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ENABLING ACT FOR AN
ALASKA CONSTITUTIONAL CONVENTION

Prepared by:

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ADMINISTRATIVE ASSISTANT
CONSTITUTIONAL CONVENTION COMMITTEE

1981

INTRODUCTION

to

ENABLING ACT

In preparation for a constitutional convention, one of the first things that the Legislature must do is pass legislation providing the basis for establishing the convention. Great care should be taken in writing this act for its purpose is to enable this convention to get under way, not to control the convention. No better word of warning on this score has come than that from the Judiciary Committee of the New York Convention of 1894:

"It is of the greatest importance that a body chosen by the people of this state to revise the organic law of this state should be as free from interference from the several departments of government as the legislative executive and judiciary are from interference by each other. Unless this were so, the will of the people might easily be nullified by the existing judiciary or legislature. Should the latter attempt to enact a law prohibiting the constitutional convention from restricting

the existing power of the legislature the act would be at once be recognized as an unwanted invasion of the rights of the people." ¹

1. Quoted in Walter F. Dodd, "The Revision and Amendment of State Constitutions" (Baltimore, The John Hopkins Press, 1910), pp 79 - 80.

The purpose of an enabling act is to facilitate the selection of delegates and the operation of the convention, nothing more. The following items are suggested as matters which must be settled before the convention can get under way. Decision on the following subjects must be made:

- I. Selection of delegates:
 - A. Number
 - B. Qualifications
 - C. Basis of thier selection (district, at large, etc.)
 - D. Method of their nomination an/or election
 - E. Date of the election
 - F. Administration of the election
 - G. Method of filling vacancies
- II. Date and procedure of convening the delegates
- III. Site of the Convention
- IV. Provis'on for pre-convention planning and accumu-
lation of materials
- V. Appropriation (Can be a separate bill)
 - A. Amount adequate to finance all convention needs, including official pre-convention activities
 - B. Post-convention activities
 - C. Accounting practices

VI. Compensation of delegates

- A. Basis of payment, per diem, monthly or flat amount for the whole convention
- B. Amount of expenses allowed, if any, and for what purposes
- C. Any special compensation for officers

The above has usually been sufficient. Three other matters, however, might be dealt with. These should be considered inherent powers of a convention, but, if there is any doubt or if there is the possibility that critics may seek to exploit the fact of their absence from the enabling act, then they should be included.

VII. Authority to require any officer of the state to furnish information or to appear before the convention or any committee thereof (this includes the authority to seek opinions from the attorney general or other legal officer of the state;

VIII. Authority to use the facilities of the state or any local government when such use is not disruptive of regular governmental activities. (This becomes particularly important if hearings by committees are conducted regionally);

IX. A schedule for the convention's work

- A. Provisions for a recess during the life of the convention
- B. Dates of the completion of the convention's work

C. Dates for submission of the convention's
proposal to the people

X. Immunity clause

The enabling act need not go deeply into matters of organization, procedure and personnel and generally should avoid statements that may hamper the convention in carrying out its assigned functions. The convention should be free to determine how it will organize and manage itself.

In the areas of personnel and materials, the convention should have full control over its needs. The power to hire and fire personnel and within its own budgetary limits, their rate of compensation, as well as the power to purchase material and equipment and to contract for services falls in this category. The convention needs to be free to seek its personnel where it wants. It should not be required to borrow its staff from existing state agencies, nor use existing facilities. No compromise should be made which will in any sense make the convention beholden to anyone outside itself. If the convention chooses to borrow state personnel for its staff, or to use the legislative council or the attorney general for assistance and advice, it may do so. But to require the convention to use these sources is to give an external element a role in the convention. A role potentially detrimental to the objectivity which the convention seeks to achieve.

1. Delegate selection: The first Alaska Constitutional Convention in 1955-56 had 55 delegates (the number of delegates who drafted the United States Constitution in 1787).

Unless otherwise provided by law, Article XII Sec. 3 requires that a call for a constitutional convention shall conform as nearly as possible to the Act, calling the Alaska Constitutional Convention of 1955 including but not limited to, number of members, districts, election and certification of delegates.

