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# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

March 19, 1999

**SUBJECT:** Amendment of the power of initiative in regard to fish and game  
(Work Order No. 21-LS0717)

**TO:** Representative Pete Kott  
Attn: Cory Winchell

**FROM:** George Utermohle *GU*  
Legislative Counsel

This memorandum is in response to your query regarding whether the legislature may propose an amendment to the Alaska Constitution that reduces the power of the people to enact laws relating to fish and game by initiative.

The power of initiative is conferred on the people by art. XI, sec. 1 of the Alaska Constitution.

The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum.

Article XI, secs. 2 - 4 and 6 control how the right of initiative is exercised. Article XI, sec. 7 sets out those subject areas that cannot be addressed by initiative: "[t]he initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation."

The power to propose an amendment to the Alaska Constitution lies with the Alaska Legislature under art. XIII, sec. 1<sup>1</sup> and with a constitutional convention under art. XIII, sec. 4<sup>2</sup>. The Alaska Constitution does not place a subject matter restriction on the matter that the legislature may consider in a proposed constitutional amendment. There is no constitutional restriction on the ability of the Alaska Legislature to propose an amendment to the Alaska

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<sup>1</sup> Article XIII, sec. 1, Constitution of the State of Alaska states, in relevant part: "Amendments to this constitution may be proposed by a two-thirds vote of each house of the legislature."

<sup>2</sup> Article XIII, sec. 4, Constitution of the State of Alaska states, in relevant part: "Constitutional conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people."

Representative Pete Kott

March 19, 1999

Page 2

Constitution that would alter, restrict, or even prohibit the use of the initiative by the people to enact laws relating to fish and game.

However, the Alaska Constitution does place a restriction on the scope of a constitutional amendment that may be proposed by the legislature. The legislature's power to propose amendments is not as broad as that of a constitutional convention. A constitutional convention may not only propose amendments to the Alaska Constitution but may also propose revisions to the Alaska Constitution. The recent *Bess v. Ulmer* case (Preliminary Opinion and Order, Alaska Supreme Court No. S-08811, S-08812, S-08821, dated September 22, 1998) addressed the distinction between an amendment and a revision. In the view of the court, "changes that are 'few and simple and independent' can be considered amendments, whereas 'sweeping change' requires the revision process." *Id.* at 2 (citations omitted).

In considering whether the proposed constitutional amendment relating to prisoners' rights<sup>3/</sup> was an amendment or a revision, the court took note of the fact that the proposed amendment "actually or potentially affected" numerous provisions of the Alaska Constitution. *Id.* at 4. In the court's view, the proposed amendment affected 12 sections within article I of the Alaska Constitution. However, the mere number of sections affected was not wholly determinative of whether the proposed constitutional change constituted a revision. Instead, the court looked not only at the number of sections affected but also the scope of the changes. The court concluded that the proposed change was actually a revision because the proposed change "would eliminate the independent force and effect of so many provisions of the Alaska Constitution with respect to the rights of prisoners that it is beyond the limits of the amendatory process of article XIII, section 1 [of the Alaska Constitution]." *Id.* at 5.

In reviewing the proposed constitutional amendment relating to marriage, the Supreme Court found that the first sentence of the proposed change constituted an amendment that was validly within the amendatory power of the legislature.<sup>4/</sup> The change was not so expansive as to exceed the permissible scope of an amendment. *Id.* at 6. Also, the proposed change was "simple to express and understand," related "to only one subject," and did not

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<sup>3/</sup> Legislative Resolve 59, Twentieth Alaska State Legislature, proposed to amend Article I of the Alaska Constitution by adding a new section to read:

**Section 25. Rights of Prisoners.** Notwithstanding any other provision of this constitution, the rights and protections, and the extent of those rights and protections, afforded by this constitution to prisoners convicted of crimes shall be limited to those rights and protections, and the extent of those rights and protections, afforded under the Constitution of the United States to prisoners convicted of crimes.

<sup>4/</sup> Legislative Resolve 71, Twentieth Alaska State Legislature, proposed an amendment to article I of the Alaska Constitution by adding a new section to read:

**Section 25. Marriage.** To be valid or recognized in this State, a marriage may exist only between one man and one woman. No provision of this constitution may be interpreted to require the State to recognize or permit marriage between individuals of the same sex.

