

S B

91

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SB 91

SPONSOR Governor

BILL TITLE Methods of appointment to APOC

DATE REFERRED 1-9-89

HEARING SCHEDULED 1-23-89

FISCAL NOTE PREPARED ✓

SPONSOR CONTACTED) yes

INTERESTED PARTIES CONTACTED

yes ✓ Karla Forsythe, APOC 276-4176

no ✓ Dean Gotthofer, DOA 2200

yes ✓ Dick Monkman, AG Karla will call.

OTHER

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 1-19-89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 1-23-89

1/9/89

Mr. President:

STATE AFFAIRS Committee considered SB 91

methods of appointment to the Alaska Public Offices Commission; efd

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) attached zero
 appropriation no FN attached

fiscal impact
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Lee Adams
John Fair
Tim Kelly

[Signature]
Chairman signature and recommendation

Committee backup attached

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 91 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to methods of appointment to the
7 Alaska Public Offices Commission; and providing for
8 an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 15.13.020(a) is amended to read:

11 (a) There is created in the Department of Administration the
12 Alaska Public Offices Commission consisting of five members. The
13 governor shall appoint all members of the commission in the manner
14 prescribed in (b) and (c) of this section, subject to confirmation by
15 a majority of the legislature meeting in joint session.

16 * Sec. 2. AS 15.13.020(c) is amended to read:

17 (c) The four members selected under (b) of this section shall,
18 by a majority vote, nominate to the governor an individual to serve as
19 [APPOINT] the [REMAINING] fifth member of the commission. The gover-
20 nor shall either appoint the nominee to the commission, or shall
21 reject the nominee and request those four members to nominate another
22 individual to serve as the fifth member of the commission.

23 * Sec. 3. AS 15.13.020(h) is amended to read:

24 (h) A vacancy on the commission shall be filled through [BY] the
25 appropriate appointing method for the position [AUTHORITY] within 30
26 days after [OF] the occurrence of the vacancy. The appointee shall
27 serve for the remaining term of the appointee's predecessor.

28 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

*all of this was deleted
in original version.
Jud CS simply clarifies*

FISCAL NOTE

REQUEST:

Revision Date: 02/03/89
 Title: An act relating to methods of appointment to APOC
 Sponsor: Governor
 Requestor: Sen. Faiks/Judiciary Committee

Agency Affected: APOC
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Karla Forsythe, Executive Director Phone: 276-4176
 Division: Alaska Public Offices Commission Date: 02/02/89

Approved by Commissioner: Burke Riley, Acting Chairman Date: 02/02/89
 Agency: Alaska Public Offices Commission

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: 12/19/88
Title: An act relating to methods of appointment to the APOC
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Alaska Public Offices Commission
BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Karla L. Forsythe, Executive Director Phone: 276-4176
Division: Alaska Public Offices Commission Date: 1/03/89

Approved by Commissioner: Daniel Patrick O'Tierney Date: 1/03/89
Agency: Alaska Public Offices Commission

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

NOTES TO DECISIONS

Constitutionality. — In the case of *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 98 S. Ct. 1407, 55 L. Ed. 2d 707, rehearing denied, 438 U.S. 907, 98 S. Ct. 3126, 57 L. Ed. 2d 1150 (1978), the supreme court of the United States has indicated in unmistakable terms that state disclosure laws pertaining to ballot issues are constitutional. *Messerli v. State*, Sup. Ct. Op. No. 2236 (File No. 4326), 626 P.2d 81 (1980).

When there is no showing that an individual must remain anonymous with respect to advertising as to ballot propositions because of the possibility of being subject to reprisals, economic or otherwise, the state campaign disclosure laws are not unconstitutional as applied to a contributor hoping to influence the outcome of a ballot issue, because the objective of an informed electorate is sufficiently compelling to overcome an interest in anonymous political expression.

Messerli v. State, Sup. Ct. Op. No. 2236 (File No. 4326), 626 P.2d 81 (1980).

Initiative substantially similar to ch. 76, SLA 1974, correctly withheld from ballot. — Substantial similarity existed between ch. 76, SLA 1974, which enacted this chapter, relating to election campaigns, and an initiative relating to campaign contributions and expenditures, which was filed with the lieutenant governor prior to the regular 1974 session of the legislature. The act effectively displaced the initiative, and the lieutenant governor was correct in withholding the initiative from the ballot. *Warren v. Boucher*, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

For comparison of ch. 76, SLA 1974, and the initiative, see *Warren v. Boucher*, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

Sec. 15.13.011. Inapplicability to presidential primary. [Repealed, § 1 ch 2 SLA 1984.]