In 1955, delegates were elected on a three level apportionment system, seven delegates were elected at large; thirty-three were elected at large within four judicial divisions; and fifteen came from newly delineated single delegate districts.

HB 117, introduced in 1971, provided for 65 delegates. Sixty delegates were to be apportioned among the election districts of both houses of the Legislature in accordance with reapportionment, pursuant to the 1970 U.S. Census. Five delegates were to be selected on a statewide basis.

In view of the 1980 Census, it can be assumed that delegate selection will be on the basis of the 1980 apportionment plan, and that any enabling legislation should contain a provision that delegates will be selected on the basis of the new apportionment plan. The use of the 60 delegates simplifies

the job of providing a basis for delegate elections. Having five delegates elected from the state at large will provide individuals of broader experience and familiarity with conditions throughout the state.

The enabling act should stipulate that the election of delegates be non-partisan and that any registered voter who has resided in the state and in the district from which he/she is running for the same period of time required of a candidate for the Legislature, is eligible.

The method of election should be a single special election with the person receiving the largest number of votes being elected as the delegate. The only problem with this is that if a district has a large number of delegates, one person may win by a small majority or by a very small percentage of the total vote. The only solution to this problem would be a run-off, but history has shown in other states that very few people vote in a run-off of this type and it can be expensive.

The date of the special election should be during an off-general-election year and should be held early enough in order that there will be sufficient time between the election of delegates and the convening of the convention for the delegates to familiarize themselves with the issues and what they are intending to accomplish. There also should be enough time to allow staff to prepare for the convention and complete the delegate materials.

The administration of the election should be carried out by the Division of Elections under the supervision of the Lt. Governor.

HB 117 required a nominating petition to be filed with the Lt. Governor consisting of not less than 50 legally qualified voters of an election district based on a house district, 100 legally qualified voters of an election district based on a senate district and 1,000 signatures for candidates seeking election on a statewide basis. The petition of a candidate seeking election for the state at large shall be subscribed by the signatures of at least 25 qualified voters from each of the senate election districts.

2. Date and Procedure of Convening the Delegates: As with the election for delegates, there should be enough time before the convening of the convention to allow delegates to familiarize themselves with what is ahead and to have an orientation session. The date of convening should also be early enough for a 90 day session and so that the convention will not be meeting simultaneously with the legislature.

In most states, the Governor convenes the convention and then turns the convention over to the temporary presiding officer. In some states, the Lt. Governor or the Secretary of State opens the convention, but usually the Governor has done this.

Most experts in constitutional conventions have recommended that staff develop a temporary set of rules under which the convention can convene until permanent rules can be adopted by the delegates.

Provision for pre-convention planning and the accumulation of materials: SB 723 which passed both houses of the Legislature in 1980, but was vetoed by the Governor, included a provision for the establishment of a constitutional convention commission made up of persons appointed by the Governor, Legislature, and the Chief Justice of the Supreme Court.

In his veto message, the Governor cited the creation of this commission as one of the reasons he vetoed the bill, claiming that the make-up of the commission violated the separation of powers. He felt the Governor should appoint members to the commission.

Most of the states who called conventions in the seventies established commissions in the way set forth in SB 723. There was usually a cooperative effort to insure a successful convention.

The legislature in Alaska feels they have the right to appoint members to any constitutional convention based on the premise that since the constitutional convention is a law-making function

and since the Legislature, by law, may provide for the calling of a constitutional convention, including procedures, it should have a say in the appointment of a preparatory commission.

Since there is disagreement regarding the commission and the appointment of its members between the two branches of government, perhaps, in order to successfully pass enabling legislation, this matter should be left out and addressed at a later date with a solution which will satisfy both parties.

Appropriation: There is no absolute formula for the funding of constitutional conventions. Conventions in the seventies ranged from \$20,000 appropriated to the Rhode Island Convention to \$3.8 million appropriated for the Texas Convention. The amount should be adequate to finance all convention needs, including official pre and post-convention activities, including but not limited to staff and consultant salaries and benefits, delegate compensation, travel, material preparation, and expenses for the functioning of the convention itself. It has been recommended that delegates be compensated at the same rate as Legislators during the legislative session.