Representative Pete Kott  
March 19, 1999  
Page 3

"substantially affect numerous other sections of the constitution." *Id.* The Supreme Court struck the second sentence of the marriage amendment on grounds that the sentence was surplusage. *Id.* at 6-7. It is not clear from the court's opinion whether the second sentence was deleted for any reason related to the issue of amendments and revisions.

The Supreme Court also reviewed a proposed constitutional amendment that changed the procedure for redistricting of the Alaska Legislature. Even though the proposed amendment expressly made substantive changes to nine sections of article VI, the court found that the proposal was indeed an amendment for purposes of the Alaska Constitution and thus was within the amendatory power of the legislature. Though the change proposed by the amendment "is an important one, it is simple to express and understand. It is complete within itself, relates to only one subject, and does not substantially affect numerous other sections of the constitution." *Id.* at 7.

Based on the Preliminary Opinion and Order issued by the Supreme Court in the Bess case, there is no substantial basis to believe that a proposed amendment that alters the power of the people to enact a law relating to fish or game by initiative exceeds the scope of an amendment that can be proposed by the legislature.

In conclusion, based on the legal precedent available in this state, the legislature does have the power to propose a constitutional amendment that would, if approved by the people, reduce the power of the people to enact laws relating to fish and game by initiative.

If I may be of further assistance, please advise.

GU:lmb  
99-048.lmb

INITIATIVES APPEARING ON THE BALLOT IN ALASKA

		<u>FOR</u>	<u>AGAINST</u>
August 9, 1960	Relocate the State Capital	18, 865	23, 972
November 6, 1962	Relocate the State Capital	26, 542	32, 325
August 27, 1974	Relocate and Construct Capital	46, 659	35, 683
August 27, 1974	Conflicts of Interest	57,094	23,151
November 2, 1976	Repeal of Limited entry	44,304	75,125
November 7, 1978	Full Bondable Costs of Relocating the Capital	69, 414	55,253
November 7, 1978	Disposal of State Lands	70,409	55,511
November 7, 1978	Refundable Deposits on Certain Beverage Containers	49,882	75,397
November 4, 1980	Establish Alaska General Stock Ownership Corporation	72,072	78,404
November 2, 1982	Claiming State Ownership of Federal Land	136, 633	50,791
November 2, 1982	Limiting State Funding of Abortions	77, 829	113,005
November 2, 1982	Personal Consumption of Fish and Game	76,679	111,770
November 6, 1984	Reducing Government Regulation of Transportation	116,891	78,663
August 26, 1986	Nuclear Weapons Freeze	80,326	57,125
November 8, 1988	Civil Liability	138,511	54,206
November 8, 1988	A State Community College Separate from University of Alaska	83,472	104,719
August 28, 1990	Amendments to the Alaska Railroad	31,612	107,269

## Initiatives Appearing on the Ballot in Alaska

		<u>FOR</u>	<u>AGAINST</u>
August 28, 1990	Relating to the Regulation of Gambling and Establishing an Alaska Gambling Board	50,446	90,827
November 6, 1994	Relating to the Recriminalization of Marijuana	105,263	88,644
November 8, 1994	Relating to Changing the Capital to Wasilla	96,398	116,277
November 8, 1994	Relating to Banning Ballot Listing Certain Congressional Candidates	126,960	74,658
November 8, 1994	Relating to Voters Right to Know the Cost of Moving the Capital	119,089	66,157
November 5, 1996	Relating to Same Day Airborne Hunting of Certain Animals (95Hunt)	137,635 T = 535325	97,690 553145
November 5, 1996	Relating to Ballot Information and Term Limits (95BITL) (overturned by court)	123,167	102,533
November 3, 1998	Relating to Prohibiting Billboards (97BILL)	160,922	61,401
November 3, 1998	Relating to Requiring Government to Use English (97ENGL)	153,107	70,085
November 3, 1998	Relating to Requiring a Term Limits Pledge for Candidates (97TERM)	109,613	108,731
November 3, 1998	Relating to Allowing Medical Use of Marijuana (97PSDM)	131,586	92,701
November 3, 1998	Relating to Trapping Wolves With Snares (97TRAP)	83,224	140,049 T = 223273

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# The Initiative and Referendum States

