

HJR

44

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHJR 44(RLS) AM

Revision Date (<u>4/24/98</u>)	Dept. Affected <u>Office of the Governor</u>
Title <u>Const. Amend: Relating to redistricting</u>	BRU <u>Elective Operations</u>
of the legislature	Component <u>General and Primary</u>
Sponsor <u>Representatives Porter and Mulder</u>	
Requester <u>Senate Judiciary Committee</u>	Component Serial No <u>#22</u>

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 ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 <u>Gail Fenumai</u>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date <u>4/24/98</u>
Approved by <u>Gov. Fran Ulmer</u>	Date <u>4/24/98</u>
Agency <u>Office of the Lieutenant Governor</u>	

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FISCAL NOTE

No: 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill version: CSHJR 44 (JUD)
(H) Publish Date: 2/18/98

Revision Date (Note if correction) _____	Dept. Affected <u>Office of the Governor</u>
Title <u>Const. Amend: Relating to redistricting</u>	BRU <u>Elective Operations</u>
of the legislature _____	Component <u>Elections</u>
Sponsor <u>Representatives Porter and Mulder</u>	
Requester <u>House Judiciary Committee</u>	Component Serial No. <u>#21</u>

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 ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 <u>Gail Fenwick</u>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date <u>2/12/98</u>
Approved by C <u>Lt. Governor Fran Ulmer</u>	Date <u>2/12/98</u>
Agency <u>Office of the Lieutenant Governor</u>	

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FISCAL NOTE

Bill Version: CSHJR 44 (JUD)

(H) Publish Date: 2/18/98

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

Revision Date (Note if correction)	Dept. Affected	Law
Title	BRU	Civil Division
State of Alaska relating to redistricting and reapportionment ...	Component	Governmental Affairs
Sponsor	Representative Porter	
Requester	House Judiciary Committee	Component Serial No 2207

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	20.1	9.4				
Travel	0.1	0.0				
Contractual	43.2	1.5				
Supplies	0.3	0.2				
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	63.7	11.1	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)

1002 Federal Receipts						
1003 GF Match						
1004 GF	63.7	11.1				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	63.7	11.1	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)

CS HJR 44 (JUD), Workdraft M, would amend the Alaska Constitution to change the method of redistricting legislative election districts, and create a Reapportionment Board appointed by the legislature to do the redistricting.

Passage of the resolution itself would have no cost to the Department of Law. However, if the constitutional amendment were adopted by the people of the State of Alaska, the new law would require preclearance by the United States Department of Justice (DOJ) before implementation because it changes a voting law. The preclearance process would require the Department of Law to document and present the state's position to the DOJ. We anticipate that 3 months of in-house attorney time would be required for preclearance, 20 hours of paraprofessional time, and \$40,000 for expert opinions, assuming that the process remains an administrative one. Should the new law be challenged, and referred to a

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 Division Attorney General's Office
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 Agency Department of Law

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 Date 2/13/98
 Date 2/13/98

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Workdraft M
BILL NO. CSHJR 44 (JUD)

ANALYSIS CONTINUATION

three-judge panel in the District of Columbia Circuit, costs would increase dramatically. The department has not included those speculative costs in this fiscal note, and would request a supplemental appropriation should that eventuality occur.

In-house costs are based on the department's FY98/99 standard attorney cost schedule (\$92.72/hour per for attorney time and \$71.94/hour for paraprofessionals). The schedule includes clerical support, lease costs, communications, and other standard overhead costs. Expert fees and costs are added separately. If the resolution passes this session, preclearance would begin 30 days after certification of the 1998 election, the next general election. The department is assuming that most of the work can be completed in FY99, and has included two months of in-house costs, and all expert costs, during that year, with the remaining one month of in-house costs to be incurred in FY00.

COST SUMMARY

Attorney				
	FY99	\$92.72	240.0 hrs	\$22,253
	FY00	\$92.72	120.0 hrs	\$11,126
Paraprofessional				
	FY99	\$71.94	20.0 hrs	\$1,439
Expert Costs				
	FY99			\$40,000
Total				
	FY99			\$63,692
	FY00			\$11,126

