

AMENDMENT

OFFERED BEFORE THE LEGISLATIVE COUNCIL

BY REPRESENTATIVE CHENAULT

TO: LEGISLATIVE DRAFTING MANUAL

2015 Manual of Legislative Drafting, p. 9

Delete the following paragraph:

[UNDER AN AMENDMENT APPROVED BY LEGISLATIVE COUNCIL ON FEBRUARY 19, 1993, IF "TWO OR MORE MEMBERS OF THE SAME HOUSE PREFILE IDENTICAL BILLS OR JOINT RESOLUTIONS AND WISH TO JOINTLY SPONSOR ONE OF THEM, THEY MAY DO SO." ALL MEMBERS SO JOINING MUST AGREE. THIS AMENDMENT PROVIDES THAT THEY WOULD BECOME JOINT PRIME SPONSORS OF THE FIRST MEASURE PREFILED. THE OTHER MEASURE OR MEASURES WOULD THEN BE WITHDRAWN. IN ADDITION, TWO OR MORE MEMBERS OF THE SAME HOUSE MAY JOINTLY REQUEST A MEASURE FOR PREFILE.]

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15-047.dla

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM

February 5, 2015

SUBJECT: Removing Joint Sponsorship of Measures from the 2015 Manual of Legislative Drafting (Work Order No. 29-LS0512)

TO: Representative Mike Chenault
Speaker of House
Attn: Tom Wright

FROM: Doug Gardner
Director

You requested an amendment to the 2015 Manual of Legislative Drafting, that removes the 1993 amendment to the manual that provided for joint prime sponsorship of prefiled bills. Please find a draft amendment attached.

Note, that while the paragraph that is being removed from page 9, by Amendment No. 1 accomplishes the stated goal of removing the authority for joint prime sponsorship of prefiled bills from the Drafting Manual, there are other locations in the drafting manual that also need to eventually be deleted. The additional deletions from the drafting manual do not, in my view need to be included in the proposed amendment, since these additional references provide drafting guidance for joint prime sponsorship in the context of bills, but do not provide authority for joint prime sponsorship of prefiled bills.

With the removal of the authority for joint prime sponsorship on page 9, these examples can be removed by the Legal Services Division during the publication of the 2017 Manual of Legislative Drafting. Since there are numerous prefiled bills that legislators filed as joint prime sponsors before the beginning of the First Session of the 29th Alaska State Legislature, that are pending before both bodies during the remainder of the 29th Alaska State Legislature, it would be helpful to leave these examples in the manual until 2017. I would propose the following motion to accompany the enclosed amendment to accomplish all of the above:

I move and ask unanimous consent, that the Legislative Council Committee amend the 2015 Manual of Legislative Drafting, as proposed in Amendment No. 1, to remove the authority for legislators to prefile bills as joint prime sponsors from the date of this motion forward, and to direct the Legal Services Division to make conforming amendments to other references to joint prime sponsorship of prefiled bills contained in the 2015 Manual of Legislative Drafting prior to publication of the 2017 Manual of Legislative Drafting.

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Enclosure

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MEMORANDUM

February 2, 2015

SUBJECT: Joint Prime Sponsorship

TO: Representative Mike Chenault
Speaker of the House
Attn: Tom Wright

FROM: Doug Gardner
Director

I understand that you are considering whether to continue the practice provided in the *Manual of Legislative Drafting* since 1993, of allowing members of the same house that file identical measures to be joint prime sponsors. You asked for a discussion of the issues raised by joint prime sponsorship to aid in your review of this issue.

Discussion

Joint prime sponsorship is addressed as follows in the 2015 *Manual of Legislative Drafting (Drafting Manual)*, at page 9:

Under an amendment approved by Legislative Council on February 19, 1993, if "two or more members of the same house prefile identical bills or joint resolutions and wish to jointly sponsor one of them, they may do so." All members so joining must agree. This amendment provides that they would become joint prime sponsors of the first measure prefled. The other measure or measures would then be withdrawn. In addition, two or more members of the same house may jointly request a measure for prefile.

The rules regarding joint prime sponsorship set out above in the *Drafting Manual* must be followed as provided by Uniform Rule 10 by all officers and employees of the legislature. The *Drafting Manual* is adopted by Legislative Council at the beginning of each two-year legislature. I understand that occasionally, Council has adopted amendments to the *Drafting Manual* outside of the regular adoption process that generally occurs during the first meeting of Legislative Council during the first session of a legislature.

