

HJR

36

HOUSE JUDICIARY STANDING COMMITTEE

DATE: 1/21/98

ISSUE: move H JR 34 from committee

	YEA	NAY	PRESENT
Vice Chair Bunde	—		
Representative Berkowitz		—	
Representative Croft		—	
Representative James	—		
Representative Porter	—		
Representative Rokeberg			—
Chairman Green	—		
TOTALS:			

PASSED 4-2 FAILED _____

HOUSE JUDICIARY STANDING COMMITTEE

DATE: 1/21/98

ISSUE: HJR 36
Amend. #1

	YEA	NAY	PRESENT
Vice Chair Bunde		—	
Representative Berkowitz (pass)	—		
— Representative Croft	—		
Representative James (pass)		—	
Representative Porter		—	
Representative Rokeberg			—
Chairman Green		—	
TOTALS:	2	4	

PASSED _____

FAILED X

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HJR36

Revision Date _____	Dept. Affected <u>Office of the Governor</u>
Title <u>Const. Amdt.: Reapportionment Board and</u>	BRU <u>Elective Operations</u>
Redistricting _____	Component <u>General and Primary Elections</u>
Sponsor <u>Representative Green</u>	
Requester <u>House Judiciary</u>	Component Serial No. <u>#22</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	3.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES []						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	3.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: none

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Full-time		0				
Part-time		0				
Temporary		0				

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by <u>Gail Fenumia</u>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date <u>4/29/97</u>
Approved by Co <u>Lt. Governor Fran Ulmer</u>	Date <u>4/29/97</u>
Agency <u>Office of the Lieutenant Governor</u>	

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HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 23, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 1-21-98

The JUDICIARY Committee considered:

HJR 36

HOUSE JOINT RESOLUTION NO. 36

REAPPORTIONMENT BOARD & REDISTRICTING

Proposing amendments to the Constitution of the State of Alaska relating to redistricting of the legislature, and repealing as obsolete language in the article setting out the apportionment schedule used to elect the members of the first state legislature.

recommends it be replaced with the following committee substitute CS HJR 36 (Jud.) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) Gov 1/20/98 fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Cam Bueche</i>			<input checked="" type="checkbox"/>	
<i>Monette James</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>		<input checked="" type="checkbox"/>		
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>Raymond S. Porter</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	

CHAIR'S SIGNATURE *[Signature]*

Out of Hickel Case
868 P2 919

IV. POPULATION BASE

The Board used the 1990 census as its population base. However, the Board did not subtract from the census data military personnel who were stationed in Alaska at the time the census was taken, but who did not consider themselves Alaska residents. The Governor did not vary the population base from the Board's recommendation.

Previously we held that the exclusion of non-resident military personnel (NRMP) from the population base is constitutionally permissible. However, we have never decided whether exclusion was constitutionally required. We have not addressed this issue before because NRMP have been excluded from the population base in every previous district reapportionment, with the exception of the interim plan we devised for the 1972 elections following **Egan v. Hammond**, 502 P.2d 856, 870 (Alaska 1972).

The state argues that the inclusion of NRMP was a policy choice it was allowed to make, and that we should defer to that choice. The state argues further that inclusion of NRMP is permissible because it is impossible to accurately estimate the number of military personnel who are not residents. It notes that this question is different with this reapportionment because the United States Army and Air Force no longer make personnel data available to the state. The state maintains that in light of this, it acted within its discretion by including all military personnel in the population base.³¹

The respondents argue that exclusion is constitutionally required since inclusion would violate the reapportionment provisions and the equal protection clause of the Alaska Constitution. They argue that the effect of the inclusion is the dilution of the voting power of residents of areas of Alaska without large military populations.

In **Egan**, we implemented an interim plan without a NRMP exclusion because "it was not possible to compile sufficiently accurate data to provide a reasonable basis for excluding any number of military from the population base." 502 P.2d at 870. However, we also recognized "the need for a permanent plan which achieves a level of accuracy of [the military population's] voting participation which is closer than either including or excluding all military as a class."³² 502 P.2d at 870. "The challenge is to arrive at the best approximation of the population to be counted without losing sight of the fact that the right of equal representation is also an individual and personal right." **Egan**, 502 P.2d at 869.

We therefore hold that exclusion is not constitutionally required if it is not possible to accurately identify those military personnel who are non-residents.³³ However, it is necessary to consider alternative plans for obtaining a sufficiently accurate plan for estimating the number of NRMP. **Id.** (noting that it was "incumbent upon [this court] to discuss alternative plans which may be available to handle the problem"). See also **Groh v. Egan**, 526 P.2d 863, 868 (Alaska 1974) (finding that the Board's careful examination of alternatives supported the conclusion that the state's choice of population base was rational).

The key determination is whether the Board's efforts in "discussing the alternatives" were

sufficient to support its conclusion that compiling accurate data was impossible. The trial court found that a "hard look" was required. The hard look requirement is consistent with our previous acknowledgement that the state has a compelling interest in attempting to exclude NRMP. *Carpenter*, 667 P.2d at 1213 (identifying the "compelling state interest" as "the prevention of the dilution of its residents' voting strength"). See also *Reynolds v. Sims*, 377 U.S. 533, 555, 12 L. Ed. 2d 506, 84 S. Ct. 1362 (1964) ("The right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.").