Sec. 15.13.020. Alaska Public Offices Commission. (a) There is created in the Department of Administration the Alaska Public Offices Commission consisting of five members.

(b) The governor shall appoint two members of each of the two political parties whose candidate for governor received the highest number of votes in the most recent preceding general election at which a governor was elected. The two appointees from each of these two parties shall be chosen from a list of four names to be submitted by the central committee of each party.

(c) The four members selected under (b) of this section shall, by a majority vote, appoint the remaining fifth member of the commission.

(d) Members of the commission serve staggered terms of five years, or until a successor is appointed and qualifies. The terms of no two members who are members of the same political party may expire in consecutive years. A member may not serve more than one term. However, a person appointed to fill the unexpired term of a predecessor may be appointed to a successive full five-year term.

(e) A member of the commission, during tenure, may not

- (1) hold or campaign for elective office;
- (2) be an officer of a political party, political committee or group;
- (3) permit the member's name to be used, or make any contributions whatsoever, in support of or in opposition to a candidate or proposition or question that appears on any ballot in the state including

Op. No. 2236
§1 (1980).
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No. 2315), 543

6. SLA 1974,
Warren v.
205 (File No.

[Repealed,

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but not limited to that of a municipality; however, contributions may be made to a candidate for the office of President of the United States;

(4) participate in any way in an election campaign or participate in or contribute to any political party; or

(5) lobby, employ or assist a lobbyist.

(f) Members of the commission shall receive compensation of \$50 a day while attending commission meetings and shall be entitled to travel expenses and per diem authorized by law for members of other boards and commissions.

(g) The members shall elect a chairman. Three members of the commission constitute a quorum. A vacancy does not impair the powers of the remaining members to exercise all of the powers of the commission.

(h) A vacancy on the commission shall be filled by the appropriate appointing authority within 30 days of the occurrence of the vacancy. The appointee shall serve for the remaining term of the appointee's predecessor.

(i) The commission may employ an executive director and other employees it considers necessary. Neither the executive director nor an employee may have a vote.

(j) The commission shall establish an office, which may be called a regional office, in each senate district in the state to keep on file for public inspection copies of all reports filed with the commission by candidates for statewide office and by candidates for legislative office in that district; however, where one municipality contains more than one election district, only one commission office shall be established in that municipality. The regional office shall make all forms and pertinent material available to candidates. All reports shall be filed by candidates, groups and individuals directly with the commission's central district office. The commission shall insure that copies of all reports by statewide and legislative candidates in each senate district are forwarded promptly to that district or regional office.

(k) The commission shall insure that copies of reports filed by candidates for municipal office are made available for public inspection in the appropriate municipality. (§ 1 ch 76 SLA 1974; am § 23 ch 25 SLA 1975; am §§ 3 — 10 ch 189 SLA 1975; am E.O. No. 41 § 2 (1980); am § 24 ch 85 SLA 1988)

Effect of amendments. — The 1988 amendment, in subsection (d), deleted obsolete references to terms of initial mem- bers and rewrote the subsection for clarity.

NOTES TO DECISIONS

Subsection (j) requires forms to be made available in a regional office in each senate district. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).
Furnishing forms to Nome regional

SB91POOP.TXT

SB 91, METHODS OF APPOINTMENT TO A.P.O.C.

TO TESTIFY:

KARLA FORSYTHE, APOC

DICK MONKMAN, A.G.'S OFFICE (TO ANSWER QUESTIONS)

~~OTHERS (SEE WITNESS LIST)~~

FYI:

PUBLIC MEMBER SPOT IS CURRENTLY VACANT. APOC PLANS TO FILL IT USING PROCEDURE OUTLINED IN SB 91 (NOMINATE MEMBER -- GOVERNOR APPOINT OR ASK FOR DIFFERENT NOMINEE -- LEGISLATURE CONFIRM) REGARDLESS OF PASSAGE OF SB 91.