Convention Site: The Alaska Constitutional Convention of 1955-'56, following the example of the New Jersey Convention of 1947, which was convened on a college campus, held its convention on the campus of the University of Alaska at Fairbanks.

In 1971 the legislature assigned two research persons to conduct a constitutional convention site survey. After visiting the Fairbanks campus, Anchorage and Juneau, and evaluating the three sites as to location, facilities, timing and other criteria, it was recommended that the University of Alaska at Fairbanks again be the convention site.

A preparatory commission or the legislature itself, should look into all the pros and cons of each possible site including conducting a site survey similar to the one held in 1971 to determine which place would best function physically to carry out the objectives and ideals of the convention. The changing times, technological advances and public perception since the 1955-56 convention necessitates a very thorough study of the choice for a proper site.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR
TERRY MILLER, Lt. Gov.

OFFICE OF THE LT. GOVERNOR

DIVISION OF ELECTIONS

POUCH AF—JUNEAU 99811

February 13, 1981

The Honorable Vic Fischer
Chairman
State Affairs Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

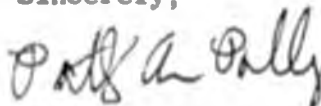
Dear Senator Fischer:

The Division of Elections has reviewed Senate Bill 165 and has prepared and attached a fiscal note and suggested amendments to the bill.

The election code has been reviewed and revised extensively over the past two years. As the review process has occurred, election procedures have changed. Based on these revisions, I have attached suggested amendments that cover two general areas:

1. Assuming that voters at the 1982 General Election have approved the holding of a convention, candidates must file a declaration of candidacy. I am suggesting that those procedures be consistent with those for legislative and statewide offices.
2. The specific duties for the conduct of an election are assigned to the Director of Elections, with the Lieutenant Governor retaining final authority.

Sincerely,



Patty Ann Polley
Director
Division of Elections

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Enclosures

SUGGESTED AMENDMENTS TO SENATE BILL 165

1. Page 1, line 13, following "anendment" insert "is"
2. Page 3, line 5, change "lieutenant governor" to "director of elections"
line 27, change "lieutenant governor" to "director of elections"
3. Page 4, line 5, remove "to the lieutenant governor"
line 8, remove "to the lieutenant governor"
line 14, remove "to the lieutenant governor"
line 20, remove "by the lieutenant governor"
line 26, insert a new section (c) to read as follows:

"A candidate for delegate to the constitutional convention shall file either with the director or an election supervisor. If the candidate files his declaration with an election supervisor, the election supervisor shall immediately forward the declaration to the director."

line 26, change "(c)" to "(d)"

lines 26-29 remove first sentence and insert the following:

"If the declaration filed under (a)(3) of this section is not received within seven calendar days, the candidate shall be notified of non-receipt."
4. Page 5, line 7, remove "lieutenant governor" and insert "director of elections"
5. Set December 15 as the first day that a declaration of candidacy may be filed.
6. Question: Do you want legislators to serve as delegates to the convention?
7. Question: Shall we add requirement for an Election Pamphlet for delegate selection election and also one for ratification election? (Fiscal note includes this.)
8. Question: Is the required APOC statement (Sec. 7, AS 39.50.020(b)) necessary at the time of filing a declaration for delegate candidates?
9. Question: Should we remove Sec. 15.50.900 delegation by lieutenant governor in lieu of these amendments?