Updated January 20, 1999

State	Statutes			Constitution	
	Initiative	Citizen Petition Referendum	Legislative Referendum	Initiative	Legislative Referendum
Alaska	I*	Yes	No	None	Yes
Arizona	D	Yes	Yes	D	Yes
Arkansas	D	Yes	Yes	D	Yes
California	D	Yes	Yes	D	Yes
Colorado	D	No	No	D	Yes
Florida	None	No	No	D	Yes
Idaho	D	Yes	Yes	None	Yes
Illinois	None	No	Yes	D	Yes
Kentucky	None	Yes	Yes	None	Yes
Maine	I	Yes	Yes	None	Yes
Maryland	None	Yes	Yes	None	Yes
Massachusetts	I	Yes	Yes	I	Yes
Michigan	I	Yes	Yes	D	Yes
Mississippi	None	No	No	I	Yes
Missouri	D	Yes	Yes	D	Yes
Montana	D	Yes	Yes	D	Yes
Nebraska	D	Yes	Yes	D	Yes
Nevada	D & I	Yes	Yes	D	Yes
New Mexico	None	Yes	Yes	None	Yes
North Dakota	D	Yes	Yes	D	Yes

Ohio	I	Yes	Yes	D	Yes
Oklahoma	D	Yes	Yes	D	Yes
Oregon	D	Yes	Yes	D	Yes
South Dakota	D	Yes	Yes	D	Yes
Utah	D & I	Yes	Yes	None	Yes
Washington	D & I	Yes	Yes	None	Yes
Wyoming	I*	Yes	No	None	Yes
US Virgin Is.	I	Yes	Yes	I	Yes

*Initiative – a law and/or constitutional amendment introduced by the citizens either to the legislature or directly to the voters.*

*D – Direct Initiative: proposals that qualify go directly on the ballot*

*I – Indirect Initiative; proposals are submitted to the legislature, which has an opportunity to act on the proposed legislation. Depending on the state, the initiative question may go on the ballot if the legislature rejects it, submits a different proposal or takes no action.*

*I\* -- Alaska and Wyoming's initiative processes are usually considered indirect. However, instead of requiring that an initiative be submitted to the legislature for action, they only require that an initiative cannot be placed on the ballot until after a legislative session has convened and adjourned.*

*Referendum – a process by which voters may express their judgment on statutes and/or constitutional amendments enacted by the legislature.*

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## Restrictions on the Use of the Initiative

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**Alaska:** No revenue measures, no appropriations, no acts affecting the judiciary, no local or special legislation. Limited to one subject.

**California:** Limited to one subject.

**Colorado:** Limited to one subject.

**Florida:** Limited to one subject.

**Illinois:** Allowed only for amendment of constitutional Article IV, relating to structural and procedural subjects concerning the legislative branch.

**Maine:** Any measure providing for an expenditure of funds in excess of those appropriated becomes inoperative 45 days after the legislature convenes.

**Massachusetts:** No measures relating to religion, the judiciary, specific appropriations and local or special legislation.

**Michigan:** The initiative power extends only to laws which the legislature may enact.

**Mississippi:** The initiative cannot be used to repeal or modify the state's Bill of Rights; to amend or repeal provisions relating to the state's public employees' retirement system; to amend or repeal Mississippi's constitutional right-to-work provision, or to modify the initiative process.

**Missouri:** Limited to one subject. Not used for appropriations of money other than new revenues created and provided for by the initiative. Cannot be used for any purpose prohibited by the state's constitution.

**Montana:** Cannot be used for appropriations or for local and special laws.

**Nebraska:** Limited to matters which can be enacted by legislation. The same measure cannot be initiated more often than once in three years.

**Nevada:** Initiative measures may not make an appropriation or require an expenditure of money unless a sufficient tax is provided as part of the initiative proposal.

**North Dakota:** Not for emergency measures. Not for appropriation measures for the support and maintenance of state departments and institutions.

**Oklahoma:** Initiatives rejected by the voters cannot be proposed again for three years by less than 25 percent of the state's legal voters.

**Wyoming:** Cannot be used to dedicate revenues; to make or repeal appropriations; to create courts; to define the jurisdiction of courts; to prescribe court rules; to enact local or special legislation or to enact legislation prohibited by the Wyoming constitution. The

same measure cannot be initiated more often than once in five years.