Sectional Analysis for CS FOR HJR 44(RLS) 0-LS0528\S.a
4/6/98

Section Number of HJR 44.	Changes Made to Existing Section of Constitution Article VI	Reasons for Changes and Intent
Section 1 and Section 2.	<p>Language is added to Section 1 and Section 2 of Article VI that boundaries of house districts and senate districts are to be established after every decennial census, as provided in the framework spelled out in the changes to Article VI.</p> <p>Old language is deleted which referred to Article XIV. Article XIV is no longer necessary, and is repealed in Section 11 of HJR 44.</p>	<p>The proposed language changes clarify that boundaries of house and senate districts are redrawn after every decennial census of the United States. This amendment requires that senate districts, as well as house districts, be subject to redistricting to achieve equal representation. This change brings the constitution into line with the U.S. Supreme Court's decision 34 years ago in <u>Reynolds v. Sims</u> (1964), 377 US 533, and companion Alaska Supreme Court decisions in <u>Wade v. Nolan</u> (1966), 414 P.2d 689, and <u>Egan v. Hammond</u> (1972), 502 P.2d 856.</p> <p>Article XIV is a lengthy description of existing house and senate districts, which changes every 10 years. The intent in eliminating Article XIV is to eliminate the need for unnecessary amendment of the constitution every ten years.</p>
Section 3.	<p>The power to reapportion house and senate districts in Section 3 of Article VI is changed from the Governor to a Redistricting Board.</p> <p>Language is added to make clear that both house districts and senate districts are reapportioned, and not just the house districts.</p>	<p>Alaska and Maryland are the only two states where the governor has reapportionment authority. However, in Maryland, the senate has ratification power over the governor's appointments to the board. In Alaska there is no such check and balance over the executive branch, with the result the governor has nearly unfettered discretion in appointing board members and to alter the board's plan. This change is intended to remove reapportionment and redistricting as far as possible from the partisan political arena by creating a redistricting board appointed by the chief justice.</p> <p>At the time the Alaska Constitution was drafted, The U.S. Supreme Court had not yet ruled that the one-person, one-vote equal protection requirement in the XIVth Amendment applied to senate districts as well as to house districts in state legislatures. As discussed above in Section 1 and 2, this change is intended</p>

	<p>The word "civilian" is deleted to make clear that reapportionment is based on the entire state's population base, including military population, and not just the civilian population.</p> <p>Language is added which makes clear that the census upon which reapportionment and redistricting is based is the official decennial census of the United States.</p>	<p>to conform the constitution to controlling federal and state case law.</p> <p>Citing <u>Davis v. Mann</u> (1964), the controlling U.S. Supreme Court precedent, twenty six years ago the Alaska Supreme Court held that eliminating military personnel as a class from the reapportionment population base is unconstitutional. <u>Egan v. Hammond</u>, 502 P. 2d 856 (1972), at 871.</p> <p>The issue then arose as to whether it is constitutionally required to exclude non-resident military personnel from the population base. In <u>Hickel v. Southeast Conference</u> (1992), 846 P.2d 38, at 55, the Alaska Supreme Court held that exclusion is not constitutionally required if it is not possible to accurately identify non-resident military personnel, after finding that it was "methodologically impossible" to accurately identify them.</p> <p>There has been much discussion about the difference between "reapportionment" and "redistricting" in many places in Article VI. The Alaska Supreme Court has stated by way of dicta that there is little difference between the two words, and that reapportionment is inseparable from redistricting. <u>Egan v. Hammond</u> (1972), 502 P. 2d 856, at 873. However, given the modern trend toward greater use of the term "redistricting" as the line drawing component of reapportionment, "redistricting" has been substituted for "reapportionment" in several appropriate places in Article VI.</p> <p>Throughout HJR 44, language is added to clarify that what is intended by the word "census" is the official decennial census of the United States. This clarification is specifically intended to prevent the utilization of any census other than the official decennial census of the United States.</p>
Section 4.	Language is added to Section 4 of Article VI to create forty	The intent is to require single-member house districts. Single-member house

Sectional Analysis for CS FOR HJR 44(RLS) 0-LS0528\S.a
4/6/98

	<p>single-member house districts, which contain one-fortieth of the state's population base.</p> <p>Language is added to create twenty single-member senate districts, which consist of two house districts.</p> <p>Language is deleted about civilian population and creating forty equal election districts.</p>	<p>and senate districts are cited as preferable to multi-member districts. See <u>Chapman v. Meier</u>, 420 U.S. 1 (1975) and <u>Groh v. Egan</u>, 526 P.2d 863, at 880 (1974).</p> <p>The intent is to require single-member senate districts, each consisting of two house districts.</p> <p>The deleted language refers to "civilian" population, which, as discussed above, has been struck down by the U.S. Supreme Court and the Alaska Supreme Court on constitutional grounds. The requirement of nearly equal population in house and senate districts is now in Article VI, section 6.</p>
Section 5.	<p>Language is added to Section 6 of Article VI to clarify that the Redistricting Board, and not the Governor, will perform the redistricting function.</p> <p>Each house district will contain "as nearly as practicable" one-fortieth of the state's population.</p> <p>Each senate district will be composed "as nearly as practicable of two contiguous house districts".</p>	<p>Self-explanatory. See discussion in Section 3.</p> <p>Since U.S. Supreme Court and Alaska Supreme Court cases make clear that minor deviations from an ideal one-fortieth of the state's population are permissible for house and senate districts, the "as nearly as practicable" language is added.</p> <p>This language recognizes the Alaska Supreme Court's emphasis on flexibility in where redistricting lines are drawn, and that actual contiguity may not always be possible.</p>
Section 6.	<p>(a) Language is added to Section 8 of Article VI to clarify that one member of the Redistricting Board shall be appointed by the chief justice of the supreme court, and the legislature shall appoint the remaining members, two each by the minority and the majority, subject to the provisions of this section</p>	<p>This section was amended on the floor of the House, and changed the Rules version which previously imposed the duty to appoint all five board members on the chief justice.</p>