Judge Weeks identified six "legitimate reasons" for including the NRMP. He also found that although the extent of non-residency among the military was determinable, it was unclear whether it was possible to make a reliable determination of the enumeration districts in which non-resident, off-base military personnel lived. Despite these findings, he concluded that the Board did not take a "hard look" at this issue. The inclusion of all military personnel in the population base was thus not justifiable.

Judge Weeks apparently believed that the reasons stated by the Board for including NRMP were post hoc justifications. Also he found it significant that the Board's legal advisor advised strongly to exclude NRMP.

At its March 4, 1991 meeting, the Board adopted the policy that the population base for the reapportionment would be the 1990 census data. The Board decided that it would not adjust the census data to account for NRMP.

In its Report and Proposed Plan, the Board discussed several methods for determining the appropriate adjustment to be made. The Board discussed the method used by the 1973 Board whereby the number of Alaska residents on a military base was determined by multiplying the number of registered voters on the base by the statewide person-counted/registered-voter ratio. The number of "residents" obtained was then divided by the number of adults living on the base to derive a percentage of residents. When the same method was applied to the 1990 data, all the military bases showed a greater than one hundred percent resident percentage.

The Board explained that other available survey methods were not adequate. It indicated that it had received expert advice that the survey method used in the Department of Labor study made that study inadequate to serve as a basis for making an adjustment. The Board also stated that it had solicited surveys from two political pollsters in Alaska and had been rejected.³⁴ The Board explained that "a poll taken a significant period of time after the Census enumeration 'would be a sampling of a different set of people with possibly changed attitudes.'" (quoting *Egan*, 502 P.2d at 887). Finally, the Board eliminated Permanent Fund Dividend applications, Military Leave and Earning statements, and registered voter data bases as reliable sources of information about residency.³⁵

The Board attempted to discover what other alternatives existed. As noted, the Board received expert opinion that an accurate survey was methodologically impossible. Even when the Board was told that a statewide survey was possible, it was told that identifying the NRMP in

each district would be impossible.³⁶ The Board discussed the expert opinion at its March 4 meeting and agreed with the proposal of director Babcock that, at least as an initial guideline, the survey could not be performed. Additionally the Board determined that the inclusion of NRMP would not result in a rural/urban bias. The Board thus concluded that its original guideline of using the census data as its population base was proper.

Based on what we have previously required of reapportionment boards, we conclude that the Board's "look" was "hard" enough. It is not necessary to attempt a survey or statistical analysis when a thorough examination reveals that such a survey is not possible. **Groh**, 526 P.2d at 868-69. Rather, we need only be assured that the Governor's authority was "exercised in a rational as opposed to an arbitrary manner." **Id.** at 868. Although we have found a "thorough and exemplary exploration" to be persuasive in proving that the Board's decision was rational, we have not required it. **Groh**, 526 P.2d at 868. The Board's consideration of alternatives and expert advice was sufficient examination.

Note 33
 estimation of % of NRMP to need
 not be ~~more~~ any more precise than
 the approximation of other portions
 of the population

CHAIRMAN GREEN asked whether there were other questions. He noted that no one from the public had signed up to testify.

Number 1982

REPRESENTATIVE ROKEBERG referred to disagreement within the committee about definitions of "reapportionment" and "redistricting." He asked whether they were going to clarify those as they apply to this bill.

CHAIRMAN GREEN replied that he would hope it would stay this way, as advised by the drafter, Mr. Chenoweth.

Number 2044

REPRESENTATIVE PORTER made a motion to adopt 0-LS0939\E, Glover, 1/20/98, as a work draft. There being no objection, that version was before the committee.

REPRESENTATIVE PORTER read from page 2, lines 4 through 9, Section 3 of the proposed committee substitute, with added comments. He said, "Redistricting - or Reapportionment, depending on this discussion - of the House and Senate. The governor shall redistrict the house of representatives and the senate immediately following the official reporting of each decennial census of the United States. Redistricting shall be based upon population, ... within each election and senate district as reported by the census." Representative Porter said that addresses specifically the boundaries, which is reapportionment, not redistricting.

Number 2076

concluded. "But I'm afraid not being able to get it will end up causing more problems than you'll ever solve by it."

Number 0714

CHAIRMAN GREEN, noting that he maintained a "no" vote, requested a roll call. Voting for Amendment 1 were Representatives Berkowitz and Croft. Voting against it were Representatives Bunde, James, Porter and Green. Representative Rokeberg was absent, chairing another meeting. Therefore, Amendment 1 failed by a vote of 4-2.

Number 0769

REPRESENTATIVE PORTER made a motion to amend page 2, line 12, to insert the word "forty" between the words "establish" and "single-member".

CHAIRMAN GREEN asked whether there were questions or an objection. There being no objection, Amendment 2 was adopted.

Number 0801

REPRESENTATIVE CROFT offered a conceptual amendment. He explained, "On page 2, line 8, it says [CIVILIAN], and that's taken out; I understand why from the Egan v. Hammond case. But in a previous draft, I'd seen 'resident,' and that's the way I'd understood the court interpreting it. We said 'civilian,' but what they really have to mean is 'resident.' Should that be 'resident population' there?" He said it is "pretty much a technical-doing-what-the-supreme-court-told-us-we-had-to-do." He concluded, "But with no modifier there, I'm not sure what would happen."

