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**CONSTITUTIONAL REVISION TASK FORCE
REPORT & RECOMMENDATIONS**

**AS PRESENTED TO
THE ALASKA STATE LEGISLATURE
APRIL 1994**

TASK FORCE MEMBERS

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ACKNOWLEDGEMENTS

Many individuals contributed their time and expertise to the Task Force in its' efforts to develop a thorough understanding of the issues involved in considering methods of amending Alaska's Constitution. We would like to extend our sincere appreciation to the following guest speakers and participants:

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REPORT OF THE HOUSE CONSTITUTIONAL REVISION TASK FORCE

April, 1994

During the first session of the Eighteenth Alaska Legislature, the Alaska House of Representatives adopted House Resolution Number 5, creating the House Constitutional Revision Task Force "to consider and recommend alternative methods by which the state constitution may be revised." The resolution called for the task force to submit a final report of its recommendations to the House of Representatives no later than April 1, 1994 (a complete copy of House Resolution No. 5 is included in the Appendix). This is the report of the work of the task force and its recommendations.

Summary of Recommendations

The task force recommends that the Alaska legislature adopt two measures:

- (1) a bill creating a permanent, 7-member advisory commission on the constitution that would review the state constitution, consider proposals for change, and develop its own recommendations for amendments for submission to the legislature; and
- (2) a concurrent resolution making several changes to the uniform rules which would (a) require the amendments recommended by the commission to come to a vote in the legislature, (b) create a joint committee on constitutional proposals, (c) restrict the introduction of constitutional amendments to the first regular session, except those introduced by the standing committee and the commission.

The complete text of the recommended measures are included in the Appendix. Below is an account of the work of the task force and an explanation of the two measures being recommended for adoption by the Alaska legislature.

Background of the House Constitutional Revision Task Force

At the Alaska general election of November 3, 1992, voters were asked: "Shall there be a constitutional convention?" The answer was no: 142,735 ballots (62.6 percent) were cast against the proposition and 84,929 (37.3 percent) were cast in favor. Article XIII, Section 3 of the Alaska constitution requires that this question be put to the electorate every ten years. Voters also declined to call a constitutional convention in two previous referenda on the question (1972, 1982). Unlike the previous referenda, however, in which the issue did not attract much public attention, the 1992 referendum was preceded by considerable public interest and debate. Although the measure was defeated, several groups and individuals campaigned in favor of it.

A proposed amendment to the constitution was introduced in the first session of the Eighteenth Legislature to authorize use of the initiative for constitutional amendments. Although this proposal was not a new one, it attracted new attention in the aftermath of the rejection of the convention referendum. Proponents argued that the state constitution is too difficult to amend and that citizens do not have adequate access to the amendment process. Currently, only the legislature by supermajority vote and a convention may put proposals on the ballot for ratification by the electorate. The House of Representatives created this task force to study the initiative and other alternative methods of amending the constitution, and to make a recommendation to the full body by April 1, 1994.

Deliberations of the Task Force

The full task force met in formal meetings five times: in Anchorage on September 9, October 14, and November 17, 1993, and in Juneau on March 19 and March 26, 1994. The meetings were publicized, and they were connected to other sites by the teleconference network. A list of

potentially interested individuals and organizations was drawn up for distribution of materials and information by the task force. Testimony from the public was encouraged.

The initial effort of the task force was to become familiar with the different methods used to amend state constitutions. The staff assembled and distributed to task force members numerous journal articles, research memorandums, state statutes, bibliographic references and other publications. At the first meeting, the task force was addressed via teleconference on the subject of constitutional amendment by Dr. Janice May, a prominent constitutional scholar of the University of Texas at Austin. During this information gathering phase, particular attention was paid to the initiative and to the use of revision commissions in the states.

At the first meeting, the task force identified as particularly important two issues associated with the process of amending the Alaska Constitution. One of these surrounds the legislature's internal handling of proposed amendments. Except that they require a supermajority vote for passage, concurrent resolutions proposing constitutional changes are treated like ordinary bills: they may receive two or three committee referrals in each chamber, and committee chairman decide if they are to receive a hearing and if they will leave committee. Proposals that merit public debate may languish in committees with unsympathetic chairmen. This process diffuses and obfuscates the accountability of legislators for the fate of constitutional reform measures. Furthermore, when proposals receive hearings and advance from one committee to another, carefully crafted constitutional phraseology in the original version is often lost along the way, resulting in a written product that is too general, too vague, too specific, or otherwise unsuitable for the state's basic law.

The second issue concerns limited public access to and participation in the amendment process. Except for costly and uncertain conventions, the legislature monopolizes the amendment process: only proposals that a two-thirds majority of each house favors can come before the voters for ratification. Thus, proposed amendments that diminish or redistribute legislature power--for example, imposing term limits on legislators or creating a unicameral legislature--are unlikely to reach the ballot by way of a legislative resolution. Indeed, the requirement for a supermajority vote on constitutional amendments works to keep amendments of all kinds off the ballot.

Consequently, task force chair Representative Phillips appointed two subcommittees of the task force: a subcommittee to examine the problem of internal legislative procedures (Representatives Ulmer and Mulder, and Ken Jacobus), and a subcommittee to examine the problem of public access to the amendment process (Representatives Phillips and Ulmer, and Judge Tom Stewart). These subcommittees prepared the two measures which are recommended by the task force.

Constitutional Initiative

The task force studied the initiative process and declined to recommend it as a desirable method of amending the state constitution (currently, the initiative may be used in Alaska to enact laws but not to amend the constitution). This decision was based, in part, on the advice of political leaders in California, a state where the initiative has been used frequently to amend the constitution. At the October meeting, the task force was addressed via teleconference by Willie Brown, Jr., long-time speaker of the California Assembly. At the November meeting, the task force was addressed via teleconference by California congressman Sam Farr. Congressman Farr served as staff to the California constitution revision commission in the early 1970s, and he was instrumental in creating the current revision commission in California. Both men emphasized the profound governmental problems that have been created by constitutional initiatives over the past two decades in their state. As a result of initiatives, they said, the legislature has lost its power to manage the finances of the state and otherwise effectively govern.

Speaker Brown and Congressman Farr both said that the initiative process in California, contrary to its intent, does not effectively empower "the people" but rather special interests. Any group with enough money has an excellent chance of getting an initiative on the ballot and mustering a majority vote in its favor. It is common practice for advocates of an initiative to hire people to collect signatures on petitions, and then to spend handsomely on campaign advertising. The wording of initiative measures is often confusing and ambiguous. Some measures are unconstitutional. Most deal with matters that should be addressed in statute, not in the constitution, and molded through the deliberative, law-making process. The situation is so serious that a constitutional revision commission was created recently to begin formally addressing the

problem. Included in the Appendix is a copy of the bill creating the new California revision commission, together with committee analyses of the bill.

In discussion among task force members, the question was raised whether the legislature could prohibit in Alaska the hiring of people to solicit signatures on initiative petitions. This question was posed to the Legal Services Division, and the answer was almost certainly that it could not, as such a prohibition would likely be considered a violation of the rights of the petition sponsors to engage in free speech. Included in the Appendix of this report is a copy of the opinion by Jack Chenoweth, Legislative Counsel.

Constitution Revision Commissions

As a means of broadening public involvement in the constitutional amendment process that is less drastic than the initiative, the task force was drawn to the concept of the constitutional revision commission. These have been used extensively in other states over the last three decades to bring about constitutional reform. Included in the Appendix is a brief background memorandum on constitutional revision commissions by Gordon Harrison, Director of the Legislative Research Agency.

The task force considered at some length an approach proposed to it by the Alaska organization Common Ground. The proposal called for a permanent constitutional commission that could recommend amendments to the legislature and, in those cases where the legislature took no action, place its proposed amendments directly on the ballot. Only the state of Florida has authorized a constitutional commission to place amendments directly on the ballot. The approach suggested by Common Ground would be a highly circumscribed version of the Florida scheme. In this case, legislators would be given a chance to consider the commission's recommendations and to vote on them. If the recommendations were approved by a two-thirds majority vote, they would go to the ballot; if they failed to obtain the supermajority vote, they would die. Only if the legislature failed to vote could the commission have the amendments placed directly on the ballot. To implement, this approach would itself require a constitutional amendment because it represents a substantive change to Article XIII of the Alaska Constitution.

