

H B

155

COMMITTEE REPORT

SENATE

FURTHER: Interim

4/2/81

Date: MAY 19, 1982

Mr. President:

The Committee on STATE AFFAIRS passed has had CSHB 155(SA) am legislative procedures

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for CSHB 155 (Jud)  same title  new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

[Signature]  
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MEMBERS MAKING  
OTHER RECOMMENDATIONS:

[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
CHAIRMAN

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

FILE  
POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

MEMORANDUM

May 19, 1982

SUBJECT: Advisory votes  
(SCS HB 155 (Judiciary))

TO: Senator Patrick M. Rodey  
Chairman, Senate Judiciary Committee

FROM: Tamara Brandt Cook  
Legislative Counsel

TBC

Here is a draft of the bill you requested incorporating material from SCS HB 633 (HESS) and adding a provision calling for an advisory vote on whether the legislature should enact laws raising the minimum age for voting in state and local elections to 21 years.

Please note that, despite the outcome of the advisory vote, the legislature may not constitutionally raise the voting age. In Oregon v. Mitchell, 400 U.S. 112, 27 L.Ed.2d 272 (1970) the United States Supreme Court invalidated that portion of a federal statute that lowered the voting age to 18 for state and local elections while upholding the power of Congress to lower the voting age for federal elections. After that decision, the Twenty-Sixth Amendment to the United States Constitution was enacted lowering the minimum age for voting in all elections to 18.

Under the Twenty-Sixth Amendment the right of citizens of the United States who are 18 years of age or older to vote shall not be denied or abridged by the United States or by any state on account of age. Colorado Project-Common Cause v. Anderson, 495 P.2d 220 (Colorado 1972); Gaunt v. Brown, 341 E.Supp. 1187 (S.D. Ohio 1972), aff'd., 409 U.S. 809, 34 L.Ed.2d 71 (1972).

TBC:ljb

Enclosure

## Article V

## Suffrage and Elections

**Section 1. Qualified Voters.** Every citizen of the United States who is at least eighteen years of age, who meets registration residency requirements which may be prescribed by law, and who is qualified to vote under this article, may vote in any state or local election. A voter shall have been, immediately preceding the election, a thirty day resident of the election district in which he seeks to vote, except that for purposes of voting for President and Vice President of the United States other residency requirements may be prescribed by law. Additional voting qualifications may be prescribed by law for bond issue elections of political subdivisions. [Amendment approved August 23, 1966; amendments approved August 25, 1970; amendment effective October 14, 1972]

**Cross reference.** — As to voter qualification for presidential election, see AS 15.05.012.

**Effect of amendments.** — The amendment, approved August 23, 1966 (4th Legislature's SJR 1), substituted "A voter" for "He" at the beginning of the second sentence, inserted the exception in that sentence and substituted "A voter" for "He" at the beginning of a former third sentence, which was deleted by a 1970 amendment.

The first amendment, approved August 25, 1970 (5th Legislature's HJR 7), substituted "eighteen" for "nineteen" in the first sentence.

The second amendment, approved August 25, 1970 (6th Legislature's HJR 51 am S), deleted a former third sentence which read: "A voter shall be able to read or speak the English language as prescribed by law, unless prevented by physical disability."

The amendment approved August 22, 1972 (7th Legislature's HJR 126 am S) inserted "residency" in the first sentence and substituted "thirty day resident" for "for one year a resident of Alaska and for thirty days a resident" in the second sentence.

**Legislative committee reports.** — For report on House Joint Resolution No. 7, SLA 1969, see 1969 House Journal, p. 443. For report on House Joint Resolution No. 51, SLA 1970 (HJR 51 am S), see 1970 House Journal, p. 130.

**Legislative intent.** — The legislature must have intended that the point of measurement for qualifications other than those of residence be the same as set out in

the constitution; that is, the same as the requirements for residence. 1960 Op. Att'y Gen., No. 21.

**Aliens excluded from voting in state elections.** — Under express language of this section, aliens are excluded from voting in the State of Alaska. *Park v. State*, Sup. Ct. Op. No. 1100 (File No. 2307), 528 P.2d 785 (1974).

**Since section limits privilege to United States citizens.** — The plain meaning of the language of this section limits the voting privilege to citizens of the United States. *Park v. State*, Sup. Ct. Op. No. 1100 (File No. 2307), 528 P.2d 785 (1974).