REPRESENTATIVE BERKOWITZ said he hadn't looked at one of those census books in quite a while. However, if he remembered right, he said, census taking includes numbers such as tourists and transient workers. He asked whether they are saying here that they'll count those people for redistricting purposes, or reapportioning, whichever term they settled on.

Number 1046

CHAIRMAN GREEN indicated he presumed the objection was maintained. He asked whether there was further discussion, then asked Representative Croft for confirmation that he wanted to put "resident" in front of "population."

REPRESENTATIVE CROFT answered, "Right, where 'civilian' was deleted."

CHAIRMAN GREEN requested a roll call vote on Amendment 3. Voting for Amendment 3 were Representatives Berkowitz and Croft. Voting against it were Representatives Bunde, James, Porter and Green. Representative Rokeberg was absent. Therefore, Amendment 3 failed by a vote of 4-2.

REPRESENTATIVE PORTER asked for confirmation that Chairman Green didn't want to deal with the issue of whether to call it "redistricting" or "reapportionment."

CHAIRMAN GREEN said no, they were voting on it as-is.

Number 1107

REPRESENTATIVE JAMES made a motion to move the proposed committee

substitute for HJR 36, version 0-LS0939\E, Glover, 1/20/98, as amended, from committee with individual recommendations and attached fiscal note(s).

REPRESENTATIVE BERKOWITZ objected.

CHAIRMAN GREEN requested a roll call vote. Voting to move the resolution from committee were Representatives Bunde, James, Porter and Green. Voting against it were Representatives Berkowitz and Croft. Representative Rokeberg was absent. Therefore, CSHJR 36(JUD) moved from the House Judiciary Standing Committee by a vote of 4-2.

ADJOURNMENT

Number 1120

CHAIRMAN GREEN adjourned the House Judiciary Standing Committee at 3:29 p.m.

HJR 36 - REAPPORTIONMENT BOARD & REDISTRICTING

Number 0076

CHAIRMAN GREEN announced the first item of business was House Joint Resolution No. 36, proposing amendments to the Constitution of the State of Alaska relating to redistricting of the legislature, and repealing as obsolete language in the article setting out the apportionment schedule used to elect the members of the first state legislature.

JACK CHENOWETH, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, explained that since not long after statehood, it has been clear that provisions covering legislative apportionment are out of sync with constitutional requirements first laid down by the United States Supreme Court in the early 1960s. This resolution would conform Alaska's constitutional scheme to those requirements. It would also require that in future legislative districting schemes, only single-member districts would be used.

MR. CHENOWETH noted that HJR. 36 deals principally with Article VI, the legislative apportionment article of the constitution. Section 1 of Article VI talks about election districts, the "term-of-art" used to describe the districts in which House members run for election or re-election. Section 1 of HJR 36 deletes obsolete language that refers to the first reapportionment and the reference to Article XIV, Section 1, substituting a requirement that the boundaries of election districts be drawn in conformity with other provisions of this article after each decennial census of the United States. A parallel change is made in Section 2 for Senate districts.

MR. CHENOWETH referred to Section 3 and said he is recommending substitution of the term "redistricting" throughout this article. "Reapportionment" is a term generally reserved to amending or changing the number of representatives within fixed political boundaries. For example, every ten years when the census comes out, the United States Congress is reapportioned, with states gaining or losing seats based on population changes. The shift of seats from one jurisdiction to another having fixed boundaries, such as state boundaries, is a true reapportionment; the number of seats is reallocated among these jurisdictions.

MR. CHENOWETH explained that within jurisdictions, however, the process of drawing lines is a simple redistricting, which is what is going on with state legislatures. The United States Supreme

Court has made it clear that only resident population count can serve as the basis for the line-drawing and that any effort to tie this to some sort of fixed, permanent or semi-permanent lines will not sit well with the courts. This is a simple redistricting of Alaska into 20 Senate seats and 40 House seats. Section 3 of HJR 36 simply substitutes the term "redistricting" for "reapportionment", and that change is made throughout the rest of the resolution.

MR. CHENOWETH referred to page 2, line 7, and said it also substitutes the word "resident" so that "resident population" rather than "civilian population" is the basis for redistricting. The limitation of tying this to a civilian population was set aside by an early state supreme court case. "And we have to go with some sort of resident-based population scheme," he concluded.

Number 0365

MR. CHENOWETH said Section 4 deletes current language that talks about how reapportionment shall be developed and substitutes the requirement of single-member districts. "The Governor is to establish single-member election districts and is to establish Senate districts composed of two contiguous election districts, with each Senate district to elect one Senator," he explained. "That's the scheme that we now have in place."

MR. CHENOWETH explained that Section 5 reworks Article VI, Section 6. It deletes some language that ties back to reapportionment and keeps in place the only language that seems to be pertinent to how lines are to be drawn, the language that the reapportionment boards in the past, and the courts in their review of the work of the Governor, have looked back at and used to consider these reapportionment decisions.