In the end, the task force rejected this approach in favor of a more traditional commission with solely advisory powers. Numerous doubts were expressed about the constitutionally created commission, including the question of whether such a body could obtain the necessary two-thirds majority vote in the legislature and be ratified by the voters. An advisory commission has the practical advantage of being a creature of statute requiring a simple majority vote of the legislature. Thus, the task force proposes that a permanent Commission on the Constitution be created by statute, as described in more detail below. The task force also proposes several changes to the Uniform Rules that affect the handling of constitutional amendments by the legislature, including the amendments presented by the new Commission on the Constitution. These rule changes are also discussed below.

Recommendations of the Task Force

The task force recommends (1) a bill creating a permanent, 7-member, advisory Commission on the Constitution, and (2) a concurrent resolution making changes to the Uniform Rules that would establish a Joint Committee on the Constitution and require the legislature to vote on amendments proposed by the new commission.

Bill to Create the Alaska Commission on the Constitution

The task force proposes the creation of permanent, 7-member, advisory commission to study constitutional problems and issues, and from time to time submit to the legislature its recommendations for constitutional amendments. This commission would create the opportunity for wide-ranging public discussion of constitutional matters, for consideration of these matters outside the partisan legislative setting, and for the studied development of proposed constitutional amendments. The commission members would not have a personal or institutional stake in the outcome of amendments, particularly those that affect the legislature. No more than three of the seven members would be registered in the same political party. The members would be appointed by a 5-member selection committee. Four of the selection committee members would be appointed by state officials--one each by the Senate president, House speaker, governor, and chief justice of the supreme court--and the fifth would be

selected by the other four. The purpose of the selection committee is to help obtain an impartial citizen commission by avoiding direct links between members and elected officials. Members would serve staggered 6-year terms. They could be removed from the commission only for cause, and only by a vote of 5 of the 7 members.

The bill creating the commission also contains a section that directs the rules committees to introduce the commission's recommended amendments "by request".

Finally, one of the rule changes discussed below would require that amendments proposed by the commission be put to a vote in at least the house of origin by the 60th day of the second legislative session. If the measure obtained the necessary two-thirds majority vote in the first chamber, a vote in the second chamber would be required by the 100th day of the second session.

Concurrent Resolution Creating a Joint Committee on the Constitution, and Requiring Vote on Commission's Proposals

The task force also proposes a House concurrent resolution that makes several changes to the Uniform Rules of the Alaska legislature. These changes are discussed below.

Sections 1 and 2 of the resolution create a Joint Committee on the Constitution of three House members and three Senate members with jurisdiction over all resolutions proposing constitutional amendments. Committee members would serve for the two-year duration of the legislature. The committee would be the first and last committee of referral for all proposed amendments, and it would be required to hold at least one hearing on each such proposed amendment. This committee would pay special attention to drafting details of proposed amendments. The purpose of the joint committee is to insure that all constitutional amendments introduced in the legislature receive at least one hearing by a special committee whose members have (or are expected to acquire) expertise in constitutional matters.

Section 3 of the resolution requires proposed amendments to be introduced in the first regular session of each legislature, except that the

Joint Committee on the Constitution and the Commission on the Constitution may propose amendments in the first thirty days of the second regular session. The purpose of this requirement is to allow sufficient time for the legislature to consider constitutional amendments. The exception allows the new joint committee and the new commission to hold hearings and study proposed constitutional amendments during the interim and bring their recommendations to the legislature early in the second session.

Section 4 of the resolution requires that amendments proposed by the Commission on the Constitution be voted on by the chamber in which they originate by the 60th day of the second regular legislative session. Measures that receive a two-thirds majority vote must then come to a vote in the other chamber by the 100th day of the second regular session. Measures that fail to receive the necessary supermajority vote in the first house, die. Requiring a vote on proposals of the Commission on the Constitution serves two purposes: one, it strengthens the role and efforts of the commission, and two, it makes individual legislators go on record in support of or in opposition to the amendments proposed by the commission.

The task force was not unanimous in support of the vote requirement in the last sentence of section 4: Judge Stewart objected to this provision, arguing that traditional legislative prerogatives for deciding what measures should be put to a vote of the body, and when, should not be disturbed. He asked that his objection to this particular recommendation of the task force be stated in the report of the group.

In sum, the recommendations of the task force would create a new citizen commission and a new standing committee of the legislature, and they would create new legislative procedures for handling constitutional amendments. Taken together, these measures should substantially expand citizen awareness of constitutional issues, and increase citizen access to and participation in the constitutional amendment process. They should also improve, from a technical point of view, the quality of amendments that eventually go before the voters for ratification.

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APPENDICIES

House Resolution No. 5 - Creating the Task Force

Proposed House Bill Relating to the Commission on the Constitution

Proposed House Resolution Amending the Uniform Rules Relating
to the Joint Committee on the Constitution and to Joint Resolutions

Memorandum on Constitution Revision Commissions

Prepared by Gordon S. Harrison, Director, Legislative Research Agency -
September 1, 1993

California Senate Bill No. 16 Relating to the
California Constitution Revision Commission
and Floor and Committee Analyses

Memorandum on the Constitutionality of Legislation Barring Sponsors'
Payment to Persons to Collect Signatures on Initiative Petitions
Prepared by Jack Chenoweth, Legislative Counsel - November 9, 1993

HOUSE RESOLUTION NO. 5
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE PHILLIPS

Introduced: 3/26/93

Referred: Rules

A RESOLUTION

1 **Establishing a House Constitutional Revision Task Force to consider and**
2 **recommend alternative methods by which the state constitution may be revised.**

3 **BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES:**

4 **WHEREAS** the constitution of a state is of vital importance in expressing the
5 collective agreement of a society as to how the state will conduct its affairs; and

6 **WHEREAS** Alaska's Constitution was adopted 37 years ago and, developed as it was
7 following an examination and analysis of the other state constitutions as they then read, the
8 document was acknowledged at the time as a model state constitution; and

9 **WHEREAS** Alaska is a young state, with rapidly changing economic, social,
10 communication, and political factors; and

11 **WHEREAS** the state's population has at least doubled since the 1955 - 1956
12 Constitutional Convention; and

13 **WHEREAS** the state constitution provides for two means of amendment, a decennial
14 vote on convening another constitutional convention and use of resolutions approved by the
15 legislature placing specific amendments on the ballot; and

16 **WHEREAS** neither method of revising the state constitution lends itself to adequate

1 citizen involvement in any contemplated changes to the state constitution; and

2 **WHEREAS** rapid changes in the state's population, vastly improved statewide
3 communications, and an interest and desire on the part of many of the state's citizens to have
4 a meaningful role in controlling their own destinies have led to calls for finding other ways
5 of preparing, presenting, and ratifying changes to the constitution that would allow greater
6 public participation in the process; and

7 **WHEREAS** an exploration of possible alternatives to the two existing methods of
8 amending the state constitution would be beneficial to the legislature and to the people of the
9 state.

10 **BE IT RESOLVED** that the House of Representatives establishes a five-member
11 House Constitutional Revision Task Force to consider and recommend alternative methods by
12 which the Alaska Constitution may be revised; and be it

13 **FURTHER RESOLVED** that the Speaker of the House of Representatives shall
14 appoint three members of the House of Representatives and two public members to the House
15 Constitutional Revision Task Force, and shall designate one of the members appointed to chair
16 the task force; the members shall be chosen in an effort to give the task force a membership
17 that has the broadest backgrounds, experience, and perspectives possible; and be it

18 **FURTHER RESOLVED** that the House Constitutional Revision Task Force shall
19 study alternative methods by which the state constitution may be revised, receive comments
20 from the public about proposed alternative methods, and prepare and present to the House of
21 Representatives its recommendations for alternative methods for revising the state constitution;
22 and be it

23 **FURTHER RESOLVED** that the expenses of the House Constitutional Revision Task
24 Force be paid from money otherwise appropriated for the work of the Alaska State
25 Legislature; and be it

26 **FURTHER RESOLVED** that the House Constitutional Revision Task Force is
27 authorized to meet between and during the sessions of the Eighteenth Alaska State Legislature,
28 and may hold public hearings and obtain information; and be it

29 **FURTHER RESOLVED** that the House Constitutional Revision Task Force shall
30 prepare and submit to the House of Representatives of the Eighteenth Alaska State Legislature
31 a preliminary report of its recommendations no later than February 1, 1994, and shall prepare
32 and submit a final report of its recommendations no later than April 1, 1994; and be it

1 **FURTHER RESOLVED** that the House Constitutional Revision Task Force is
2 terminated on the date of convening of the First Session of the Nineteenth Alaska State
3 Legislature.

