11, 1956

Committee reports on two Executive Branch items

PRESIDENT EGAN: The Convention will revert to the business of introduction of committee reports at this time. The Chief Clerk will please read the committee report.

CHIEF CLERK: "The Committee on the Executive Branch met on January 10 to consider Delegate Proposal No. 44, which would provide for the election of the Commissioner of Labor, and Delegate Proposal No. 45 which would provide for the election of the Attorney General. The Committee members in attendance at the meeting voted as follows on these proposals:

Delegate Proposal 44:

Do Pass: Delegate Barr

Do Not Pass: Delegates Boswell, Harris, Nordale, and V. Rivers

Delegate Proposal 45:

Do Pass: Delegate Barr

Do Not Pass: Delegates Boswell, Harris, and Nordale.

Day 52 — Jan. 15, 1956

During a discussion of the qualifications for the office of The Governor and the election of the Secretary of State (now the Lt. Governor) and succession for the office of Governor.

Delegate John Hellenthal expresses his position on having a strong executive and having an appointed Attorney General.

"I hesitate to talk on this because I think this is a wonderful enactment, and this is the only amendment that I have to offer to the entire matter, but I think it is basic. Now, therefore, I should like the indulgence of the delegates. Now, at the outset I favor a strong executive, never an absolute executive, and I don't think that the amendment would call for an absolute executive. I favor that the attorney general be appointed, that all other department heads be appointed, and I have no other amendment to offer. I do not intend to follow this up, to use this as a play to get the attorney general elected, no. I believe in a strong executive."

Day 52 – Jan 13, 1956

Presentation from Executive Committee on Committee Proposal 14

Includes lengthy discussion of department heads, qualifications and responsibilities.

Day 55 — Jan. 15, 1966

Proposed amendment brought forward by the minority group in the Executive Committee

Delegate Victor Rivers proposed the following amendment — calling on the Attorney General to be selected from a list of potential candidates brought forward by the Judicial Council

"After Section 14, page 7 of Committee Proposal No. IO/a, insert a new section as follows:

Section 15.

The Attorney General shall be appointed by the Governor from two or more qualified persons nominated in the same manner as judges by the judicial council. He shall have been admitted to practice law in the State and shall have the other qualifications prescribed herein for heads of principal departments and shall be subject to approval by the Legislature in a similar manner.

The Attorney General may be removed by the Governor with the consent and approval of both houses of the Legislature meeting jointly.' Renumber successive sections to conform to the above insertion."

Lengthy Discussion followed before a roll call vote

Yeas: 18 - Barr, Collins, Cross, H. Fischer, Harris, Hinckel, Kilcher, Metcalf, Nerland, Nolan, Peratrovich, Reader, V. Rivers, Robertson, Rosswog, Smith, Taylor, VanderLeest.

Nays: 36 - Armstrong, Awes, Boswell, Buckalew, Coghil, Cooper, Davis, Doogan, Emberg, V. Fischer, Gray, Hellenthal, Hermann, Hilscher, Hurley, Johnson, King, Knight, Laws, Lee, Londborg, McCutcheon, McLaughlin, McNees, Marston, Nordale, Poulsen, Riley, R. Rivers, Stewart, Sundborg, Sweeney, Walsh, White, Wien, Mr. President.

Absent: 1 - McNealy.)

Day 58 — Jan. 19, 1956

Delegate James Nolan of Wrangell reported that after a local meeting with the Chamber of Commerce the members were unanimously in favor of electing an attorney general.

Mr. Nolan's comments were made amidst reports from the communities of the convention delegates.

Constitutional Amendment Summary 1966-2004 Proposed Amendment Titles & Vote Counts

Election Date	Subject of Amendment	Provisions Affected	Resolution Number	Votes For	Votes Against
8/23/66	Residency Requirement to Vote for President	Article V, Section 1	SJR 1 (1966)	36,667	12,383
8/27/68	Commission on Judicial Qualifications	Article IV, Section 10	HJR 74 (1968)	32,481	12,823
8/27/68	Compensation of Judicial Qualification Commission	Article IV, Section 13	HJR 74 (1968)	27,156	17,467
8/25/70	Establish Voting Age at 18 Years	Article V, Section 1	HJR 7 (1969)	36,590	31,216
8/25/70	Remove English Requirement for Voting	Article V, Section 1	HJR 51 (1970)	34,079	32,578
8/25/70	Secretary of State Designated Lieutenant Governor	Article III, Sections 7-11, 13-15; Article XI, Sections 2-6; Article XIII, Sections 1,3; Article XV, Section 9	SJR 2 (1970)	46,102	18,781
8/25/70	Chief Justice Elected by Supreme Court	Article IV, Section 2	HJR 11 (1970)	44,055	19,583
8/25/70	Term of Office for Judicial System Administrator	Article IV, Section 16	HJR 11 (1970)	43,462	18,651
8/22/72	Residency Requirement for Voting	Article V, Section 1	HJR 126 (1972)	31,130	20,745
8/22/72	Prohibition of Sexual Discrimination	Article I, Section 3	HJR 102 (1972)	43,281	10,278
8/22/72	Right of Privacy	Article I, Section 22	SJR 68 (1972)	45,539	7,303
8/22/72	Eliminate City Representation on Borough Assemblies	Article X, Section 4	SJR 52 (1972)	30,132	19,354
8/22/72	Authorize Limited Entry Fisheries	Article VIII, Section 15	SJR 10 (1971)	39,837	10,761