MR. CHENOWETH noted that Section 6 changes the board's name to the "Redistricting Board". It maintains the requirement of a geographic spread but unties this from the notion of fixed Southeastern, Southcentral, Central and Northwestern Senate districts, which are the fixed districts used in the original constitution; it substitutes the four judicial districts established by law and authorized under Article IV, Section 1.

MR. CHENOWETH said Section 7 simply is a change in name from "Reapportionment" to "Redistricting". Section 8 updates some references to the Governor, removing a gender-based pronoun and substituting a neutral term. It also makes further substitutions of "redistricting" for "reapportionment".

MR. CHENOWETH said Section 9 deletes two sections of Article VI made obsolete by United States Supreme Court decisions: Section 5, which talks about combining House districts in order to maintain Senate districts in the old fixed-boundary scheme, and Section 7 (misstated as Article VII), which talks about modification of Senate districts when necessary to accommodate population shifts.

MR. CHENOWETH stated, "We also propose to repeal Article XIV, which is a provision that sets out the initial reapportionment dating from 1959. It's not used anymore. It has no standing anymore. Article XIV is simply a device or a vehicle by which we generally restate the current apportionment, so that it can be found in the statute books. It's typically an annotation of some sort that describes the boundaries of the current apportionment, so at least we have it someplace out in the public and they can find it. Every time there's an apportionment change, every ten years, that change is made. But ... the original language of Article XIV is of no value anymore." He concluded by saying Section 10 is a boiler plate to get this before the voters in November 1998.

Number 0570

REPRESENTATIVE ELLC CROFT asked whether the major change is "constitutionalizing" single-member districts.

MR. CHENOWETH said yes, for both the House and the Senate.

REPRESENTATIVE CROFT asked, "Do you mean any change in current law when you make the switch from 'civilian' to 'resident,' that is, the law that we're forced into by the federal interpretation?"

MR. CHENOWETH replied, "Yes, we are following the requirements that have been imposed by, chiefly, recently, state supreme court decisions that have eliminated the use of 'civilian' and required that we go to a resident population base. And the state supreme court has suggested ways in which it is possible to take, for example, the military count, and try to allocate some number of estimated military that reflect a better split between resident and nonresident."

REPRESENTATIVE CROFT asked whether it conforms to current practice in that regard.

MR. CHENOWETH affirmed that.

REPRESENTATIVE CROFT referred to the term "contiguous" and said

Change in Multimember Legislative Districts from 1980s to 1990s

state	State Senates						State Houses					
	Total Number of Districts		Number of Multimember Districts		Largest Number of Seats in a District		Total Number of Districts		Number of Multimember Districts		Largest Number of Seats in a District	
	1980s	1990s	1980s	1990s	1980s	1990s	1980s	1990s	1980s	1990s	1980s	1990s
Alaska	14	20	6	0	2	1	27	40	13	0	2	1
Arizona							30	30	30	30	2	2
Arkansas							84	97	10	2	3	3
Georgia							156	180	15	0	5	1
Idaho	33	35	6	0	3	1	33	35	33	35	6	2
Indiana							77	100	16	0	3	1
Maryland							59	62	45	44	3	3
Nevada	14	16	7	5	2	2						
New Hampshire							175	132	103	74	10	36
New Jersey							40	40	40	40	2	2
North Carolina	35	42	13	8	3	2	72	98	30	17	4	3
North Dakota	53	49	2	0	2	1	53	49	53	49	2	2
South Dakota							35	35	35	35	2	2
Vermont	13	13	10	10	6	6		108		42		2
Washington							49	49	49	49	2	2
West Virginia	17	17	17	17	2	2	40	58	26	23	12	7
Wyoming	18	30	5	0	4	1	23	60	15	0	9	1

Source: National Conference of State Legislatures

he'd read some of those cases. Because of geography, Alaska has an interpretation somewhat different from other states. For example, Alaska has one Senate district and two House districts separated by 700 miles of ocean; those are considered "contiguous." He stated, "So, we don't mean any change in that."

MR. CHENOWETH concurred.

REPRESENTATIVE CROFT asked, then, whether the sole substantive change is locking in single-member districts. If this were current law and these changes had been made two years ago, would what they are doing now be legal?

MR. CHENOWETH said yes.

Number 0714

REPRESENTATIVE ETHAN BERKOWITZ asked for confirmation that there is no constitutional problem with the existing structure, from a federal perspective.

MR. CHENOWETH replied that what problems there might be, the state courts have generally worked their way around. They have looked at decisions of the United States Supreme Court and accommodated as best as they've been able to, pointing out that this is an article in need of revisitation and amendment, in light of decisions from the United States Supreme Court and their own practices.

REPRESENTATIVE BERKOWITZ indicated the Hickel case is the only related case he has read, although there may be others. He asked, "What, generically, are the concerns in the courts?"

MR. CHENOWETH answered, "Well, the courts have had to fill in, if you will. They have had to assume responsibility where there was no literal expression of responsibility for action taken by the Governor or by the reapportionment board as recommendations to the Governor. For example, there is no authority in law to adjust the terms of sitting Senators. The courts have filled in by saying that when there is a substantial change in a boundary, and a Senate district is increased substantially so that new faces are brought in or former constituents are let go of and put in a different district, ... there is an inherent authority to cut short by two years the Senate terms and require a Senator ... in a remade district to run again."