An adoption of an amendment to the *Drafting Manual* occurred in 1993 when the Council approved an amendment that provided: if "two or more members of the same house prefile identical bills or joint resolutions and wish to jointly sponsor one of them,

they may do so." *Manual of Legislative Drafting*, p. 9 (2013 ed.).¹ Prior to adoption of this amendment there was no opportunity at all for joint prime sponsorship of measures.

Although the issue was discussed, the Council specifically declined to permit joint prime sponsorship of measures that had not been prefiled. Former Legal Services Director Tam Cook was present during the discussion on February 19, 1993, and it was her impression that the Council was concerned that legislators might come under pressure from other legislators to "share" their measures, so the Council authorized joint prime sponsorship only for a small class of measures and only to address a particular issue.

It was recognized by the Council that the prefiling of bills creates a unique problem when legislators, often unbeknownst to each other, introduce identical proposals, only one of which can actually move through the legislative process. While the same problem can arise at any time during the session when two or more legislators happen to introduce identical legislation on the same day, the Council felt that the problem is most acute during the prefiling of bills due to the high volume.² The issues raised by the 1993 joint prime sponsor amendment are as follows:

- Uniform Rule 27(b);³ Withdrawal of Measures

The issue that arises due to the joint prime sponsorship provided by Legislative Council by way of amendment to the *Drafting Manual*, is that the amendment

¹ The Legislative Council meeting minutes of February 1, 1993, where the joint prime sponsorship amendment was adopted by Council, and the February 19, 1993 Legislative Council meeting minutes where the *Drafting Manual* was approved by the Council as amended to include the procedure for joint prime sponsorship, are enclosed. I was unable to locate a copy of the motion presented at the February 1, 1993 meeting that added joint prime sponsorship to the *Drafting Manual*. I note, as Gerald Luckhaupt noted at the Legislative Council Meeting on January 27, 2015, that Legislative Council may amend the 2015 *Drafting Manual* at any time. If there is a desire to amend the joint prime sponsorship language, I would suggest that the amendment be prepared just like an amendment to a bill, using the same drafting techniques and rules as otherwise provided in the *Drafting Manual*. An amendment could of course, be an oral motion as well.

² Notwithstanding the *Drafting Manual*, and the 1993 amendments discussed above, I understand that for the past 10 years leadership in the House of Representatives, through the Chief Clerk's Office, has allowed a short window of time prior to the first day of session for legislators to add their names as co-prime sponsors to previously prefiled bills.

³ Uniform Rule 27(b) provides:

(b) After a bill or resolution has been introduced or a motion for the adoption of an amendment has been made, and is read by the clerk or secretary or stated by the presiding officer, it is deemed to be in possession of the house. ***It may be withdrawn at any time by the member introducing or reporting it*** if consent is given by a majority vote of the full membership of the house. [Italics and bold added for emphasis.]

affects other rules like Uniform Rule 27(b). If joint prime sponsors are considered by the body as co-equals for purposes of introducing a bill, it is unclear what the ruling from the chair would be if one joint prime sponsor moved to withdraw a bill. Would the presiding officer rule that one joint prime sponsor can move to withdraw a bill, or would the presiding officer rule that all joint prime sponsors are required to join in a motion to withdraw a bill. Since 1993, I am unaware that this issue has been ruled on, and do not want to speculate on what a presiding officer would decide, but both options could be supported by the idea that joint prime sponsors have equal "ownership" of a bill or resolution.

- Uniform Rule 36:⁴ Pre-filing of Measures

Again, the 1993 amendment, by way of the *Drafting Manual*, added joint prime sponsorship, but without addressing the issues presented in Uniform Rule 36 regarding: (1) final approval by the "sponsor"; (2) the 10 bill pre-file limit; and (3) sponsor deadline for pre-filed bills. In each of these situations, Uniform Rule 36 is out of sync with the 1993 amendment providing for joint sponsorship. As a practical matter, the Legal Services Division has adapted by interpreting Uniform Rule 36 to the joint prime sponsorship amendment by: (1) deferring to the "original sponsor" for the order in which the joint prime sponsors' names appear on the bill; (2) requiring permission from each joint prime sponsor for the addition of their name prior to pre-filing; (3) requiring the approval of the "original sponsor" for any changes to the bill language prior to pre-filing, but Legal Services provides draft versions of the measure along with any legal memos written to all joint prime sponsors. Legal Services has not had a complaint regarding our efforts to be fair to all of the joint prime sponsors, but it does take some staff time to coordinate, and our practice, while I believe fair, is not technically sanctioned anywhere by rule or by decision of the body.