**Such limitation does not conflict with Alaska Const., art. I, § 1.** — Limiting the voting privilege to citizens of the United States does not conflict with the equal protection clause of Alaska Const., art. I, § 1. *Park v. State*, Sup. Ct. Op. No. 1100 (File No. 2307), 528 P.2d 785 (1974).

It must be assumed that the drafters of our constitution considered that the qualifications for voting stated in this section did not create a classification prohibited by the Declaration of Rights in Alaska Const., art. I, § 1, as the provisions were adopted concurrently. *Park v. State*, Sup. Ct. Op. No. 1100 (File No. 2307), 528 P.2d 785 (1974).

**The federal constitution does not invalidate this section.** *Park v. State*, Sup. Ct. Op. No. 1100 (File No. 2307), 528 P.2d 785 (1974).

The equal protection clause of the 14th Amendment to the United States Constitution does not guarantee state

voting rights for aliens. *Park v. State*, Sup. Ct. Op. No. 1100 (File No. 2307), 528 P.2d 785 (1974).

It is basic to democratic society that the people be afforded the opportunity of expressing their will on the multitudinous issues which confront them. *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

**Exclusion of nonproperty owners from bond elections.** — The provisions of a state constitution and statutes which exclude nonproperty owners from elections for the approval of the issuance of general obligation bonds violate the Equal Protection Clause of the United States Constitution. *City of Phoenix v. Kolodziejski*, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d 523, 38 U.S.L.W. 4596 (1970).

The decision in the above case will apply only to authorizations for general obligation bonds which are not final as of June 23, 1970, the date of that decision. In the case of states authorizing challenges to bond elections within a definite period, all elections held prior to the date of that decision will not be affected by the decision unless a challenge on the grounds sustained by the decision has been or is brought within the period specified by state law. *City of Phoenix v. Kolodziejski*, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d 523, 38 U.S.L.W. 4596 (1970).

**Nonresident property owner may not vote.** — The second sentence of this section leaves no room for broadening the qualifications to permit a nonresident property owner to vote. *Turkington v. City of Kachemak*, Sup. Ct. Op. No. 141 (File No. 177), 380 P.2d 593 (1963).

There is no constitutional requirement of precinct residency, and there is clear statutory authorization for persons claiming to be registered voters to vote a questioned ballot if there is no evidence of registration in the precinct in which the voter seeks to vote. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4291, 4284, 4285), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

**Section 2. Disqualifications.** No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored. No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed.

**Cross-precinct voting authorized by statute.** — Cross-precinct voting, which occurs when a voter registered in one precinct votes a questioned ballot in a different precinct in the same election district, is authorized by statute. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4291, 4284, 4285), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

**Waiver of challenges to cross-district voting.** — Challenges to the validity of cross-district voting, which occurs when a voter registered in one district casts a questioned ballot in a different district, are waived if not raised before the ballots are separated and commingled. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4291, 4284, 4285), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

**Time for determining residence of voter.** — Any attempt to determine the eligibility of a voter as to residence (1) in the state and (2) in the election district, at any time other than the date of the election, would be unconstitutional. 1960 Op. Att'y Gen., No. 21.

**Section precludes banning of write-in votes.** — This section of the constitution, holding that citizens who meet certain requirements may vote is one of the provisions that would preclude the banning of write-in votes. The other is Alaska Const., art. I, § 2 which states that government originates with the people and is founded on their will. 1963 Op. Att'y Gen., No. 30.

**Pre-registration not required for borough election.** — Any Alaskan qualified to vote under this section may also vote in a borough election without pre-registering. 1965 Op. Att'y Gen., No. 9.

**Stated in** *Green v. State*, Sup. Ct. Op. No. 592 (File No. 1177), 462 P.2d 994 (1969).

**Cited in** *Wade v. Nolan*, Sup. Ct. Op. No. 346 (File No. 731), 414 P.2d 689 (1966).

**Cross reference** disqualification for AS 15.05.030.

**Section 3. Me** voting, including of voting shall b contests, with rig

**Cross reference.** contests, see AS 15.20 thereto.

**Legislative power** determining wheth are substantially s and Alaska Const., XII, § 11, when read legislature the power determining wheth initiative are "subst used in Alaska Const. v. Boucher, Sup. Ct. (2315), 543 P.2d 731

**No provision fo** elections. — The leg implemented this pr for the contest *Turkington v. City of* Op. No. 141 (File No. (1963); *Dale v. Gre* Borough, Sup. Ct. C 965), 439 P.2d 790 (

**But this is not of** — The fact that the have specifically preliminary adminis of local election co could be had to the c consequence. *Turki* Kachemak, Sup. Ct. 177), 380 P.2d 593 (

**As following** contesting state reasonable. — No p prescribed by the le local election contes following; the proces state elections is a r getting the matter b

**Section 4. Vo** provide a syste establish voting

**There is no const** which prohibits t registration prior

**Cross reference.** — As to disqualification for felony conviction, see AS 15.05.030.

Quoted in *Green v. State*, Sup. Ct. Op. No. 592 (File No. 1177), 462 P.2d 994 (1969).