MR. CHENOWETH indicated there is nothing of that in the state constitution, adding, "They have simply accepted the fact that that

needs to be done, looked at the operation of that kind of a provision in other states and adapted it ... into this." He emphasized this is the one thing for which no express provision exists in the state constitution, nor is there an express provision for it in this resolution.

Number 0845

REPRESENTATIVE CON BUNDE asked why they weren't including that omitted provision here.

MR. CHENOWETH answered, "Well, I think you should. I think a complete package would be some sort of reference in here that the Governor has explicit authority to, under some kind of circumstances, cut short the terms of sitting Senators and require that they run for re-election. Now, I don't know how that's going to sit in the other body, and I certainly wasn't asked to make that change. I only throw it out on the table as the one piece of this puzzle that, as I went back and looked at this thing over the weekend, I thought perhaps we ought to put something in there so that the courts are not relying upon some assumed authority. Having rewritten Article VI, perhaps we ought to add that in and make that point clear."

Number 0919

REPRESENTATIVE BUNDE noted the lateness in the session and the expense required for a public vote or a constitutional amendment. He suggested they'd be remiss not to include as many housekeeping details as possible. He'd like to see that provision included.

REPRESENTATIVE BRIAN PORTER pointed out that the Governor can make the appointment to the districting board without confirmation by or concurrence of the legislature. He asked whether it would be a friendly amendment to add that.

Number 1001

CHAIRMAN GREEN said that was a good thought. He mentioned the "two concepts" and asked Mr. Chenoweth whether there is a way to tighten this so that nothing is left to chance. They'd been working this way at least as long as he'd been in the state, that "every decennial election, the Senators just serve two terms, and then everybody starts from scratch again; but this would codify it."

REPRESENTATIVE PORTER indicated his own suggestion about confirmation had been somewhat facetious.

CHAIRMAN GREEN clarified that he was discussing the prior issue. Although it wasn't essential to do it immediately, he wondered whether there was a way to modify it, possibly for review at a future meeting.

MR. CHENOWETH said he believed that could be accomplished. It may only be necessary to add a sentence or a fraction of one that invites the published final plan to indicate some determination on the terms of Senators then in office, or words to that effect.

CHAIRMAN GREEN said he perceived that to be the will of the committee, according to comments.

REPRESENTATIVE CROFT asked whether there would be other witnesses.

CHAIRMAN GREEN replied that no one was on teleconference, but Mr. Baldwin was signed up to testify locally.

Number 1114

JAMES BALDWIN, Assistant Attorney General, Governmental Affairs Section, Civil Division (Juneau), Department of Law, came forward to testify, saying Representative Croft's questions had pretty well covered what he wanted to clarify that day. The people in his area of the department generally end up advising the reapportionment board. He said, "I guess I've been through about three or four, but not that many governors. It seems like there's been more reapportionments than there have been governors because of the way these things get into litigation. And we seem to have to do them more than once per ten-year cycle."

MR. BALDWIN indicated the application of the federal voting rights act has made their job increasingly complicated over time. He explained, "It seems like we do the plan, we get through our courts, and then we have to get through the Justice Department for pre-clearance, which then seems to make us have to go through another cycle again." Mr. Baldwin is concerned, with this legislation particularly, about abandoning some current flexibility in techniques to bring forward reapportionment plans. He stated, "If you go strictly to a single-member-district approach, then you give up the ability to go to multi-member districts, if that would serve our interests and perhaps assist us in gaining pre-clearance from the Justice Department."

MR. BALDWIN said he couldn't pose a particular set of facts that would cause that to arise. "But I've been having a terrible time

doing that for every reapportionment plan we've come up with; there's always been something new that comes up to cause us a hurdle before the Justice Department," he stated. "So, I just ask the committee to consider that fact. As our population grows and it shifts, and we know it's shifting somewhat, particularly towards the Mat-Su area of the state, it's going to take a larger population for rural areas of the state; they're going to have to come in and pick up, perhaps, what we call the 'fringe areas' of the municipalities and more higher-populated areas."

MR. BALDWIN said it might be possible they'd need to go to multi-member districts to solve some particular problem. Under the current interpretation of the state constitution, they can go to single-member districts if the Governor desires that. Mr. Baldwin advised members, "Not knowing who the next Governor is going to be that's going to be writing the next plan, you might want to keep in mind leaving that option open to him or her."

MR. BALDWIN expressed concern that being required to go to single-member districts may affect rural areas more than urban areas. While he wasn't saying they'd want to do multi-member districts in rural areas, they may need to do so in urban districts in order to make things work in the rural areas. Or they could possibly be into retrogression, which he called a "nasty word in the area of voting rights." Mr. Baldwin explained, "In other words, the minorities who are represented now would lose representation. And ... mathematically, if that works out, if demographically that works out, we have to do that, that's fine. But ... if it can be done another way, the Justice Department is going to be there, and I don't know what the outcome would be, lacking the flexibility that we have now. So, ... I really hate this saying, but 'if it ain't broke, don't fix it' might well apply here."