8-LS1576K

Cook

3/28/94

HOUSE BILL NO.**IN THE LEGISLATURE OF THE STATE OF ALASKA****EIGHTEENTH LEGISLATURE - SECOND SESSION****BY**

Introduced:

Referred:

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to the Commission on the Constitution."

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1. FINDINGS AND PURPOSES.** The legislature finds there is a need to
4 improve and expand procedures for introduction and consideration of proposed amendments
5 to the state constitution. There should be substantially increased opportunities for citizen
6 involvement in these procedures. To accomplish these goals, there should be created a citizen
7 commission on the constitution to make continuing studies of the needs, from time to time,
8 for constitutional change, and to provide the legislature with carefully considered
9 recommendations for such proposals.

10 * **Sec. 2.** AS 24.08.060(b) is amended to read:

11 (b) Bills introduced by the legislative council shall be delivered with a letter
12 of explanation to the rules committee of either house and bear the inscription "Rules
13 Committee by Request of the Legislative Council"; bills introduced by the
14 Administrative Regulation Review Committee shall be delivered with a letter of

1 explanation to the rules committee of either house and bear the inscription "Rules
2 Committee by Request of the Administrative Regulation Review Committee"; bills
3 introduced by the Legislative Budget and Audit Committee shall be delivered with a
4 letter of explanation to the rules committee of either house and bear the inscription
5 "Rules Committee by Request of the Legislative Budget and Audit Committee." Joint
6 resolutions proposing amendments to the state constitution offered by the
7 Commission on the Constitution shall be delivered with a letter of explanation to
8 the rules committee of either house during a first regular session or during the
9 first 30 days of a second regular session and bear the inscription "Rules
10 Committee by Request of the Commission on the Constitution." Bills presented
11 by the governor shall be delivered with a letter to the rules committee of either house
12 and bear the inscription "Rules Committee by Request of the Governor"; bills so
13 presented and inscribed shall be received as bills carrying the approval of the governor
14 as to policy and budget impact. The governor may submit a statement of purpose and
15 effect with each bill and appear personally or through a representative before any
16 committee considering legislation.

17 * Sec. 3. AS 24.20 is amended by adding new sections to read:

18 ARTICLE 5. COMMISSION ON THE CONSTITUTION.

19 Sec. 24.20.650. COMMISSION ON THE CONSTITUTION. (a) A
20 Commission on the Constitution is established in the legislative branch. The
21 commission consists of seven members, with at least one member from each judicial
22 district. No more than three commission members may be registered members of the
23 same political party. An elected state official, a sitting justice, or a sitting judge may
24 not serve on the commission. A commission member serves a six-year term and may
25 be reappointed. A commission member may be removed from office only for cause
26 and only upon the affirmative vote of at least five members of the Commission on the
27 Constitution.

28 (b) Members of the Commission on the Constitution are appointed by a
29 selection committee consisting of one member appointed by the governor, one member
30 appointed by the presiding officer of the senate, one member appointed by the
31 presiding officer of the house of representatives, one member appointed by the chief

1 justice of the supreme court, and one member appointed by the other four members
2 of the selection committee. An elected state official, a sitting justice, or a sitting judge
3 may not serve on the selection committee. A member of the selection committee
4 serves a two-year term and may be reappointed. A vacancy is filled by the appointing
5 authority for the unexpired portion of the term. A person may be appointed to the
6 Commission on the Constitution only upon the approval of at least four members of
7 the selection committee. A vacancy on the commission is filled by the selection
8 committee for the unexpired portion of the term.

9 Sec. 24.20.660. POWERS AND DUTIES OF THE COMMISSION. The
10 Commission on the Constitution may consider any proposed amendment to the state
11 constitution. During a first regular session and during the first 30 days of a second
12 regular session, the commission may, through the rules committees, introduce one or
13 more joint resolutions proposing amendments to the state constitution.

14 * Sec. 4. Notwithstanding AS 24.20.650(a), as enacted in sec. 2 of this Act, as designated
15 by the selection committee, one member of the first Commission on the Constitution shall be
16 appointed to a three-year term, two members shall be appointed to four-year terms, two
17 members shall be appointed to five-year terms, and two members shall be appointed to six-
18 year terms.

8-LS1279E ✓

Cook

3/22/94

HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Introduced:

Referred:

A RESOLUTION

1 **Proposing amendments to the Uniform Rules of the Alaska State Legislature**
2 **relating to the Joint Committee on the Constitution and to joint resolutions; and**
3 **providing for an effective date.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. Rule 1(e) of the Uniform Rules of the Alaska State Legislature is amended
6 to read:

7 (e) The presiding officer shall announce, not later than the day following
8 election, the appointment of a Committee on Committees consisting of five members
9 including the presiding officer. The presiding officer chairs the Committee on
10 Committees. The committee is responsible for nominating the members of the
11 standing committees as set out in Rule 20(a) [20] and the member who is to chair each
12 standing committee to serve for the two-year duration of the legislature. The
13 membership of each standing committee shall total to an uneven number. The
14 committee is also responsible for nominating three members of that house to serve
15 on the Joint Committee on the Constitution for the two-year duration of the
16 legislature and the member who is to serve as co-chair. On each standing

committee and on the Joint Committee on the Constitution the minority is entitled to the number of seats that is proportional to the number of minority members compared to the total house membership or to one seat, whichever is greater. In calculating the number of seats the minority is entitled to, fractional numbers that represent the minority proportional entitlement to a seat shall be ignored. The report of the Committee on Committees is subject to approval by a majority vote of the full membership of the house. For purposes of this subsection "minority" means a group of members who have organized and elected a minority leader and who constitute at least 25 percent of the total house membership.

* Sec. 2. Rule 20 of the Uniform Rules of the Alaska State Legislature is amended by adding a new subsection to read:

(c) In addition to the standing committees, there is the Joint Committee on the Constitution with jurisdiction over resolutions proposing amendments to the State Constitution. The committee consists of three representatives and three senators. The committee shall, in the house of origin, serve as the first committee of referral for a resolution proposing an amendment to the State Constitution, and the committee shall, in the other house, serve as the last committee of referral for the resolution. The committee shall consider each resolution proposing an amendment to the State Constitution, giving particular attention to matters of style and drafting. The committee, while serving as the first committee of referral, shall hold at least one public hearing on each resolution. The committee may meet during and between regular sessions. The provisions of Rule 21 that conflict with this subsection or with Rule 1(e) do not apply to the Joint Committee on the Constitution.

* Sec. 3. Rule 37 of the Uniform Rules of the Alaska State Legislature is amended by adding a new subsection to read:

(c) Notwithstanding (a) of this rule and Rule 44, a resolution proposing an amendment to the State Constitution may only be introduced during a first regular session, except that the Joint Committee on the Constitution may, and the Commission on the Constitution may through the Rules Committee, introduce a resolution proposing an amendment to the State Constitution during the first 30 days of a second regular session as well.

* Sec. 4. Rule 49(a)(5) of the Uniform Rules of the Alaska State Legislature is amended

1 to read:

2 (5) A joint resolution is the most formal type of resolution and is
3 adopted by both houses and then signed by the governor as a ministerial formality.
4 Except as provided in Rule 20(c) and Rule 37(c), a [THE] joint resolution is treated
5 in all respects as a bill but it is not subject to veto. It is usually reserved for
6 addressees outside the state. This resolution is used mainly to express the view or
7 wish of the legislature to the President, the Congress or agencies of the United States
8 Government or the governments of other states. It is required for proposing or
9 ratifying amendments to the U. S. Constitution, proposing amendments to the State
10 Constitution under provisions of Sec. 1, Art. XIII, of the State Constitution, and for
11 disapproval of local government boundary changes recommended by the Local
12 Boundary Commission under provisions of Sec. 12, Art. X, of the State Constitution.
13 Approval of a joint resolution, other than a resolution proposing amendments to the
14 State Constitution, requires a majority vote of the full membership of each house.
15 A vote shall be held in the house of origin by the 60th legislative day of the
16 second regular session on a resolution proposing amendments to the State
17 Constitution introduced by the Commission on the Constitution; if the resolution
18 passes by at least two-thirds vote in the house of origin, a vote shall be held on
19 it in the second house by the 100th legislative day of that session.