**Section 3. Methods of Voting; Election Contests.** Methods of voting, including absentee voting, shall be prescribed by law. Secrecy of voting shall be preserved. The procedure for determining election contests, with right of appeal to the courts, shall be prescribed by law.

**Cross reference.** -- As to election contests, see AS 15.20.540 et seq. and note thereto.

**Legislative power to enact method of determining whether act and initiative are substantially same.** — This section and Alaska Const., art. XI, § 4, and art. XII, § 11, when read in harmony, give the legislature the power to enact a method of determining whether an act and an initiative are "substantially the same," as used in Alaska Const., art. XI, § 4. *Warren v. Boucher*, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

**No provision for contest of local elections.** — The legislature has not fully implemented this provision by providing for the contest of local elections. *Turkington v. City of Kachemak*, Sup. Ct. Op. No. 141 (File No. 177), 380 P.2d 593 (1963); *Dale v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 476 (File No. 965), 439 P.2d 790 (1968).

**But this is not of grave consequence.** — The fact that the legislature may not have specifically provided for any preliminary administrative determination of local election contests before resort could be had to the courts is not of grave consequence. *Turkington v. City of Kachemak*, Sup. Ct. Op. No. 141 (File No. 177), 380 P.2d 593 (1963).

**As following procedure for contesting state elections is reasonable.** — No procedure having been prescribed by the legislature for getting local election contests before the courts, following the procedure for contesting state elections is a reasonable method of getting the matter before the court, and

the jurisdiction of the court to hear the matter is recognized by the constitution. *Turkington v. City of Kachemak*, Sup. Ct. Op. No. 141 (File No. 177), 380 P.2d 593 (1963).

The legislature may provide by law for appeal to the courts to decide election contests involving members of the legislature or Congress. March 29, 1963, Op. Att'y Gen.

But the legislature is the sole judge of the election qualifications of its members. March 29, 1963, Op. Att'y Gen.

Which power is not limited by power to provide for additional grounds of appeal to courts. — The power to provide for additional grounds upon which to base an appeal to the courts in no way limits the legislature's constitutional power to be the sole judge of the election and qualifications of its members. March 29, 1963 Op. Att'y Gen.

**Designation of particular seats in house of representatives.** — The legislature has no power to designate particular seats in the house of representatives to which candidates must seek nomination and election. Likewise, there is nothing in the constitution to indicate that the advisory reapportionment board or the governor has the power to so designate the seats. 1961 Op. Att'y Gen., No. 20.

Statutory requirement that a candidate's designation of treasurer be filed by a specified due date is not constitutionally unreasonable. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

**Section 4. Voting Precincts; Registration.** The legislature may provide a system of permanent registration of voters, and may establish voting precincts within election districts.

There is no constitutional provision which prohibits the requirement of registration prior to exercising the

right to vote. *United States v. Bowden*, 11 Alaska 503, 166 F.2d 701 (9th Cir. 1948).

**Section 5. General Elections.** General elections shall be held on the second Tuesday in October of every even-numbered year, but the month and day may be changed by law.

**Revisor's note.** — Exercising its authority under this section, the legislature has provided that the date of general elections is the Tuesday after the first Monday in November in every even-numbered year. See AS 15.15.020.

## Article VI

### Legislative Apportionment

**Section 1. Election Districts.** Members of the house of representatives shall be elected by the qualified voters of the respective election districts. Until reapportionment, election districts and the number of representatives to be elected from each district shall be as set forth in Section 1 of Article XIV.

**Cross references.** — For current (1974-1980) description of election districts, see note following section 3, article XIV of this constitution. For current election districts, see note following section 1 of Article XIV of this constitution.

The legislature may not break election districts down into wards or subdistricts. 1961 Op. Att'y Gen., No. 20.