MR. BALDWIN said he believed the testimony earlier was that the requirement of districting only resident population is not intended to be a change from anything now in effect. He stated, "Our supreme court was not quite so direct in the way it said that contiguity can include expanses of water. And I want to make sure that in here you're not saying 'contiguous' in its plain meaning, which means right up against one another. We can't lose that flexibility, because geography just works against us in so many ways, and particularly getting things to work. So, I'm glad that you're creating a strong record for that."

MR. BALDWIN noted that it was nearly the end of session. If this resolution did not pass both houses, he asked the committee to carefully consider studying this matter in the interim, particularly with regard to single-member districts. He mentioned "knowing better what's going into the building blocks of the census, which is being put together now, whether there isn't going to be enough evidence there to perhaps lead to a decision that we don't need to abandon this flexibility that we have now."

MR. BALDWIN commented that from a Governor's perspective, single-member districts are good because a veto can be done "surgically," by district. However, from the realities of reapportionment or redistricting, it may cause real problems for the next Governor.

Number 1432

CHAIRMAN GREEN indicated they had used this method since the 1992 election. He asked whether there wasn't a significant influx and shifting of population in the 1980s. He said it seems the concerns Mr. Baldwin expressed were handled well in single-member districts. He asked, "Do you anticipate some reason why that won't continue to be handled well with single-member districts?"

MR. BALDWIN said the only thing he can successfully anticipate is that there will be litigation over the plan, one way or another. There have been a couple of supreme court cases recently on using minority voters as a criteria. While he can't foresee the affect of that, he predicts Alaska will be in a "fight over retrogression" in the next reapportionment. He explained, "When you go into these reapportionment efforts, the Justice Department generally sticks you with a benchmark as to ... how many minority-influence seats you have, how many majority seats you have. And if the way we go into it forces us into a retrogression situation, I see long and protracted litigation, with uncertain results at the end of the tunnel."

REPRESENTATIVE PORTER asked, "With the feds?"

MR. BALDWIN replied, "I think with the minorities, and the feds will be as a part of it, yes. They will be ... in the litigation as well." He said for a state like Alaska, which is closely monitored under the voting rights act, the best situation is not to have retrogression but to maintain the benchmarks, if at all possible. While it is hard to predict what will happen, he anticipates that is what Alaska will be confronted with. There might be ways to avoid it.

MR. BALDWIN stated, "Keeping the maximum powers in the hands of the Governor to do that, (indisc.) in the board to do that, would be my preferred alternative. But it's not the best." He pointed out there is much good to be said for single-member districts. Campaigns are cheaper and easier. It is easier to maintain "one person, one vote." Constituents don't need to feel that they can't tell who their representative is, and there is a more direct relationship. Mr. Baldwin stated, "There's all those good things, but when you get right down to the problems that we have with a small population, a large area of geography and much water and all those factors brought to bear, tying your hands to one method of redistricting might not be what would serve the interests of ... the state as a whole."

Number 1596

CHAIRMAN GREEN suggested that when one looked at the demographics of the districts as they were done, and the number of minorities and other factors, it looked pretty good across the state. "To then say that it might be better to go to multiple-member districts and potentially get back into the 'doughnut' district or Valdez being tied in with South Anchorage, I mean, those kinds of things seem to be much more confusing and much more potential for litigation than to go to an area where the constituency is far more aware of who their representative really is," he said.

REPRESENTATIVE JEANNETTE JAMES agreed with Mr. Baldwin's reasons why a single-member district is important. She indicated she'd prefer not to have an option, which they may use when they don't need to. She'd never yet seen a redistricting without litigation. She feels much more comfortable with a single-member district because of the "one man, one vote" issue and because the people know who represents them. She believes those are important issues.

REPRESENTATIVE JAMES indicated she understands about losing members from rural areas. However, in the next ten years there may be a surge in the rural areas, particularly if they get some of the anticipated development. She asked whether "maybe it ought to be left that the option is only a single-member district and then, should we see a problem with that coming in the future, that we then go to the voters to ask for a change." She added, "Maybe that's not wise, because maybe most of the voters are in the areas who love to have more representation than less out there; I don't necessarily think that's true." She asked Mr. Baldwin to respond to that way of looking at it.

Number 1708

MR. BALDWIN replied, "I don't think it's harder to come up with a list of ... why you'd want multi-member districts, first off. I think there's a list of reasons for that, too, and because of the other criteria in the constitution about compactness and socioeconomic interrelatedness, which are the other criteria in the constitution, it might well be able to state a case that an area, for example, Juneau, which ... has in past reapportionment plans, before the one we're in, has had multi-member districts, and probably for a good reason. It's hard to see any division line between the town and the [Mendenhall] Valley, for example, and there have been other areas in the state that are like that, that have benefitted from having multi-member districts."

MR. BALDWIN said he didn't know what the process would be for the voters to come back and change it at some point in the future. He stated, "I mean, we have a reapportionment, and we try to do a plan and have it done so it can be in place for another ten years. And to interrupt that in the middle of a cycle, which is what we've done the last couple of times because of litigation, has been very disruptive to the electoral process. Can you imagine the Division of Elections scrambling to try and get their precinct lines and regulations done for an election when you don't know what the districts are going to be? It's really pandemonium." He said he wouldn't recommend an approach like that, if he understood the question correctly.