20 * Sec. 5. The amendments proposed by this resolution take effect on the convening of the
21 First Session of the Nineteenth Alaska State Legislature.

Legislative Research Agency

Alaska State Legislature



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September 1, 1993

MEMORANDUM

TO: Representative Gail Phillips

FROM: Gordon S. Harrison, Director 

RE: **Constitution Revision Commissions**
Research Request 94.014

You asked for a brief overview of the use of constitutional revision commissions in the United States. This memorandum offers a cursory survey of these bodies; we have material at hand to provide more historical and analytical information on constitutional commissions if you or members of the Alaska House Constitution Revision Task Force would like a more detailed treatment of the subject.

Constitutional revision commissions, also called constitutional study commissions, are composed largely (but not exclusively) of private citizens appointed by legislative leaders, the governor and occasionally judges. They are strictly *advisory* bodies; except for an unusual situation in Florida (discussed below), constitutional commissions do not have the authority to propose constitutional change directly to the voters. They have no affect on the amendment process specified in state constitutions. Thus, commissions do not diminish the traditional power of the legislature to propose amendments to the people or to call a constitutional convention.

In states feeling pressure for constitutional change, a citizen commission is appealing because it removes, preliminarily, the issue of amendment from the legislative arena. This can be helpful because legislatures typically do not have the time to contemplate complex and often tedious points of constitutional philosophy, doctrine and legal phraseology. The consideration of these matters should be calm, unhurried and to some extent detached from the passions of momentary controversy, conditions seldom attainable in any legislative setting. Also, legislatures have their own direct interest in many constitutional issues. Thus, a blue-ribbon study commission may produce recommendations that a legislative body might not, and the recommendations of a commission, even those identical to ones that a legislative body would have produced, are likely to attract broader public support because they are untainted by the appearance of a conflict of interest.

An impartial, fairly constituted commission with sufficient time and resources to do the job assigned it is unlikely to have any serious ill consequences. At worst, it will have consumed public money and the time and patience of its members without advancing the cause of constitutional revision or amendment. Indeed, this has been the outcome of many constitutional study commissions; recommendations are not infrequently rejected by the legislature or by the electorate. The possible disadvantage of a commission is that a poorly constituted one may do more harm than good in the way of finding solutions to problems and educating the public about the issues at stake. A commission could well muddy the waters of constitutional change if, for example, it were too small or too partisan to be regarded as legitimate by mainstream political groups; if it were so large as to be unwieldy and to dilute the role of individual members; if it were handicapped with internal procedures that biased the outcome of its deliberations; or if it labored with inadequate staff and insufficient funds for hearings and other forms of public involvement.

Historically, constitutional revision commissions have tended to be used when a total rewrite of a state constitution is contemplated, rather than selective amendments. During the 1960s and early 1970s there was considerable interest in state constitutional revision around the country, and commissions were common. In recent years the constitutional reform movement has lost momentum (in large part because its work was accomplished), and only a few commissions can be found today. Thus, the 1972-73 edition of the *Book of the States* reported fourteen commissions in existence during 1971; the 1992-93 edition reported only two commissions operating in 1991.

Although the usual charge to a commission is to prepare (by a specific date) the draft of a whole new constitution, commissions may well be formed to examine a specific article or a specific constitutional issue. Indeed, the Alaska House Constitutional Revision Task Force is a type of limited constitutional study commission (and it will probably be noted as a commission in operation during the biennium 1992-93 in the forthcoming edition of the *Book of the States*). In 1988 a special commission, the Taxation and Budget Reform Commission, was created in Florida to examine the state's revenue needs, budgetary practices, and tax structure. The unique feature of this commission was not its limited focus on fiscal matters but its power to place constitutional amendments directly on the state ballot.¹

¹The commission was created by constitutional amendment; it follows the precedent of the Florida Constitutional Revision Commission (CRC), also a constitutional body. The CRC is a nonelected body with authority to place proposed constitutional amendments directly on the ballot. In 1988 the Florida constitution was amended to remove fiscal matters from the purview of the CRC and place them in the hands of the Taxation and Budget Reform Commission. See Donna Blanton, "The Taxation and Budget Reform Commission: Florida's Best Hope for the Future," *Florida State University Law Review*, Vol. 18 (Winter, 1991), pp. 437-465.

Representative Phillips
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The Utah Constitutional Revision Commission, one of the two commissions operating in 1991, is noteworthy because it is the only commission with a permanent existence. Originally created in 1969 with a life of six years, the commission was made permanent in 1977 (it remains subject to periodic sunset review). The commission is directed to make a "comprehensive examination" of the constitution of the state of Utah and to make recommendations for change at least 60 days before the convening of the legislature. The commission has over the years studied the Utah constitution one article at a time and brought forth proposed amendments limited to the subject of each article. During its life, the Utah commission has advanced 41 proposals. Of these, 18 were rejected by the legislature, and of the 23 approved by the legislature, 20 were ratified by the voters.

Commissions are usually created by the legislature in statute. However, they have also been created by legislative resolution, by action of a legislative committee (the Kentucky commission was created by a committee roughly equivalent to the legislative council in this state, for example) and by executive order. Ideally, constitutional study commissions are created by statute and report directly to the legislature, as governors have no role or only a peripheral role in the amendment process in most states. Commissions vary widely in size, composition and method of selecting members. However, most seek a balance of partisan interests, include some ex-officio legislative and executive members, and draw the balance of their members from the ranks of private citizens and elected municipal officials.

I hope this introductory information is useful. If we can be of further assistance, please call.

CHAPTER 1243

An act to add and repeal Article 1.5 (commencing with Section 8275) of Chapter 3.5 of Division 1 of Title 2 of the Government Code, relating to the California Constitution Revision Commission, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 11, 1993. Filed with
Secretary of State October 11, 1993.]

LEGISLATIVE COUNSEL'S DIGEST

SB 16, Killea. California Constitution Revision Commission.

(1) The California Constitution authorizes the Legislature to propose revisions to that document. Existing law creates in state government the California Law Revision Commission to examine the common law and statutes of the state and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms to the Governor and the Legislature.

This bill would create the California Constitution Revision Commission, prescribe its membership, and specify its powers and duties. The measure would require the commission to submit a report to the Governor and the Legislature no later than August 1, 1995, that sets forth its findings with respect to the formulation and enactment of a state budget and recommendations for the improvement of that process. The commission would also be required to report on specified issues relating to the structure of state governance.

(2) The provisions relating to the commission would become inoperative on July 1, 1996, and would be repealed as of January 1, 1997.

(3) The bill would also appropriate \$200,000 for the 1993-94 fiscal year to the commission to carry out its duties and responsibilities.

(4) The bill, in addition, would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) California's budget process has become crippled by a complex entanglement of constraints that interfere with an orderly and comprehensive consideration of all fiscal matters. A complete review of the process by an independent citizens' commission would provide the Legislature a basis for considering changes that would

result in a more thoughtful and deliberative process.

(b) The legislative process has at times become mired in gridlock. Rivalries between the two houses of the Legislature and the executive branch have deterred the state's ability to make significant policy changes in response to the changing times. Changes to existing government organizational structures may provide a more responsive and productive form of governance for California than the current system.

(c) California's existing "system" of government is dysfunctional and does not work together sufficiently to achieve the public's goals. The various components have no common conception of mission and often work at cross-purposes.

SEC. 2. Article 1.5 (commencing with Section 8275) is added to Chapter 3.5 of Division 1 of Title 2 of the Government Code, to read:

Article 1.5. California Constitution Revision Commission

8275. There is created in state government the California Constitution Revision Commission.

8275.1. (a) The commission shall consist of 23 members, as follows:

(1) Ten members appointed by the Governor. No more than six members may be registered with the same political party.