Constitutional Amendment Summary 1966-2004 Proposed Amendment Titles & Vote Counts

8/22/74	Voting on Constitutional Amendments at General Elections	Article XIII, Section 1	HJR 20 (1973)	56,017	20,403
11/02/76	Action on Veto of Bills	Article II, Sections 9 and 16	HJR 11 (1975)	71,829	39,980
11/02/76	Authorize Permanent Fund	Article IX, Sections 7 and 15	HJR 39 (1976)	75,588	38,518
11/02/76	Administration and Review of State Land Disposals	Article VIII, Section 10	SJR 45 (1976)	46,652	64,744
11/02/76	Direct Financial Aid to Students	Article VII, Section 1	HJR 73 (1976)	54,636	64,211
11/07/78	Powers of Legislative Interim Committees	Article II, Section 1.1	SJR 16 (1978)	48,078	68,403
11/04/80	Legislative Annulment of Regulations	Article II, New Section	HJR 82 (1980)	58,808	82,010
11/04/80	Disqualification of Legislators	Article II, New Section	SJR 2 (1980)	47,054	99,705
11/04/80	Interim and Special Legislative Committees	Article II, Section 1.1	HJR 80 (1980)	41,868	102,270
11/04/80	Appointment and Confirmation of Members	Article III, Section 26	HJR 20 (1980)	56,316	90,506
11/02/82	Veterans' Housing Bond Authority	Article IX, Section 8	HJR 71 (1982)	111,460	69,497
11/02/82	Changes in Commission on Judicial Qualifications	Article IV, Section 10	HJR 32 (1981)	123,172	53,424
11/02/82	Limiting Appropriation Increases	Article IX, Section 16; Article XV, Sections 26-28	SJR 4 (1981)	110,669	71,531
11/06/84	Legislative Annulment of Administration Regulations	Article II, New Section	HJR 5 (1983)	91,171	98,855
11/06/84	Limit Length of Legislative Session	Article II, Section 8	HJR 2 (1984)	150,999	46,099

Constitutional Amendment Summary 1966-2004 Proposed Amendment Titles & Vote Counts

11/04/86	Legislative Annulment of Administrative Regulations	Article II, New Section	SJR 40 (1986)	65,176	94,299
11/08/88	Resident Hiring Preference	Article I, Section 23	HJR 18 (1988)	162,997	31,650
11/06/90	Budget Reserve Fund	Article IX, Section 17	SJR 5 (1990)	124,280	63,307
11/08/94	Individual Right to Keep and Bear Arms	Article I, Section 19	SJR 39 (1994)	153,300	57,636
11/08/94	Rights of Crime Victims	Article I, Sections 12, 24	HJR 43 (1994)	178,858	27,641
11/05/96	Voter Approval of Changes to Statehood Act	Article XII, Section 14	SJR 3 (1996)	157,936	71,082
11/03/98	Definition of Marriage	Article I, Section 25	SJR 42 (1998)	152,965	71,631
11/03/98	Redistricting	Article VI, Sections 1-11; Article XI, Section 3; Article XIV, Sections 1-3; Article XV, Section 29	HJR 44 (1998)	110,768	101,686
11/07/00	Prohibition on Wildlife Initiative	Article XI, Section 7	HJR 56 (2000)	96,253	179,552
11/07/00	Amendment Provision; Prohibit Court Intervention	Article XIII, Section 1; New Section	SJR 27 (2000)	114,310	151,467
11/07/00	Confirmation of Board Appointees	Article III, Section 26; Article IX, Section 15	SJR 34 (2000)	72,419	194,975
11/02/04	Requirements for Initiative & Referendum	Article XI, Section 3	HJR 5 (2004)	149,236	139,642

Proposed amendment highlighted in red did not gain voter approval.

HJR 18 – Qualifications to be Attorney General

Representative LeDoux asked why the qualifications for a superior court judge were used for the qualifications of the Attorney General in HJR 18?

HJR 18, Page 1, Line 14 and following states

“Section 28. Attorney General. (a) The attorney general shall be elected in the manner provided by law by the qualified voters of the State at the same time and for the same term as the governor. A person is not eligible to serve as attorney general unless the person meets the qualifications for a superior court judge.”