Number 1777

REPRESENTATIVE JAMES mentioned a lawsuit "determined on a national level last year" about gerrymandering in the South. In her own district, she noted that they'd "zeroed out Nenana to meet some population, Native population, and left me with less people in my district than other districts," but within the parameters allowed. She asked whether that court decision would have precluded that from happening and whether Mr. Baldwin was familiar with it.

MR. BALDWIN replied, "Yes, I am. I don't think so. Representative Croft and I've argued about this a little bit; he doesn't quite see it my way. But I think that in Alaska we did our redistricting considering not only race; we also considered the other traditional criteria, which are compactness and socioeconomic connectedness. At the same time, we did the adjustments which were required, we thought, to meet pre-clearance requirements. It's only when you're doing it based completely on race, without any other criteria, that you fall into the realm of those U.S. Supreme Court cases involving Texas and Georgia. So, if that was your ... sole criteria, you did

it just because of race considerations, then you're going to have violated the U.S. Constitution."

Number 1874

REPRESENTATIVE PORTER indicated that if it wasn't the sponsors' desire to get this past both bodies this year, he was only being facetious regarding confirmation of the board by the legislature to the extent that he believed this was a "slam-dunk" housekeeping legislation. However, if the main feature needs looked at further, this would be the appropriate committee to perhaps look at "a much bigger element of this whole area."

REPRESENTATIVE PORTER explained, "I would think that it would be appropriate to try to get a procedure to put in place a board that would look at redistricting from a position of what is the most appropriate - under the law - district to put in place for the betterment of the voters of the state of Alaska, instead of, 'How much partisan gerrymandering can we do and get away with it?' And I'm not saying that one party does this any better or worse than the other party. I mean, we've been here long enough to know that they both do it. So, if it is that we have a desire to work on this over the interim, I would be happy to try to work on that element also."

CHAIRMAN GREEN indicated changing that would raise a concern. He asked whether Mr. Baldwin had indicated, in response to Representative Porter's mention of this earlier, that the Administration would be more concerned about the resolution if they modified the strong gubernatorial input in selection of the board.

MR. BALDWIN suggested that may have been Mr. Chenoweth. He said it wasn't brought up while he was present.

CHAIRMAN GREEN asked, "So, you don't see any problem with that?"

MR. BALDWIN laughed, then said, "I think that the constitution is just fine, as far as having the Governor appoint the board. That was a decision that was hotly debated in the minutes of the constitution. ... They felt that the legislature, while a[n] exceedingly wise organization, maybe was not best suited for ... making reapportionment decisions."

Number 2004

REPRESENTATIVE CROFT suggested if they knew anything after this history, it's that the legislature doesn't want to be involved in

rewriting its own boundaries. While to some extent it's up to the vagaries of who is in office every decade and there have been some games, he can't imagine the games there would be if the legislature were in charge of that.

Number 2024

REPRESENTATIVE PORTER responded that he certainly wasn't suggesting that. He was suggesting trying to establish a neutral board without gubernatorial or legislative direction on how to try to gerrymander the districts. He said, "And if there's anybody here that doesn't think that that isn't what's happened the last 10, 20, 30, 40 years, I'll talk to you after we get off the record."

Number 2050

REPRESENTATIVE BUNDE brought up questions he'd like to have addressed if this was worked on during the interim. First, do other states have both single-member and multiple-member districts in the same body? And have other states gone from having single to multiple members? He understood that most have gone from multiple to single, for many good reasons, and while he understood the plea for flexibility, "we may need a socket set here but we've got a crescent wrench; maybe we don't need to keep the crescent wrench."

MR. BALDWIN replied that he didn't know the answer but would be happy to research it.

Number 2107

CHAIRMAN GREEN asked whether there were further comments. Speaking as both sponsor and chairman, he announced that HJR 36 would be held over and worked on during the interim.

JACK CHENOWETH, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105
Telephone: (907) 465-2450
POSITION STATEMENT: Testified regarding HJR 36.

JAMES BALDWIN, Assistant Attorney General
Governmental Affairs Section
Civil Division (Juneau)
Department of Law
P.O. Box 110300
Juneau, Alaska 99811-0300
Telephone: (907) 465-3600
POSITION STATEMENT: Provided department's position and answered
questions regarding HJR 36.

LEGAL SERVICES

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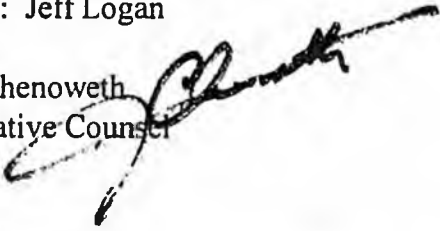
MEMORANDUM

April 21, 1997

SUBJECT: Redistricting constitutional amendment resolution (Work Order No. 0-LS0939\A)

TO: Representative Joe Green
ATTN: Jeff Logan

FROM: Jack Chenoweth
Legislative Counsel



Although popularly understood as "reapportionment," a term that is used in articles VI and XIV of the Constitution of the State of Alaska, the process of revising state legislative election and senate district lines to achieve equal population is properly styled "districting" or "redistricting."