(2) Five members appointed by the Speaker of the Assembly. No more than three members may be registered with the same political party. Two members shall be appointed in consultation with the Assembly Minority Caucus.

(3) Five members appointed by the Senate Committee on Rules. No more than three members may be registered with the same political party. Two members shall be appointed in consultation with the Senate Minority Caucus.

(4) The Chief Justice of California, or his or her designee.

(5) The Legislative Analyst, or his or her designee.

(6) The Director of Finance, or his or her designee.

The Governor, the Senate Committee on Rules, and the Speaker of the Assembly may each appoint no more than one Member of the Legislature to the commission. No lobbyist, as defined in Section 82039, may serve as a member of the commission. The membership of the commission shall broadly reflect the ethnic, racial, cultural, geographic, and gender diversity of the state.

(b) The initial appointments to the commission shall be made not later than 90 days after this article becomes operative.

8275.2. Each member of the commission shall serve without compensation, but each member other than an elected officer shall receive one hundred dollars (\$100) for each day while on official business of the commission. In addition, each member shall also be entitled to receive necessary expenses actually incurred in the performance of his or her duties.

8275.3. (a) The Governor shall select one of the members as the chair of the commission.

(b) The commission may appoint an executive secretary and fix his or her compensation in accordance with law. The commission may employ and fix the compensation, in accordance with law, of any professional, clerical, and other assistants that may be necessary.

(c) The Legislative Counsel, Legislative Analyst, State Auditor, and the Department of Finance shall assist the commission in the performance of its duties.

8275.4. The commission shall assist the Governor and the Legislature by doing the following:

(a) Examining the process by which a budget is formulated and enacted by state government, the manner in which the budget serves the future needs of the state, the appropriate balance of resources and spending by the state, and the fiscal relations of the state, federal, and local governments, and any constraints and impediments that interfere with an orderly and comprehensive consideration of all fiscal matters that impact upon the development of a budget for the state.

(b) Examining the structure of state governance and proposed modifications that may increase accountability and improve the process of formulation, consideration, and approval of policy determinations and a budget for the state.

(c) Examining the current configuration of state and local government duties, responsibilities, and priorities; the fiscal relations of state and local governments; the types of services delivered; mechanisms of service delivery; desired program outcomes; and methods of performance measurement; and any constraints or impediments that interfere with the most effective allocation of state and local responsibilities.

(d) Examining the feasibility of integrating community resources into service delivery mechanisms in order to reduce duplication and increase efficiency, and the feasibility of community coalitions making recommendations to local entities regarding a community's vision and goals.

8275.5. The commission shall submit a report to the Governor and the Legislature no later than August 1, 1995, that sets forth its findings with respect to the mandate in Section 8275.4. The commission should submit interim reports before that date whenever it makes a finding and recommendation on a specific topic.

8275.6. In carrying out its duties and responsibilities, the commission shall have the following powers:

(a) To meet at times and places as it may deem proper. The commission is a state body subject to the provisions of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3).

(b) To issue subpoenas to compel the attendance of witnesses and

the production of books, records, papers, accounts, reports, and documents.

(c) To administer oaths.

(d) To contract, as it deems necessary, for the rendition of services, facilities, studies, and reports to the commission as will best assist it to carry out its duties and responsibilities.

(e) To cooperate with and to secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of its duties and responsibilities, and to direct the sheriff of any county or any marshal to serve subpoenas, orders, and other process.

(f) To secure directly from every department, agency, or instrumentality full cooperation, access to its records, and access to any information, suggestions, estimates, data, and statistics that it may have available.

(g) To do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the powers expressly granted to it.

8275.7. This article shall become inoperative on July 1, 1996, and, as of January 1, 1997, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. The sum of two hundred thousand dollars (\$200,000) is hereby appropriated from the General Fund for the 1993-94 fiscal year to the California Constitution Revision Commission established by this act to carry out its duties and responsibilities under this act.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the California Constitution Revision Commission, created by this act, to carry out its functions and duties as soon as possible, it is necessary that this act take effect immediately.

O

OFFICE ID: B4500
ROUTE TO: LEGISLATIVE COUNSEL BUREAU
925 L STREET ROOM 500
ATTENTION:

[illegible]

SENATE THIRD READING

SB 16 (Killea) - As Amended: September 8, 1993

ASSEMBLY ACTIONS:

COMMITTEE RULES VOTE 5-2 COMMITTEE W. & M. VOTE 14-7

Ayes: Burton, Johnson, Lee, Murray, Nolan
Ayes: Vasconcellos, Alpert, V. Brown, Burton, Campbell, Costa, Epple, B. Friedman, Hannigan, McDonald, Murray, Nolan, O'Connell, Polanco

Nays: Harvey, Mountjoy
Nays: Horcher, Allen, Johnson, Jones, Quackenbush, Seastrand, Woodruff

DIGEST

Urgency statute. 2/3 vote required.

Existing law creates the California Law Revision Commission to examine the common law and statutes of the state and judicial decisions and recommend needed reforms to the Governor and the Legislature.

This bill creates the California Constitution Revision Commission, prescribes its membership, specifies its powers and duties, appropriates \$200,000 and sunsets July 1, 1996.

Specifically, the commission would:

- 1) Consist of 23 members: 10 appointed by the Governor, 5 by the Senate Rules Committee, 5 by the Speaker of the Assembly, the Chief Justice of California, the Legislative Analyst, and the Director of Finance.
- 2) Examine the budget formulation and enactment process; the manner in which the budget serves the future needs of the state; the appropriate balance of state resources and spending; the fiscal relations of state, federal and local governments; and any constraints/impediments to a comprehensive consideration of all fiscal matters that affect budget development.
- 3) Examine the state government budget process and the constraints and impediments that affect the development of the budget.
- 4) Examine the state and local government duties, responsibilities, and priorities; the fiscal relations of state and local governments; the types of services delivered; mechanisms of service delivery; desired program outcomes; and methods of performance measurement; and any constraints/impediments that interfere with the most effective allocation of state and local responsibilities.
- 5) Examine the structure of state governance and propose modification that may increase accountability and improve the budget process.

- continued -

- 6) Examine the feasibility of integrating community resources into service delivery mechanisms to reduce duplication and increase efficiency.
- 6) Submit interim reports and its final report by August 1, 1995.

FISCAL EFFECT

Appropriates \$200,000 from the General Fund for the 1993-94 Fiscal Year to the commission for per diem, travel, staff and operating expenses.

COMMENTS

Pursuant to the provisions of ACR 188 (W. Brown) Resolution Chapter 171, Statutes of 1990, a staff report was prepared by the Joint Legislative Budget Committee. The report concluded that the highest potential for overhauling the state's existing fiscal process would be achieved by the creation of a Constitution Revision Commission whose duties were goal specific and whose membership represented a cross section of knowledgeable and respected citizens.

Prior legislation:

- 1) AB 2398 (Isenberg) of 1991-92, differed only in that appointments were to be made no later than 60 days of enactment, allowed the commission to appoint the chair, the reporting dates, and appropriated \$500,000. This bill died in Conference.
- 2) SB 55 (Alquist) of 1991-92, created a 60 member commission to review both the state's fiscal process and initiative process. This bill was vetoed by the Governor.
- 3) SB 458 (Killea) of 1991-92, differed only in the reporting dates and appropriated \$300,000. This bill was vetoed by the Governor.

FN 005584

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UNFINISHED BUSINESS

SB 16

Killea (I), et al

9/8/93

27 - Urgency

p. 2425, 7/16/93

61-17, 9/9/93

SUBJECT: California Constitution Revision Commission

SOURCE: The author

DIGEST: This bill would create the California Constitution Revision Commission, prescribe its membership, and specify its powers and duties. This measure would require the Commission to submit a report to the Governor and the Legislature no later than August 1, 1995, that sets forth its findings with respect to the formulation and enactment of a state budget and recommendations for the improvement of that process. The Commission would also be required to report on specified issues relating to the structure of state governance. Appropriates \$200,000.