	<p>The board shall consist of five members, "all of whom shall be residents of the state for at least one year and none of whom may be public employees or officials at the time of and during the tenure of appointment".</p> <p>Previous draft language which clarified that compensation is to be paid to board members "as provided by law" was deleted for unknown reasons.</p> <p>Language is deleted which previously required board members to be from certain geographic areas of the state, and which required that appointments be made without regard to political affiliation.</p> <p>(b) New language is added which requires board members to be appointed by September 1 of the year in which a decennial census is taken.</p> <p>New language is added that "at least one board member shall be a resident from each judicial district that existed on January 1, 1999".</p> <p>New language is added that requires board members to serve until a final redistricting plan and proclamation has been adopted and all legal challenges to it under the enforcement section have been resolved through final remand or affirmation.</p> <p>(c) New language is added which prevents a person who was a member of the board from becoming a candidate for the legislature in the general election following the adoption of the final redistricting plan</p>	<p>The state has a compelling interest in maintaining the integrity of the reapportionment and redistricting process, and in avoiding even the appearance of impropriety in board composition. The "for at least one year" language was added on the floor of the House.</p> <p>It is intended that the board members be compensated for per diem and travel expenses. If the constitutional amendment is approved by the voters, a bill should be drafted to provide for compensation.</p> <p>The geographic representation concept has been moved to section 8(b) of Article VI. The "without regard to political affiliation" language dropped out when previous drafts contemplated two majority and two minority party board members.</p> <p>Self explanatory. This allows the board to be appointed and organized to start work once the official census is released.</p> <p>This restores the geographical representation which was deleted above.</p> <p>It is the intent of this language to require board members to serve until a plan and proclamation have been adopted, and to continue to serve through any remands following superior court or supreme court challenges.</p> <p>This provision is intended to avoid the appearance of impropriety on the part of a board member who might otherwise be accused of redistricting a district for self serving reasons. The over-all goal of the changes to Article VI is to have as far as possible, a redistricting plan that is fair,</p>
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Sectional Analysis for CS FOR HJR 44(RLS) 0-LS0528\S.a
4/6/98

	and proclamation.	rational, objective, and free from undue political influence.
Section 7.	<p>Language is added by which "actions of the board" require the concurrence of three members. Ambiguous language is deleted about "a ruling or determination" and "or otherwise act for the board".</p> <p>New language is added which requires the board to "employ or contract for services of independent legal counsel".</p>	<p>The language in the existing constitution creates ambiguities about the legal effect of a majority of only three board members meeting somewhere and making unspecified "rulings or determinations". Two members in this scenario should not be able to bind a five member board.</p> <p>The board will need independent legal counsel, and should not be required to utilize legal services from any state, local or federal government entity.</p>
Section 8.	<p>New language is added to Section 10 of Article VI which requires the board to agree on one or more proposed plans within 30 days of release of the decennial census population data. The board then has 60 more days to hold hearings and agree on a final reapportionment plan and to issue a proclamation of reapportionment.</p> <p>If the census data is officially released before the board is duly appointed, language has been added to clarify that the 30 and 90 day clock starts to run after two events have occurred: the board is duly appointed and the census data has been officially released.</p> <p>Language is deleted about the board reporting to the governor, and the governor submitting the final plan and proclamation.</p> <p>New language is added by which the final plan is to set out boundaries of house districts and senate districts.</p>	<p>Once the board has been appointed and the decennial census has been officially released, the 90 day clock starts to run. The board has 30 days to agree on one proposed plan, if it can. If it cannot, it will have hearings on multiple proposed plans over the next 60 days. By the end of the 90 day period, the board must adopt a final single plan and proclamation.</p> <p>In the remote event the census data is officially released before the board is duly appointed, it is the intent of this language that the board has 30 days after it is appointed to come up with one or more proposed plans, and a total of 90 days after it is appointed to come up with the final plan.</p> <p>This deletion is for consistency reasons. It is the Redistricting Board which develops and adopts the proposed and final plans of reapportionment.</p> <p>This provision is intended to clarify that the final plan sets out the boundaries of senate districts as well as of house election districts, as discussed above.</p>