Qualifications to be a superior court judge

In the Constitution

Article 4 § 4. Qualifications of Justices and Judges

Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law.

In Alaska Statutes

AS 22.10.090. Qualifications of judges.

A judge of the superior court shall be a citizen of the United States and of the state, a resident of the state for five years immediately preceding appointment, have been engaged for not less than five years immediately preceding appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. The active practice of law shall be as defined for justices of the supreme court in AS 22.05.070 .

Active Practice of Law

AS 22.05.070 Active Practice of Law.

The active practice of law includes

- (1) sitting as a judge in a state or territorial court;
- (2) being actually engaged in advising and representing clients in matters of law;
- (3) rendering legal services to an agency, branch, or department of a civil government within the United States or a state or territory of the United States, in an elective, appointive, or employed capacity;
- (4) serving as a professor, associate professor, or assistant professor in a law school accredited by the American Bar Association

Removal of an Attorney General (If HJR 18 is placed on the ballot and approved by voters)

Alaska Constitution Provides for Recall of Elected Officials

Article 11 § 8. Recall

All elected public officials in the State, except judicial officers, are subject to recall by the voters of the State or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by the legislature.

Alaska Statutes Addresses Grounds for Recall

AS 15.45.510 Grounds for Recall

The grounds for recall are (1) lack of fitness, (2) incompetence, (3) neglect of duties, or (4) corruption.

If HJR 18 is passed and approved by the voters - Alaska Statutes addressing recall would need to be amended to include the office of Attorney General (AS 15:45.470 - 720)

How states have selected/and select the Attorney General

State	Selection History
Alabama	Has elected the attorney general since statehood
Alaska	Has appointed the attorney general since statehood
Arizona	Has elected the attorney general since statehood – term limit extended in 1970 by constitutional amendment
Arkansas	Has elected the attorney general since statehood
California	Has elected the attorney general since statehood
Colorado	Has elected the attorney general since statehood
Connecticut	Has elected the attorney general since the office was created in 1897
Delaware	Appointed by the Governor between 1776 and 1897 when the state constitution was ratified making the position an elected office.
Florida	Has elected the attorney general since statehood
Georgia	Has been a state executive since 1797. The Georgia Constitution ratified in 1868 made it an elected position
Hawaii	Appointed by the Governor since statehood
Idaho	Has elected the Attorney general since statehood
Illinois	Originally appointed by the Governor, the state constitution was amended in 1978 establishing the election of the attorney general
Indiana	Has elected the attorney general elected since statehood
Iowa	Has elected the attorney general since statehood
Kansas	Has elected the attorney general since statehood
Kentucky	Has elected the attorney general since statehood
Louisiana	Has elected the attorney general since statehood
Maine	Has been selected by vote of State Senate since statehood
Maryland	Has elected the attorney general since statehood
Massachusetts	Has elected the attorney general since the first state legislature convened in 1777, and established the office
Michigan	Originally appointed by the Governor, became an elected position after a constitutional amendment in 1950
Minnesota	Has elected the attorney general since statehood
Mississippi	Has elected the attorney general since 1820

Missouri	First Constitution in 1820 provided for the attorney general to be appointed, but since the 1865 Constitution, the attorney general has been elected
Montana	Has elected the attorney general since statehood
Nebraska	Has elected the attorney general since statehood
Nevada	Has elected the attorney general since statehood
New Hampshire	Has appointed the attorney general since statehood
New Jersey	Has appointed the attorney general since statehood
New Mexico	Has elected the attorney general since statehood
New York	Has elected the attorney general since 1892
North Carolina	Has elected the attorney general since statehood
North Dakota	Has elected the attorney general since statehood
Ohio	Has elected the attorney general since statehood
Oklahoma	Has elected the attorney general since statehood
Oregon	Office of attorney general established by state legislature in 1891 and has elected an attorney general since
Pennsylvania	Originally appointed by the Governor, voters approved a constitutional amendment in 1978 making the position elected
Rhode Island	Has elected the attorney general since statehood
South Carolina	Has elected the attorney general since statehood
South Dakota	Has elected the attorney general since statehood
Tennessee	Appointed by Tennessee Supreme Court since statehood — State Sen. Mae Beavers has carried legislation over the last four years to change the selection of the attorney general to an election by the people
Texas	Has elected the attorney general since statehood
Utah	Has elected the attorney general since statehood — Utah State Sen. Todd Weller requested a study in 2013 on amending the constitution to make the position appointed.
Vermont	Has elected the attorney general since statehood
Virginia	Has elected the attorney general since statehood
Washington	Has elected the attorney general since statehood
West Virginia	Has elected the attorney general since statehood
Wisconsin	Established by state legislature, elects attorney general since law established in 1850
Wyoming	Has appointed the attorney general since statehood