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 165
Title "An Act relating to constitutional conventions; and providing for an effective date"
Requested by Senate State Affairs Date February 11, 1981

II. FISCAL DETAIL

Agency Affected Office of the Governor
Program Category Affected Legislative and Elective Operations
BRU, Program, or Subprogram(s) Affected Division of Elections
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	-0-	-0-	199.6	223.6	-0-	-0-
200 TRAVEL	-0-	-0-	27.2	30.5	-0-	-0-
300 CONTRACTUAL	-0-	-0-	863.2	936.8	-0-	-0-
400 COMMODITIES	-0-	-0-	34.4	38.5	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	1124.4	1259.4	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	1124.4	1259.4	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY			5.5	5.5		

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Assume:

- 1) FY 81 - no additional cost
- 2) FY 82 - no additional cost
- 3) FY 83
 - a) Full cost of special election for Constitutional Convention delegate selection;
 - b) Full cost of Official Election Pamphlet pertaining to special election in four regional issues (at request of Senate State Affairs);
 - c) Preparation costs for ratification election to be held early in FY 84
- 4) FY 84
 - a) Full cost of ratification election;
 - b) Full cost of Official Election Pamphlet in four regional issues pertaining to constitutional amendment ratification (at request of Senate State Affairs);
 - c) 12% inflation over FY 83

IV. DATE February 13, 1981 PREPARED BY Danith D. Anderson
AGENCY Division of Elections
PHONE 586-6181
Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

(100) Personal Services

Includes overtime (average of \$20,000/month for 1980 elections plus 12% inflation) for 2-month period; cost of 22 total temporary employees (19 at Range 8 and 3 at Range 10) for Anchorage, Fairbanks, Juneau and Nome offices for 3-month period ($\$1,393/\text{month} \times 19 \times 3$) + ($\$1,564/\text{month} \times 3 \times 3$); cost of Election Pamphlet and public information staff (based on 1980 costs and 12% inflation).

(200) Travel

Includes in-state airfare for public information officer and election supervisor coordination; travel for election pamphlet staff (based on 1980 costs and 12% inflation); travel for absentee voting officials for pipeline assistance, data processing systems personnel ($\$350/\text{airfare} + \$500/\text{trip} \times 32$ trips).

(300) Contractual Services (Total of \$863,200)

(310) Includes Zenith line, long-distance and telegram service, postage (82.2 with 40.0 allocated for Election Pamphlet).

(320) Printing and Advertising Including cost of printing ballots (80.0) (25 sets of data vote ballots, 15 sets of paper ballots, assuming 40 election districts), declarations of candidacy forms, tally books, registers, notices of election, certificates and return booklets; plus Election Pamphlet printing costs (based on 1980 costs with 12% inflation -- 165.0) and general advertising.

(330) Rents and Leases Additional office space in Juneau and Anchorage for election related activities.

(360) Equipment Rental Includes 10 Mag Card II typewriters at \$300. each x 3 months = \$9,000; data processing equipment rental (card reader, 6 display stations, 4 printers); copier expense.

(380) Professional Services Including data processing consulting (20.0)

(390) Other fees and expenses (460.0)
 Election Night Expense (100.0)
 Miscellaneous (20.0)
 Election Board Payments (340.0)

(400) Commodities Includes all election-related materials (31.9) for 500 precincts, election night activities, temporary employees, absentee voting officials (50 total) and election pamphlet staff (2.5).

(500) Equipment No additional equipment expenses required.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SENATE BILL 165

Title "An Act relating to constitutional conventions; providing for eff. date.

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected _____

Program Category Affected _____

BRU, Program, or Subprogram(s) Affected _____

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
	0	0	0	0	0	0

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III) SB 165 is for an enabling act.

It provides a standby process in case voters or the Legislature approve a constitutional convention call by referendum. The next referendum is in November 1982. If the voters approve a convention call, major expenses will ensue. If the voters oppose a convention, there will be no costs. In either case, the convent on enabling legislation would, unless changed by law, apply to future referenda and convention calls.

Possible costs of a convention -- delegate election, constitution revision process, ratification election, and other expenses -- are ascribable to the referenda or a legislative call and not to this bill. Essentially the same expenditures will occur in case of a convention call even if this bill is not enacted.

Accordingly, the fiscal note for this bill is zero.

IV. DATE March 1, 1981 PREPARED BY Sen. Fischer, Chairman

AGENCY Senate State Affairs Committee

PHONE 465-4954

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