This bill sunsets January 1, 1997.

Assembly Amendment:

1. Increases the date of submittal of the report from March 31, 1994 to January 1, 1995.
2. Increases the committee from 20 to 23 by adding the Chief Justice of the Supreme Court, Legislative Analyst, and Director of Finance, or his or her designee.
3. Adds several items for the commission to examine.

ANALYSIS: Pursuant to the provisions of ACR 188 (W. Brown; Res. Chap. 171, Statutes of 1990), a staff report was prepared by the Joint Legislative Budget Committee. The report concluded that the highest potential for overhauling the state's existing

fiscal process would be achieved by the creation of a Constitution Revision Commission whose duties were goal specific and whose membership represented a cross section of knowledgeable and respected citizens.

The California Constitution authorizes the Legislature to propose revisions to the California Constitution.

In 1962, the Legislature adopted a constitutional amendment, which was approved by the people, providing for revision of the Constitution.

In the 1963 First Extraordinary Session, the Legislature adopted a concurrent resolution establishing the Constitution Revision Commission under the Joint Committee on Legislative Organization. Having studied and reported on every article of the Constitution, the Commission's existence was terminated by the Legislature in 1974.

Existing law creates the California Law Revision Commission for the purpose of examining the common law and statutes of the state and judicial decisions and recommending needed reforms to the Governor and the Legislature.

SB 458 creates the California Constitution Revision Commission. The Commission would terminate on January 1, 1997.

The bill states the following legislative findings and declarations:

--That California's budget process has become crippled by a complex entanglement of constraints that interfere with an orderly and comprehensive consideration of all fiscal matters. A complete review of the process by a independent citizens' commission would provide the Legislature a basis for considering changes that would result in a more thoughtful and deliberative process.

-- That the legislative process has at times become mired in gridlock. Rivalries between the two houses of the Legislature and the executive branch have deterred the state's ability to make significant policy changes in response to the changing times. Changes to existing government organizational structures may provide a more responsive and productive form of governance for California than they current system.

The Commission would:

1. Examine the budget formulation and enactment process; the manner in which the budget serves the future needs of the state; the appropriate balance of state resources and spending; the fiscal relations of state, federal and local governments; and any constraints/impediments to a comprehensive consideration of all fiscal matters that affect budget development.
2. Examine the state government budget process and the constraints and impediments that affect the development of the budget.

CONTINUED

3. Examine the state and local government duties, responsibilities, and priorities; the fiscal relations of state and local governments; the types of services delivered; mechanisms of service delivery; desired program outcomes; and methods of performance measurement; and any constraints/impediments that interfere with the most effective allocation of state and local responsibilities.
4. Examine the structure of state governance and propose modification that may increase accountability and improve the budget process.
5. Examine the feasibility of integrating community resources into service delivery mechanisms to reduce duplication and increase efficiency.

Appointments

The bill would prescribe the following:

- (a) The Governor will appoint 10 members, the Senate Committee on Rules 5 members, and the Speaker of the Assembly 5 members to the Commission, and appoint no more than one Member of the Legislature each as part of their appointment allotment.

The Chief Justice of California, the Legislative Analyst, the Director of Finance, or his or her designee would be members.

No lobbyist may serve as a member of the commission.

- (b) Membership of the Commission would broadly reflect the economic, geographic, ethnic, racial, cultural, and gender diversity of the state.
- (c) The initial appointments to the Commission would be made not later than 90 days after adoption of this resolution.

Each member would receive \$100 for each day while on official commission business plus any necessary expenses incurred.

The Governor is to select one of its members as the Chairman of the Commission.

The Commission may appoint an executive secretary and employ professional, clerical, and other assistants that may be necessary. The Legislative Counsel, Legislative Analyst, State Auditor, and Department of Finance would assist the Commission. The Commission would be required to submit a report to the Governor and the Legislature by August 1, 1994.

Two hundred thousand dollars (\$200,000) would be appropriated from the General Fund for the 1993-94 fiscal year.

SIMILAR LEGISLATION: A very similar bill, SB 458 (Killea) of 1992 passed the Senate by a vote of 27-10 but was subsequently vetoed by the Governor.

CONTINUED

The difference between the two is that SB 16 does not put the Chief Justice on the Commission.

Senate Floor Vote: (P. 8188, 8/31/92)

VETO MESSAGE:

"This bill would create the California Constitution Revision Commission to review the state's budget process and the attendant constraints that interfere with an orderly and comprehensive consideration of all fiscal matters.

"While I agree that the budget process and consideration of fiscal matters needs considerable attention, I do not agree that the formation of a new Commission is the method we should use to achieve this objective. Members of the legislative and executive branches of government are fully aware of the issues that must be resolved. We do not need a Commission for this purpose. Instead, it would be wiser if we confronted these problems directly and immediately. It would be my hope that we could do so early in 1993."

FISCAL EFFECT: Appropriation: Yes Fiscal Committee: Yes Local: No

Appropriates \$200,000 for the 1993-94 fiscal year.

ASSEMBLY FLOOR VOTE:

DLW:jk 9/10/92 Senate Floor Analyses

CONTINUED

ASSEMBLY THIRD READING

SB 16 (Killea) - As Amended: September 3, 1993

ASSEMBLY ACTIONS:

COMMITTEE	<u>RULES</u>	VOTE <u>5-2</u>	COMMITTEE	<u>W. & M.</u>	VOTE <u>14-7</u>
Ayes:	Burton, Johnson, Lee, Murray, Nolan		Ayes:	Vasconcellos, Alpert, V. Brown, Burton, Campbell, Costa, Eppler, B. Friedman, Hannigan, McDonald, Murray, Nolan, O'Connell, Polanco	
Nays:	Harvey, Mountjoy		Nays:	Horchner, Allen, Johnson, Jones, Quackenbush, Seastrand, Woodruff	

DIGEST

Urgency statute. 2/3 vote required.

Existing law creates the California Law Revision Commission to examine the common law and statutes of the state and judicial decisions and recommend needed reforms to the Governor and the Legislature.

This bill creates the California Constitution Revision Commission, prescribes its membership, specifies its powers and duties, appropriates \$200,000 and sunsets July 1, 1996. Specifically, the commission would:

- 1) Consist of 20 members: 10 appointed by the Governor, 5 by the Senate Rules Committee, and 5 by the Speaker of the Assembly. The Chief Justice of California, or his or her designee, would serve ex-officio.
- 2) Examine the budget formulation and enactment process; the manner in which the budget serves the future needs of the state; the appropriate balance of state resources and spending; the fiscal relations of state, federal and local governments; and any constraints/impediments to a comprehensive consideration of all fiscal matters that affect budget development.
- 3) Examine the state government budget process and the constraints and impediments that affect the development of the budget.
- 4) Examine the state and local government duties, responsibilities, and priorities; the fiscal relations of state and local governments; the types of services delivered; mechanisms of service delivery; desired program outcomes; and methods of performance measurement; and any constraints/impediments that interfere with the most effective allocation of state and local responsibilities.
- 5) Examine the structure of state governance and propose modification that may increase accountability and improve the budget process.

- continued -

- 6) Examine the feasibility of integrating community resources into service delivery mechanisms to reduce duplication and increase efficiency.
- 6) Submit interim reports and its final report by December 1, 1994.

FISCAL EFFECT

Appropriates \$200,000 from the General Fund for the 1993-94 Fiscal Year to the commission for per diem, travel, staff and operating expenses.

COMMENTS

Pursuant to the provisions of ACR 188 (W. Brown), Resolution Chapter 171, Statutes of 1990, a staff report was prepared by the Joint Legislative Budget Committee. The report concluded that the highest potential for overhauling the state's existing fiscal process would be achieved by the creation of a Constitution Revision Commission whose duties were goal specific and whose membership represented a cross section of knowledgeable and respected citizens.

Prior legislation:

- 1) AB 2398 (Isenberg) of 1991-92, differed only in that appointments were to be made no later than 60 days of enactment, allowed the commission to appoint the chair, the reporting dates, and appropriated \$500,000. This bill died in Conference.
- 2) SB 55 (Alquist) of 1991-92, created a 60 member commission to review both the state's fiscal process and initiative process. This bill was vetoed by the Governor.
- 3) SB 458 (Killea) of 1991-92, differed only in the reporting dates and appropriated \$300,000. This bill was vetoed by the Governor.