⁴ Uniform Rule 36 provides:

(a) Bills or proposals for bills may be prefiled with the executive director of the Legislative Affairs Agency at any time before January 1. All requests are confidential and are limited to bills and those joint resolutions proposing amendments to the state or federal constitutions. Bills given final approval *by the sponsor* will be assigned a number and duplicated during the week prior to the convening date of the session and made available to the press and public. *A member may request no more than 10 bills* for prefiling. Drafts of prefiled bills not receiving *sponsor approval* prior to the convening day of the session will not be introduced as prefiled bills, but, *at the direction of the sponsor*, will be prepared in final form by the agency staff, subject to the demands of assigned interim and pre-session work.

(b) Prefiled bills are submitted to each house for formal introduction and first reading at the commencement of the first regular session on the day when the house is organized to the point where it has committees to receive bills, or on the first day of the second regular session. Prefiled bills are read and referred to committee in advance of other bills. [Italics and bold are added for emphasis.]

- Uniform Rule 37(a)⁵: Introduction of Bills
There is no provision in Uniform Rule 37(a) for joint prime sponsorship.
- AS 24.08.035(b)⁶: Fiscal Notes on Bills
There is no guidance on how joint prime sponsors are to be treated with regard to preparing a fiscal note for a bill; do all the joint prime sponsors have the authority to prepare their own fiscal notes?
- AS 24.08.035(d)⁷: Fiscal Notes on Bills
Do all joint prime sponsors receive a copy of a fiscal note?
- AS 24.08.050⁸: Prefiling of Bills and Resolutions
A similar issue is presented with regard to AS 24.08.050 as discussed above regarding Uniform Rule 36, since like Uniform Rule 36, AS 24.08.050 does not include or recognize joint prime sponsorship regarding prefiled bills or resolutions.

⁵ Uniform Rule 37(a) provides:

(a) Any member, group of members, standing, special, or joint committee may introduce a bill, subject to the provisions of these Uniform Rules. A bill must be introduced, in proper form as approved by the enrolling secretary of the legislature, with the original and three copies delivered to the chief clerk or secretary. The bill is then assigned a number which it retains through subsequent changes and substitutions. The bill is considered formally introduced when the clerk or secretary reads the heading and title aloud in open session (first reading). Bills may be introduced through the Rules Committees by the governor and the permanent interim committees pursuant to provisions of law.

⁶ AS 24.08.035(b) provides:

(b) In addition to the fiscal note required by this section, the sponsor of a bill or resolution may prepare a fiscal note in conformity with the requirements of this section and submit it to the committee of first referral or the finance committee. A committee may prepare an additional fiscal note in conformity with the requirements of this section.

⁷ AS 24.08.035(d) provides:

(d) The original of a fiscal note shall be submitted to the Division of Legislative Finance and copies shall be sent to the prime sponsor, the committee requesting the fiscal note, and the office of management and budget.

⁸ AS 24.08.050 provides:

Any member of the legislature whose term extends into a forthcoming session or legislature, or a member-elect may file a bill or resolution or a proposal for a bill or resolution with the Legislative Affairs Agency at any time before January 1. The agency shall place a prefiled bill or resolution, which is approved by the sponsor, in proper form and deliver it to the chief clerk of the appropriate house on the day on which the next session convenes or is organized for business. Prefiled bills or resolutions shall be considered as introduced on the day of their delivery to each house.

Representative Mike Chenault
February 2, 2015
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All of the issues discussed can be addressed by a "clean-up" bill for AS 24.08, and a joint resolution amending the Uniform Rules if there is a desire to address the issues discussed in this memorandum. Conversely, the *Drafting Manual*, as noted above, can be amended to remove the 1993 amendment, by deleting the paragraph quoted. If the 1993 amendment is removed from the *Drafting Manual*, the authority contained in the *Drafting Manual*, recognized by way of Uniform Rule 10, would be gone, and the Legal Services Division would no longer prepare any bills with joint prime sponsors. In addition, if the 1993 amendment is removed, the logical inference is that the body would follow its past precedent regarding identical bills filed during the session, and would move the bill with the lower bill number, but that would be a decision for the body.

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Enclosures



ALASKA LEGISLATIVE COUNCIL

—Minutes—

February 1, 1993

1. ROLL CALL

The Legislative Council meeting was called to order at 12:14 p.m. by Representative Eldon Mulder, Chair, in the Butrovich Room.

The roll was taken and in attendance were Council members Barnes, Davidson, Halford, James, Kelly, Little, MacLean, Miller, Mulder, Pearce, Phillips, Sanders and Taylor. Senator Jacko was absent. Staff present were Endicott, Cook, Finley, Stoops and Fink.