	<p>(b) New language is added to clarify that adoption of a final redistricting plan requires at least three votes of the board.</p>	<p>Self-explanatory.</p>
<p>Section 9.</p>	<p>The enforcement provisions of Article VI, Section 11, now provide that any qualified voter can compel the board to perform its duties in formulating a final plan and proclamation, or to correct any error in redistricting or reapportionment.</p> <p>A lawsuit to compel performance of the duty to formulate a final redistricting plan and proclamation at the end of 90 days must be filed not later than 30 days after the 90 day period. A lawsuit to correct any error in redistricting or reapportionment must be filed within 30 days after adoption of the final plan and proclamation by the board.</p> <p>New language is added to require the courts to dispose of cases arising under Article VI on an expedited basis.</p> <p>If any reapportionment remands are ordered by the courts, the matter shall be remanded directly to the board for correction and development of a new plan, and not to the superior court or to special masters.</p> <p>On the floor of the House, upon the motion of Rep. Grussendorf, a sentence was added that "if that new plan is declared invalid the matter may be referred again to the board".</p>	<p>This is a consistency change which substitutes the board for the Governor.</p> <p>This provision allows for a reasonable time to prepare a lawsuit, but sets an absolute limit so as to meet the timing requirements for the next election. This is an existing constitutional provision.</p> <p>Same reasoning as above, and is consistent with recent supreme court handling of such cases.</p> <p>This language is intended to avoid the situation which arose in <u>Hickel v. Southeast Conference</u>, in which the court system in effect rewrote the reapportionment plan. The approach was criticized by two of the justices in a dissenting opinion in that case.</p> <p>The intent of the Grussendorf amendment is to reaffirm the supreme court's continuing jurisdiction over the board's task of redoing the plan in accordance with the court's order. If the board fails to redo the plan in accordance with the court's order, the court will continue to remand until the board gets it right.</p>

Sectional Analysis for CS FOR HJR. 44(RLS) 0-LS0528\S.a
4/6/98

Section 10.	Consistency change to another part of the constitution in order to eliminate "election districts" in favor of "house districts".	Provides a precise term that is distinguishable from senate district.
Section 11.	A new Article XV, section 29 is added by which the 1998 amendments to Article VI apply only to plans and proclamations of redistricting adopted on or after January 1, 2001.	This language is intended to ensure that the plan and proclamation in effect since 1994 will not be subject to legal challenge on the basis that it is not in conformity with the 1998 amendments, which become effective approximately 90 days after voter approval.
Section 12.	Article VI, sections 5 and 7, and Article XIV of the constitution are repealed.	These sections of Article VI and Article XIV are repealed because they are no longer necessary in light of the changes made in HJR 44.

Alaska State Legislature



Official Business

State Capitol
Juneau AK
99801-1182

JOINT SPONSOR STATEMENT FOR

HJR 44: A RESOLUTION PROPOSING AMENDMENTS TO THE CONSTITUTION OF THE STATE OF ALASKA RELATING TO REAPPORTIONMENT AND REDISTRICTING OF THE LEGISLATURE; REPEALING OBSOLETE LANGUAGE; AND PROVIDING FOR AN EFFECTIVE DATE.

The reapportionment and redistricting provisions of the Alaska Constitution have been outdated for more than 25 years. U.S. Supreme Court decisions have struck down state law provisions excluding military personnel from reapportionment population bases, and have extended the one-person, one-vote requirement of the equal protection clause of the XIVth Amendment to senate districts as well as to house districts. The Alaska Supreme Court has been inviting the legislature to amend the constitution since at least 1972 in these areas.

Alaska is only one of two states in the Union which places the reapportionment and redistricting power in the office of the Governor. In the other state, Maryland, the senate has the right to ratify the governor's appointees. No such check exists in Alaska. This situation has produced redistricting plans which have been subject to criticism of being borne in the crucible of politics, rather than creating redistricting plans based on bipartisan fairness and objectivity. The existing system of constitutional provisions has spawned litigation after every decennial census since statehood, the most recent of which was exceptionally contentious.

This proposal creates a five-member redistricting board which is appointed by the Chief Justice of the Alaska Supreme Court. The redistricting process proposed in this legislation is intended to produce balanced, professionally drawn districting plans.

Probably due in part to the inherent political bias of the existing mechanism, and the delays inherent in legal challenges, the Alaska Supreme Court has had to take an increasingly activist approach in deciding redistricting disputes in time for primary elections. The most recent legal challenge caused two of the Justices to dissent regarding what they perceived to be an "abuse of power" by the majority of the court. The court majority sent the final redistricting task to the superior court and special masters to rewrite the plan, rather than remand the case to the reapportionment board. The proposed changes to the constitution will require the court to remand the redistricting function back to the redistricting board to make changes in accordance with the court's order.

There are other changes proposed, such as clarifying that representatives and senators shall be elected from single-member districts. A more detailed analysis of other sections of HJR 44 appears in the sectional analysis, which is incorporated by reference.