FN 005131

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WAYS AND MEANS COMMITTEE ANALYSIS

Author: Killea

Amended: 07/13/93

Bill No.: SB 16

Policy Committee: Rules

Vote: 05-02

Urgency: Yes

Hearing Date: 09/01/93

State Mandated Local Program: No

Staff Comments By:

Reimbursable:

Tim Gage

Summary

This bill establishes a 20-member California Constitution Revision Commission, 10 appointed by the Governor, 5 by the Senate Rules Committee and 5 by the Speaker of the Assembly, to:

- 1) Examine the budget formulation and enactment process; the manner in which the budget serves the future needs of the state; the appropriate balance of state resources and spending; the fiscal relations of state, federal and local governments; and any constraints/impediments to a comprehensive consideration of all fiscal matters that affect budget development.
- 2) Examine the structure of state governance and modifications that may increase accountability and improve the policy and budget formulation process.
- 3) Report its findings to the Governor and Legislature by March 31, 1994.

The commission would cease to operate July 1, 1996.

Fiscal

The bill appropriates \$200,000 General Fund for support of the commission for per diem, travel, staff and operating expenses for the 1993-94 fiscal year.

Comments

AB 665 (Vasconcellos), currently on the Appropriations Committee suspense file, creates a Commission to Reinvent State and Local Government.

SB 458 (Killea) and AB 2398 (Isenberg) of 1992 would have created a California Constitution Revision Commission to examine the budget process and the initiative process. SB 458 was vetoed and AB 2398 died in conference.

SB 55 (Alquist) of 1991 contained similar provisions and was vetoed.

TG

Date of Hearing: August 30, 1993

ASSEMBLY COMMITTEE ON RULES

John Burton, Chair

SB 16 (Killea) - As Amended: July 13, 1993

SUBJECT

California Constitution Revision Commission.

DIGEST

Urgency statute. 2/3 vote required.

This bill creates the California Constitution Revision Commission, prescribes its membership, specifies its powers and duties, appropriates \$200,000 and sunsets July 1, 1996.

Specifically, this commission would:

- 1) Consist of 20 members: 10 appointed by the Governor, 5 by the Senate Rules Committee, and 5 by the Speaker of the Assembly. They are each allowed to appoint only one member of the Legislature. No lobbyist may serve on the commission. The initial appointments are to be made no later than 90 days after enactment of this measure. Each member would receive \$100 per diem and necessary expenses.

The Governor appoints the chair and the commission appoints an executive secretary and employs professional, clerical, and other assistants as needed. The Legislative Counsel, Legislative Analyst, State Auditor, and the Department of Finance would assist the commission.

- 2) Examine the state government budget process and the constraints and impediments that affect the development of the budget.
- 3) Examine the structure of state governance and propose modification that may increase accountability and improve the budget process.
- 4) Submit interim reports and its final report by March 31, 1994.

FISCAL EFFECT

- continued -

Appropriates \$200,000 from the General Fund for the 1993-94 Fiscal Year to the commission.

COMMENTS

Pursuant to the provisions of ACR 188 (W. Brown) Resolution Chapter 171, Statutes of 1990, a staff report was prepared by the Joint Legislative Budget Committee. The report concluded that the highest potential for overhauling the state's existing fiscal process would be achieved by the creation of a Constitution Revision Commission whose duties were goal specific and whose membership represented a cross section of knowledgeable and respected citizens.

Prior legislation:

- 1) AB 2398 (Isenberg) of 1991-92, differed only in that it put the Chief Justice on the commission, appointments were to be made no later than 60 days of enactment, allowed the commission to appoint the chair, the reporting dates, and appropriated \$500,000. This bill died in Conference.
- 2) SB 55 (Alquist) of 1991-92, created a 60 member commission to review both the state's fiscal process and initiative process. This bill was vetoed by the Governor. In his message, he stated:

"I am concerned that the size of this Commission would make it too unwieldy to accomplish its stated purpose. Moreover, the composition of the Commission does not provide for equal representatives for the executive branch of government. When concerning the important and extensive subject of State fiscal procedures, the two branches should be represented in a cooperative, positive, and equal basis."

- 3) SB 458 (Killea) of 1991-92, differed only in that it put the Chief Justice on the commission, the reporting dates and appropriated \$300,000. This bill was vetoed by the Governor. In his message, he stated:

"While I agree that the budget process and consideration of fiscal matters needs considerable attention, I do not agree that the formation of a new Commission is the method we should use to achieve this objective. Members of the legislative and executive branches of government are fully aware of the issues that must be resolved. We do not need a Commission for this purpose. Instead, it would be wiser if we confronted these problems directly and immediately. It would be my hope that we could do so early in 1993."

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THIRD READING

SB 16

Rillea (I), et al

7/13/93

27 - Urgency

SUBJECT: California Constitution Revision Commission

SOURCE: The author

DIGEST: This bill would create the California Constitution Revision Commission, prescribe its membership, and specify its powers and duties. This measure would require the Commission to submit a report to the Governor and the Legislature no later than March 31, 1994, that sets forth its findings with respect to the formulation and enactment of a state budget and recommendations for the improvement of that process. The Commission would also be required to report on specified issues relating to the structure of state governance. Appropriates \$200,000.

This bill sunsets January 1, 1997.

ANALYSIS: Pursuant to the provisions of ACR 188 (W. Brown; Res. Chap. 171, Statutes of 1990), a staff report was prepared by the Joint Legislative Budget Committee. The report concluded that the highest potential for overhauling the state's existing fiscal process would be achieved by the creation of a Constitution Revision Commission whose duties were goal specific and whose membership represented a cross section of knowledgeable and respected citizens.

The California Constitution authorizes the Legislature to propose revisions to the California Constitution.

In 1962, the Legislature adopted a constitutional amendment, which was approved by the people, providing for revision of the Constitution.

In the 1963 First Extraordinary Session, the Legislature adopted a concurrent resolution establishing the Constitution Revision Commission under the Joint Committee on Legislative Organization. Having studied and reported on every article of the Constitution, the Commission's existence was terminated by the Legislature in 1974.

Existing law creates the California Law Revision Commission for the purpose of examining the common law and statutes of the state and judicial decisions and recommending needed reforms to the Governor and the Legislature.

SB 458 creates the California Constitution Revision Commission. The Commission would terminate on January 1, 1997.

The bill states the following legislative findings and declarations:

--That California's budget process has become crippled by a complex entanglement of constraints that interfere with an orderly and comprehensive consideration of all fiscal matters. A complete review of the process by a independent citizens' commission would provide the Legislature a basis for considering changes that would result in a more thoughtful and deliberative process.

-- That the legislative process has at times become mired in gridlock. Rivalries between the two houses of the Legislature and the executive branch have deterred the state's ability to make significant policy changes in response to the changing times. Changes to existing government organizational structures may provide a more responsive and productive form of governance for California than they current system.

The Commission would be charged with examining the process by which a budget is formulated and enacted by state government, the manner in which the budget serves the future needs of the state, the appropriate balance of resources and spending by the state, the fiscal relations of the state, federal, and local government, and any impediments that interfere with this process.

It would also examine the structure of state governance and proposed modifications that may increase accountability and improve the process of formulation, consideration and approval of policy determinations and a budget for the state.

Appointments

The bill would prescribe the following:

- (a) The Governor will appoint 10 members, the Senate Committee on Rules 5 members, and the Speaker of the Assembly 5 members to the Commission, and appoint no more than one Member of the Legislature each as part of their appointment allotment.

No lobbyist may serve as a member of the commission.

CONTINUED

- (b) Membership of the Commission would broadly reflect the economic, geographic, ethnic, racial, cultural, and gender diversity of the state.
- (c) The initial appointments to the Commission would be made not later than 90 days after adoption of this resolution.

Each member would receive \$100 for each day while on official commission business plus any necessary expenses incurred.

The Governor is to select one of its members as the Chairman of the Commission.

The Commission may appoint an executive secretary and employ professional, clerical, and other assistants that may be necessary. The Legislative Counsel, Legislative Analyst, State Auditor, and Department of Finance would assist the Commission. The Commission would be required to submit a report to the Governor and the Legislature by March 31, 1994.