2. APPROVAL OF THE JANUARY 22, 1993 MEETING MINUTES

Representative Barnes moved and asked unanimous consent that the minutes of the January 22, 1993 meeting be approved. There was no objection and the motion passed with unanimous consent.

3. AMICUS CURIAE BRIEF IN B.S. v. State, Supreme Ct. No. 5064

Pam Finley, attorney with the Legal Services Division, explained the options available to the Council regarding the brief. Senator Kelly moved and asked unanimous consent that the Council direct Ms. Finley to file an amicus curiae brief on behalf of Legislative Council as soon as possible. There was no objection and the motion passed with unanimous consent. Senator Taylor was designated to work with Ms. Finley on behalf of the Council on this issue.

4. SNOW REMOVAL CONTRACT AMENDMENT

Mr. Endicott indicated that the Agency had entered into a \$4,800 contract with The Yard Doctor for snow removal. Because of the heavy snowfall this winter it was necessary to increase the contract amount to \$10,000. Senator Kelly moved and asked unanimous consent that the Council authorize the contract amendment. There was no objection and the motion passed with unanimous consent.

5. GROH, EGGERS AND PRICE BILLING

The Council directed Tam Cook, Director of Legal Services, to draft an opinion regarding the settlement proposed in the reappropriations lawsuit, in particular the section relating to the Finance Committees, and whether different drafting procedures would prevent a similar situation.

6. **NEW BUSINESS - DRAFTING MANUAL**

Representative Barnes moved and asked unanimous consent that the Council approve an amendment to the Drafting Manual which would provide for joint sponsorship of a bill and limit that sponsorship to circumstances where two or more members of the same house have prefiled identical bills. There was no objection and the motion passed with unanimous consent.

Senator Little asked that the adoption of the drafting manual be held until the next meeting.

The meeting was adjourned at 12:51 p.m.



ALASKA LEGISLATIVE COUNCIL

—Minutes—

February 19, 1993

1. ROLL CALL

The Legislative Council meeting was called to order at 12:36 p.m. by Representative Eldon Mulder, Legislative Council Chair, in the Butrovich Room.

The roll was taken and in attendance were Council members Davidson, Halford, James, Kelly, Little, Miller, Mulder, Pearce, Phillips, Sanders and Taylor. Members absent were Barnes, Jacko and MacLean. Staff present were Endicott, Cook, Dierdorff, Stoops and Fink.

2. APPROVAL OF THE FEBRUARY 1, 1993 MEETING MINUTES

Representative James moved and asked unanimous consent that the minutes of the February 1, 1993 meeting be approved. There was no objection and the motion passed with unanimous consent.

3. DRAFTING MANUAL

Senator Little moved and asked unanimous consent that the Drafting Manual be approved as amended. There was no objection and the motion passed with unanimous consent.

4. LEGISLATURE V. COWPER (REAPPROPRIATION) LAWSUIT

Mr. Cliff Groh of Groh, Eggers and Price, informed the Council of the status of this lawsuit.

Representative Phillips moved and asked unanimous consent that the Council approve \$1,000 to continue this lawsuit. There was no objection and the motion passed with unanimous consent.

Senator Taylor moved and asked unanimous consent that the Council approve the outstanding Groh, Eggers and Price billing in the amount of \$6,446.47. There was no objection and the motion passed with unanimous consent.

5. NORTH POLE PARTNERS LEASE RENEWAL

Mr. Endicott indicated that this space is being renewed for an additional year at a yearly cost of \$12,594.60. Representative Phillips moved and asked unanimous consent that

the renewal of this leave be approved. There was no objection and the motion passed with unanimous consent.

6. SUBSCRIPTIONS: LEGISLATIVE REPORTING SERVICE AND LEGISLATIVE DIGEST AND ALASKA ECONOMIC REPORT

Senator Kelly asked that this item be held over until the next meeting.

7. CITIZENS' OVERSIGHT COUNCIL REPORT

Mr. Ernie Piper, Executive Director of the Citizens' Oversight Council gave a brief update to the Oversight Council's status. Representative Davidson noted that two of the board members' positions had expired.

8. FY 94 LEGISLATIVE AFFAIRS AGENCY BUDGET

Ms. Pam Stoops, Director of LAA Administrative Services, presented a brief overview of the FY 94 budget. Representative James moved and asked unanimous consent that the budget be adopted. There was no objection and the motion passed with unanimous consent.

9. NEW BUSINESS: TAX CONSEQUENCES OF RELOCATION EXPENSES

The Chair appointed a subcommittee consisting of Senator Pearce (chair), Senator Miller and Representative Phillips to review this issue and report to the Council.

The meeting was adjourned at 1:20 p.m.