IN PAST, COMMISSION HAS SIMPLY CHOSEN 5TH MEMBER WITHOUT GOVERNOR'S APPROVAL. IN DEFENDING LEW DISCHNER AGAINST APOC CHARGES, DOUG POPE ARGUED THAT APOC IS NOT DULY CONSTITUTED TO DO ANYTHING BECAUSE ITS MEMBERSHIP EXISTS CONTRARY TO THE STATE CONSTITUTION. (THE DISCHNER CHARGE IS ON HOLD PENDING COMPLETION OF THE NORTH SLOPE LITIGATION.)

A.G. DISAGREES WITH POPE ON GROUNDS THAT APOC IS CONSTITUTED ACCORDING TO STATE LAW, BUT WANTS THIS "LOOPHOLE" CLOSED.

CONTENT OF SB 91 WAS IN KAY BROWN'S CAMPAIGN REFORM BILL AND ABOOD'S APOC BILL LAST YEAR. THE PROVISION WAS NOT CONTROVERSIAL.



Alaska State Legislature

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Senate State Affairs Committee Members
FROM: Senator Pat Pourchot, Chairman *Pat*
RE: January 23 Committee Hearing
DATE: January 20, 1989

On Monday, January 23 at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hear the following bills:

SCR 10, Relating to the promotion of Colonel Lars L. Johnson to major general in the Alaska National Guard.

SCR 10 requests that the Governor appoint Colonel Johnson as a major general in the Alaska National Guard. Johnson is now retired. The promotion would be honorary, in recognition of his service and achievements. Johnson was the first Adjutant General of the Alaska National Guard and organizer of the Alaska Air National Guard. The Guard would like to honor Johnson with this promotion at its annual awards ceremony on February 12. The appointment would be subject to legislative confirmation.

SCR 10 has a zero fiscal note. A biographical sketch of Colonel Johnson is attached.

SB 48, An Act extending the termination date of the Older Alaskans Commission.

SB 48 would continue the Older Alaskans Commission through June 30, 1993.

The Older Americans Act of 1965 (PL 100-175) provides grants to the states for programs for senior citizens, and requires that a state agency be designated to administer the grant programs. The Older Alaskans Commission was established in 1981 to perform this function. In addition, the commission is charged with developing a statewide plan for senior needs and advocating for the elderly within the state.

The commission, located within the Department of Administration, consists of seven senior citizens appointed by the Governor and representatives of DHSS, DOA, DCRA, and the Pioneers Homes Advisory Board.

SB 48 has a zero fiscal note, with funding being continued in the Governor's proposed FY 90 operating budget. A copy of the recently performed sunset audit of the Older Alaskans Commission, which recommends continuation, is attached.

SB 91. Relating to methods of appointment to the Alaska Public Offices Commission.

SB 91 clarifies that all members of APOC shall be appointed by the Governor and confirmed by the legislature.

APOC has five members. Current law provides that four of the members shall be appointed by the Governor from nominees made by political parties, and that these four members shall then appoint one public member. The legality of this provision has been questioned on the grounds that it conflicts with Article III, Section 26 of the State Constitution which requires that the Governor appoint members of boards and commissions.

*also -
legislative
confirm.
of 4
party
members*

SB 91 would clear up the legal question by providing for the Governor to appoint the fifth APOC member from nominees made by the other four members. The Alaska Public Offices Commission supports the bill. SB 91 has a zero fiscal note.

SB 94. Limiting liability for activities of the Alaska National Guard.

SB 94 will prevent suits against the State for injuries or damage resulting from federally mandated and controlled National Guard activities. Federal law was amended in 1981 to permit such suits against the United States. Alaska is one of the few states that has not enacted protective legislation to ensure that the state is not held liable in such cases. SB 91 would not affect the liability of the State during periods of state active duty (i.e. duty called by the Governor).

Because SB 94 would reduce the civil liability exposure of the state, the Department estimates an annual savings of \$50,000 in insurance costs charged by the Division of Risk Management.



a1

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Kelly:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to methods of appointment of members of the Alaska Public Offices Commission (APOC).

The bill amends AS 15.13.020 to remedy technical problems with the present appointment process. The proposed amendments provide for legislative confirmation of all APOC members, and clarify the role of the governor in appointing the non-partisan, "fifth member" of the APOC. The bill includes a proposed conforming amendment to AS 15.13.020 (h).

The APOC has endorsed these amendments. I urge that this bill be passed without delay.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name.

Steve Cowper
Governor

Alaska State Constitution

Article III

Supervision

in joint session, these orders become effective at a date thereafter to be designated by the governor.