Two hundred thousand dollars (\$200,000) would be appropriated from the General Fund for the 1993-94 fiscal year.

SIMILAR LEGISLATION: A very similar bill, SB 458 (Killea) of 1992 passed the Senate by a vote of 27-10 but was subsequently vetoed by the Governor.

The difference between the two is that SB 16 does not put the Chief Justice on the Commission.

Senate Floor Vote: (P. 8188, 8/31/92)

VETO MESSAGE:

"This bill would create the California Constitution Revision Commission to review the state's budget process and the attendant constraints that interfere with an orderly and comprehensive consideration of all fiscal matters.

"While I agree that the budget process and consideration of fiscal matters needs considerable attention, I do not agree that the formation of a new Commission is the method we should use to achieve this objective. Members of the legislative and executive branches of

CONTINUED

government are fully aware of the issues that must be resolved. We do not need a Commission for this purpose. Instead, it would be wiser if we confronted these problems directly and immediately. It would be my hope that we could do so early in 1993."

FISCAL EFFECT: Appropriation: Yes Fiscal Committee: Yes Local: No

Appropriates \$200,000 for the 1993-94 fiscal year.

DLW:jk 7/14/92 Senate Floor Analyses

SENATE BUDGET AND
FISCAL REVIEW COMMITTEE
Senator Alquist, Chairman

BILL NO.: SB 16
AUTHOR: Killea
VERSION:
As Amended: 6/28/93
Consultant: JG

HEARING DATE: July 7, 1993

FISCAL: Yes

SUBJECT: Creation of California Constitution Revision Commission

SUMMARY:

This bill, an urgency measure, creates the California Constitution Revision Commission, prescribes its membership, specifies its duties, and makes an appropriation for its support.

BACKGROUND

Three different methods have been used historically to accomplish constitutional changes in California: (1) limited scope proposals initiated by the Legislature or by the public through the initiative process; (2) proposals initiated through a constitutional convention; and (3) proposals initiated by a constitution revision commission for legislative consideration as ballot measures.

PROPOSED LAW:

This bill, an urgency measure, as amended, creates a 20-member Constitution Revision Commission, specifies its duties, provides for staffing, per diem and necessary expenses of members, requires a report by March 1, 1994, and terminates its existence on July 1, 1996.

The bill provides that the twenty members of the commission are to be appointed as follows: 10 by the governor, 5 by the Senate Rules Committee, and 5 by the Speaker of the Assembly. The Chief Justice of California, or his or her designee, shall also serve as an ex officio nonvoting member. The Governor is authorized to select one of the members to serve as the chair of the commission.

The bill specifies the duties of the commission shall be to assist the Governor and the Legislature by (a) examining the state government budget process and the constraints and impediments that affect the development of the budget; and (2) examining the structure of state governance and proposed modifications that may increase accountability and improve the budget process. The commission's report is due to the Legislature and the Governor no later than March 31, 1994. It may also issue interim reports before that date.

FISCAL EFFECT:

The bill appropriates \$200,000 from the General Fund to the Constitution Revision Commission for the 1993-94 year.

SUPPORT:

The author's office provided the following list of supporters of SB 458, which was an identical bill last year (see comments below). There was insufficient time to verify their support for SB 16.

California Common Cause
Contra Costa County
Nevada County
Amador County
John MacDonald, Chair, San Diego Board of Supervisors
David Blakely, Chair, San Luis Obispo Board of Supervisors
John Larson, Past Chairman, FPFC
A. Alan Post, Former Legislative Analyst
Sacramento Bee

OPPOSED:

None received

COMMENTS:

Two similar measures have passed the Legislature in the past two years, but both have been vetoed by the Governor. In 1992, SB 458 (Killea) differed only in the reporting dates and the size of the appropriation (it appropriated \$300,000 instead of \$200,000). The Governor vetoed the measure on the grounds that a new commission was not needed to achieve the objective of overhauling the state's budget process.

In 1991 the Governor vetoed SB 55 (Alquist) because the proposed commission in SB 55 was too large (60 members) and because it did not provide the governor with half of the appointments (it provided the governor 24 of the 60 appointments). This measure differs from SB 55 in that it (1) creates a smaller commission, (2) deletes the requirement that the commission examine the initiative process, and (3) requires the commission to examine the structure of state governance.

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MEMORANDUM

November 9, 1993

SUBJECT: Constitutionality of legislation barring sponsors' payment to persons to collect signatures on initiative petitions (Work Order No. 8-LS1356\A)

TO: Representative Fran Ulmer

FROM: Jack Chenoweth
Legislative Counsel

You have asked about the probable constitutionality of state legislation barring sponsors from making payments to persons in order to collect signatures on initiative petitions.

A statutory prohibition against making payments to obtain signatures on measures would almost certainly be found to be unconstitutional as a violation of the sponsors' rights to engage in political speech as guaranteed by the First and Fourteenth Amendments to the United States Constitutions. The question arose in conjunction with a Colorado statute, Colo. Rev. Stat. § 1-40-110:

Any person, corporation, or association of persons who directly or indirectly pays to or receives from or agrees to pay to or receive from any other person, corporation, or association of persons any money or other thing of value in consideration of or as an inducement to the circulation of an initiative or referendum petition or in consideration of or as an inducement to the signing of any such petition commits a . . . felony

In Meyer v. Grant, 486 U.S. 414, 100 L.Ed.2d 425, 108 S.Ct. 1886 (1988), the United States Supreme Court unanimously concluded that the state's statutory bar to

payment of petition circulators abridged the petitioners right to engage in political speech. ^{1/}

On appeal, since a fundamental right of the appellants was at issue, the Court subjected the statute to strict scrutiny analysis, observing

The circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change. Although a petition circulator may not have to persuade potential signatories that a particular proposal should prevail to capture their signatures, he or she will at least have to persuade them that the matter is one deserving of the public scrutiny and debate that would attend its consideration by the whole electorate. This will in almost every case involve an explanation of the nature of the proposal and why its advocates support it. Thus, the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as "core political speech."

Meyer, 486 U.S. at 421 - 442, 100 L.Ed.2d at 434 - 435. At the same time, it rejected the state's assertion that the constitution permitted the imposition of some burden on First Amendment expression when other avenues of expression remain available:

That appellees remain free to employ other means to disseminate their ideas does not take their speech through petition circulators outside the bounds of First Amendment protection. Colorado's prohibition of paid petition circulators restricts access to the most effective, fundamental, and perhaps economical avenue of political discourse, direct one-on-one communication. That it leaves open "more burdensome" avenues of communication does not relieve its burden on First Amendment expression. . . . The First Amendment protects appellees right not only to advocate their cause but also to select what they believe to be the most effective means for so doing.

486 U.S. at 424, 100 L.Ed.2d at 436 (citations omitted). The Court concluded that the state had failed to meet its burden of justifying the statutory prohibition. ^{2/}

^{1/} The case was brought under 42 U.S.C. 1983 against state elections officials and other state officers, seeking a declaration that the statutory payment prohibition violated the petition circulators' rights.

^{2/} Said the Court:

Representative Fran Ulmer
November 9, 1993
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Accordingly, the Court affirmed the Tenth Circuit's earlier invalidation of the statute.

I have no doubt that a comparable enactment in Alaska would reach the same end.

*

This memo does not address the separate question of the state's authority to set limits on payments to people as consideration for signing a petition.

JBC:mi
93-142.mai

^{2/}(...continued)

We agree with the [Tenth Circuit] Court of Appeals' conclusion [reported at 828 F.2d 1446] that the statute trenches upon an area in which the importance of First Amendment protections is "at its zenith." For that reason the burden that Colorado must overcome to justify this criminal law is well-nigh insurmountable.

...

"[L]egislative restrictions on advocacy of the election or defeat of political candidates are wholly at odds with the guarantees of the First Amendment." Buckley v. Valeo, 424 U.S. at 50. That principle applies equally to "the discussion of political policy generally or advocacy of the passage or defeat of legislation." Id., at 48. The Colorado statute prohibiting the payment of petition circulators imposes a burden on political expression that the State has failed to justify.