"Apportionment" is the division of a given number of positions among established political subdivisions in accordance with an existing plan or formula. Every ten years, under article I, sec. 2, cl. 3 of the United States Constitution, the number of authorized members allowed to each of the 50 states in the House of Representatives is redetermined to reflect changes in the respective populations in the states as determined by the census. This redetermination or reallocation of seats among the political jurisdictions is an apportionment, or reapportionment, and the net gain or loss of House seats by each state is the product of that apportionment. Thereafter, within each state, the boundaries of the districts of the members of the House of Representatives are revised into new district boundaries to achieve equal population under a process of "districting" or "redistricting."

Historically, in the state legislatures--and this is true of the Alaska State Senate under the provisions of article VI of the state constitution--one house was often "apportioned" in the sense that members elected to that house were chosen within specific political subdivisions having fixed boundaries such as counties. Some counties or groups of counties elected one member, but more populous counties were assigned multiple members. But, at least since the decision in Reynolds v. Sims, 377 U.S. 533 (1964), holding that both houses of a bicameral state legislature are to be districted on a population basis, reliance on the fixed boundary lines set by counties and other political subdivisions to identify the basis of electing members of one house of the state legislature has been abandoned.

Representative Joe Green

April 21, 1997

Page 2

The terminology--the only terminology--properly applicable to the process to be revised within article VI, Constitution of the State of Alaska, is "districting" or "redistricting." I have amended the appropriate provisions of article VI to so provide.

*

If this memo or its attachment prompts questions, please contact me.

JBC:jdr

97-281.jdr

Attachment

MEMORANDUM

Date: 2/4/98
To: Richard Glover
From: Kevin Jardell
Re: HJR 36 Reapportionment Board and Redistricting

Richard,

For purposes of clarification I have attached the House Judiciary Committee minutes from 1/21/98 which reflect the following:

Rep. Porter moved to adopt 0-LS0939\E as a work draft. Without objection the version was before the committee.

Rep. Porter moved to amend page 2, line 12, to insert the word "forty" between the words "establish" and "single-member." Without objection the amendment was adopted.

If you have any further questions please contact me at ext. 4990.

Thanks.

AMENDMENT

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE JUDICIARY

TO: CSHJR 36 () work draft O-LS0939\ E

Page 2, line 9 following "census.":

Insert "The reapportionment board shall conduct a survey to determine the percentage of resident and non-resident military voters and shall reapportion based on the resident population."

Hickel v. Southeast Conference, 868 P.2d 919 (Alaska 1994).

Dealt mostly with Atty's fees for prevailing party. Democratic Party as public Interest Litigant.

DOJ reviews plan under Section 5 of Voting Rights Act.

Hickel v. Southeast Conference, 846 P.2d 38 (Alaska 1992)

Ak. Const. Art. VI, § 3. and *Wade v. Nolan*, 414/689, 700 (Alaska 1966), Governor has power and duty to reapportion the state legislature every ten years.

Contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Total [civilian] population by 40.

EQUAL PROTECTION

- 1) One person, one vote. The right to an equally weighted vote. (Quantitative, purely numerical.)
- 2) "Fair and effective representation." The right to group effectiveness or an equally powerful vote. (Qualitative.)

Kenai Peninsula Borough,
743/1366.

One person one vote. "minor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case of invidious discrimination under the 14th Amendment. State must provide justification for deviation above 10%. Art 6 requirements will justify greater than 10%. (deviation of 16.3% seen as outside parameters *Gaffney*, 412 US 735 (1973).

Fair and effective representation. Fair Representation is denied where there is proof that the group has substantially excluded from the political process and denied political effectiveness over a period of more than one election. FED Equal Protection *Kenai* at 1369.

Ak Equal Protection. More strict standard. Won't hypothesize facts which would sustain otherwise questionable legislation i.e. rational basis. Upon a

showing that the Board acted intentionally to discriminate against the voters of a geographic area, The Board must demonstrate that its plan will lead to greater proportionality of representation. *Kenai* at 1372.

Voting Rights Act. Reapportionment invalid if it "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."

Ak Ct has emphasized the need to preserve flexibility in the redistricting process so that all constitutional requirements may be satisfied as nearly as practicable. *Hickel*, 846 at 50.

NRMP. (non-resident military personnel) Exclusion is not constitutionally mandated if it is not possible to accurately identify those military personnel who are non-residents. It is necessary to consider alternative plans for obtaining a sufficiently accurate plan for estimating the number of NRMP. A "hard look" is required. Explained in *Hickel*, 846 at 57.

Alaska State Legislature



House of Representatives House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

Distribution of Representative Green's HJR 36 Sponsor Statement and CS/E
for Inclusion in Committee Member Packets.

Rep. C. Bunde

✓

Rep. B. Porter

JP

Rep. N. Rokenburg

Rep. J. James

James

Rep. E. Croft

Rep. E. Berkowitz

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HJR36 | _____

Revision Date (Note if correction) _____ Dept. Affected Office of the Governor
 Title Const. Amend: Reapportionment Board BRU Elective Operations
 and Redistricting _____ Component Elections
 Sponsor Representative Green
 Requester House Judiciary Committee Component Serial No. #21

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by Dana LaTour *D LaTour* Phone 465-5347
 Division Division of Elections Date 1/20/98
 Approved by C. Lt. Governor Fran Ulmer *Fran Ulmer* Date 1/20/98
 Agency Office of the Lieutenant Governor

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