SECTION 24. Each principal department shall be under the supervision of the governor.

Department Heads

SECTION 25. The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the Secretary of State. The heads of all principal departments shall be citizens of the United States.

(The Sixth Legislature's Senate Joint Resolution No. 2 "changing the name of the secretary of state to lieutenant governor" in sixteen sections of the Alaska Constitution, approved by the voters August 25, 1970, inadvertently omitted express amendment of this section.)

Boards and Commissions

SECTION 26. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

Recess Appointments

SECTION 27. The governor may make appointments to fill vacancies occurring during a recess of the legislature, in offices requiring confirmation by the legislature. The duration of such appointments shall be prescribed by law.

ARTICLE IV

THE JUDICIARY

Judicial Power and Jurisdiction

SECTION 1. The judicial power of the State is vested in a supreme court, a superior court and the courts established by the legislature. The jurisdic-

tion of courts shall be established by law. The courts shall constitute the judicial system. The operation and administration of the courts shall be established by law.

Supreme Court

SECTION 2. (a) The highest court of the State shall be the Supreme Court. It shall consist of a chief justice and four justices. The number of justices shall be increased by law if necessary. The chief justice shall be elected by the voters for a term of four years. The chief justice shall be eligible for re-election. The chief justice shall be elected by the voters for a term of four years. The chief justice shall be eligible for re-election. The chief justice shall be elected by the voters for a term of four years. The chief justice shall be eligible for re-election.

(b) The chief justice shall be elected by the voters for a term of four years. The chief justice shall be eligible for re-election. The chief justice shall be elected by the voters for a term of four years. The chief justice shall be eligible for re-election. The chief justice shall be elected by the voters for a term of four years. The chief justice shall be eligible for re-election.

(The amendment to this section was added to the state constitution August 25, 1970 and Subsection (b) was added.)

Superior Court

SECTION 3. The superior court of general jurisdiction shall consist of five judges. The number of judges shall be increased by law if necessary. The judges shall be elected by the voters for a term of four years. The judges shall be eligible for re-election.

Qualifications of Justices and Judges

SECTION 4. Supreme court judges shall be citizens of the State, and of the State, licensed to practice law in the State, and possessing all the qualifications prescribed by law. Judges shall be selected in a manner, for the terms prescribed by law.

Nomination and Appointment

SECTION 5. The governor shall appoint or remove a supreme court judge by appointment or removal of persons nominated by the legislature.

Approval or Rejection

SECTION 6. Each superior court judge shall be elected by law, be subject to a nonpartisan ballot at the

Cowper picks Wilson for APOC

By JOHN TETPON
Daily News reporter

Gov. Steve Cowper has appointed Rodman Wilson, a retired physician and former Anchorage public health director, to the Alaska Public Offices Commission.

Wilson, a Democrat and an Alaska resident for the past 30 years, was recommended to the governor for membership on the commission by the Democratic Party of Alaska.

Under state law, the Democrats and Republicans each nominate two commission members on the five-member body — an effort to maintain fairness in the

regulation of Alaska's political community.

Wilson, who ran unsuccessfully against Rep. Alice Hanley for a seat in House District 9, will fill out a three-year term formerly held by commissioner Patrick Owen, also a Democrat. Owen resigned last month.

Wednesday, APOC commissioners, who get to choose a fifth, nonpartisan member, adjourned before a selection could be made. They are trying to choose a successor to Daniel Patrick O'Tierney, whose five-year term expires Feb. 1.

Wilson, 67, said one of his primary concerns as a

commissioner will be to make sure that the APOC does its job as required by state law.

Cowper spokesman David Ramseur said Wilson's appointment will add a "heavy dose" of credibility to the commission.

"He is politically savvy, knows his way around government agencies and is committed to the watchdog role of the APOC," Ramseur said.

The commission, given about \$500,000 a year by the state legislature to operate, regulates reporting laws on how and where political candidates get their money.



Anchorage Daily News file photo

Rodman Wilson

The Governor calls this "technical", and says APOC supports. Apparently the procedure for appointing the 5th member is unclear.

Per Karla Forsythe: Corrects conflict between Gov's Constitutional right to appoint and statutory authority of commission to appoint. Also raises Constitutionality issue over procedure for selecting party members (party provides names from which Gov. must select). Kaula is looking into.

1 IN THE SENATE

2 SENATE BILL NO. 91

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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