**Section 2. Senate Districts.** Members of the senate shall be elected by the qualified voters of the respective senate districts. Senate districts shall be as set forth in Section 2 of Article XIV, subject to changes authorized in this article.

**Cross references.** — See note to Alaska Const., art. XIV.

For current (1974-1980) description of election districts see note following section 3, Article XIV of this constitution.

See notes on redistricting under section 6, Article VI of this constitution.

**Senate must be apportioned according to population.** — Since the adoption of the Alaska Constitution in 1956 the United States supreme court has ruled that both houses of a state legislature must be apportioned according to population. Egan v. Hammond, Sup. Ct. Ops. No. 815 and 830 (File No. 1711), 502 P.2d 256 (1972).

**Reapportionment of senate must be similar to reapportionment of house.** — Although no provision comparable to this article governs reapportionment of the senate, the supreme court has held that the senate, too, must be reapportioned similarly to the house of representatives in order to conform to constitutional requirements imposed by the United

States supreme court. Groh v. Egan, Sup. Ct. Op. No. 1081(A) (File No. 2233), 526 P.2d 863 (1974).

**Intent of constitutional convention as to reapportionment of senate.** — See Wade v. Nolan, Sup. Ct. Op. No. 346 (File N 731), 414 P.2d 689 (1966).

**The senate was unconstitutionally apportioned.** Wade v. Nolan, Sup. Ct. Op. No. 346 (File No. 731), 414 P.2d 689 (1966).

An analysis of the Alaska legislature's apportionment indicated that the senate was not then apportioned on a population basis within the meaning of the United States supreme court's reapportionment rulings. 1964 Op. Att'y Gen., No. 4.

**And this affected entire legislative apportionment system.** — A court can declare Alaska's entire legislative apportionment system unconstitutional on the ground that the senate's apportionment is invalid 1964 Op. Att'y Gen., No. 4.

Regardless of whether it was validly apportioned. Op. Att'y Gen., No. 4.

No specific provision for changing senatorial districts. Wade v. Nolan, Sup. Ct. Op. No. 731, 414 P.2d 689.

But it is the intent of the constitution that the function of reapportionment be performed on the same basis with the assistance of a reapportionment board. Wade v. Nolan, Sup. Ct. Op. No. 731, 414 P.2d 689.

An enlightened article which permits reapportionment on a population basis is a fundamental principle of representative government. Wade v. Nolan, Sup. Ct. Op. No. 731, 414 P.2d 689.

Because the Alaska Constitution contains no provision for reapportionment of the senate, the supreme court has ruled on an interim basis until the Alaska Constitution is amended that the Alaska Constitution grants the senate the same power to reapportion itself as the house of representatives. Egan v. Hammond, Sup. Ct. Ops. No. 815 and 830 (File No. 1711), 502 P.2d 256 (1972).

Not the legislature's authority or duty to reapportion the senate.

**Section 3. Reapportionment.** Reapportionment of the senate shall be on the same basis as the reapportionment of the house of representatives. Reapportionment of the senate shall be on the same basis as the reapportionment of the house of representatives.

**Cross reference.** Alaska Const., art. VI, § 2 of this article.

**House must be apportioned according to population.** — Since the adoption of the Alaska Constitution in 1956 the United States supreme court has ruled that both houses of a state legislature must be apportioned according to population. Egan v. Hammond, Sup. Ct. Ops. No. 815 and 830 (File No. 1711), 502 P.2d 256 (1972).

**Military personnel must be apportioned on a population basis.** — Military personnel must be apportioned on a population basis. Egan v. Hammond, Sup. Ct. Ops. No. 815 and 830 (File No. 1711), 502 P.2d 256 (1972).

declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as acting President.

§ 4. Declaration of President's disability by Vice President and other officers; determination of issue. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as acting President; otherwise, the President shall resume the powers and duties of his office.<sup>33</sup>

ARTICLE XXVI.

§ 1. Voting by persons eighteen years of age. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

§ 2. Power to enforce article. The Congress shall have power to enforce this article by appropriate legislation.<sup>34</sup>

33. Proposed by Congress on July 6, 1965, and declared ratified on February 23, 1967.  
34. Proposed by Congress on March 23, 1971, and declared ratified on July 5, 1972.

The Constitution

Adopted by

Ratified

Became  
Pro

ARTICLE

- Preamble . . . .
- I Declaration of Rights
- II The Legislature
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We the people who founded this Nation in order to secure our heritage of freedom and justice for the Union of the States