

**SJR**

**40**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 3/29/00

FURTHER:

REPORTED OUT OF  
SFC 4/4/00

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 4 April 00

Finance Committee considered

SENATE JOINT RESOLUTION NO. 40

Proposing amendments to the Constitution of the State of Alaska providing that the governor, United States senators, United States representative, and electors of the President and Vice-President of the United States be elected by a majority vote.

and recommends:

- be replaced with \_\_\_\_\_ CS SJR 40 (FIN)
- adopt previous \_\_\_\_\_ CS CS \_\_\_\_\_
- attached amendment(s) forthcoming
- adopt Letter of Intent by \_\_\_\_\_
- further referral to the \_\_\_\_\_ Committee

- Senate Bill: same title
- new title
- House Bill: same title
- technical title
- new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Kell &amp; Kelly</i>	✓	<i>Al Adams</i>	X		
<i>Linda Green</i>	✓				
<i>Pete Kelly</i>	✓				
<i>Gary Wilson</i>	✓				
<i>Loren D. Jensen</i>	✓				
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			

**NEW FISCAL NOTE(S):**

Department                      Date      Zero      Fiscal

Elections	3/31/00		1.5

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date      Zero      Fiscal


APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# 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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 4, 2000

**SUBJECT:** CSSJR 40(FIN) (Work Order No. 1-LS1579\D)

**TO:** Senator Torgerson, Co-chair  
Senate Finance Committee  
Attn: Jamie Foley

**FROM:** Kathryn L. Kurtz *KLK*  
Legislative Counsel

Enclosed is the final CS for SJR 40(FIN) you requested.

This CS now requires a conforming title amendment in order to make the title of the bill match the contents of section 2. The reference to electors needs to be removed from the title, and a reference to the lieutenant governor should be added. These changes can be made without a title change resolution while the bill is still in the first house. A draft amendment making these title changes is enclosed.

KLK:pl  
00-122.plm

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSJR 40(FIN)

1 Page 1, line 2:

2 Following "governor":

3 Insert "and lieutenant governor"

4 Following "senators,":

5 Insert "and"

6 Page 1, lines 2 - 3:

7 Delete ", and electors of the President and Vice-President of the United States"

SENATE FINANCE ,1-LS1579A.1  
COMMITTEE #1 Kurtz  
Amendment Number: #1  
Bill Number: SJR 40 3/31/00  
Sponsor: Adams Date: 4/3/00  
Logged In By: Miridy

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: SJR 40

- 1 Page 1, line 16, following "elected.":
- 2 Insert "The winning candidate must be the first choice of at least 50 percent plus
- 3 one of the votes cast for the office." delete

SENATE FINANCE COMMITTEE  
2000 COMMITTEE ACTION

Bill Number	SJR 40
Amendment	#1 as amended
Motion	adopt
<u>Motion by</u>	ft
<u>Objection</u>	
<u>Objection by</u>	none
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	

SENATE FINANCE COMMITTEE  
2000 COMMITTEE ACTION

Bill Number	SJR 40
Amendment	# 1
Motion	amend delete "first"
<u>Motion by</u>	P
<u>Objection</u>	
<u>Objection by</u>	none
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	Pass

SENATE FINANCE  
COMMITTEE  
Amendment Number: #2 1-LS1579A.4  
Bill Number: SJR 40 Kurtz  
Sponsor: Torgerson Date: 4/3/00  
Logged by: Mindy

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TORGERSON

TO: SJR 40

- 1 Page 1, line 14, following "senator,":
- 2       Insert "and"
  
- 3 Page 1 lines 14 - 15:
- 4       Delete "and elector of President and Vice-President of the United States."
  
- 5 Page 1, line 16, through page 2, line 1:
- 6       Delete "Procedures [THE PROCEDURE] for arriving at a majority vote, and for"
- 7       Insert "The procedure for"

SENATE FINANCE COMMITTEE  
2000 COMMITTEE ACTION

Bill Number	SJR 40		
Amendment	#2		
Motion	adpt		
<u>Motion by</u>	P		
<u>Objection</u>			
<u>Objection by</u>	L		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Gary Wilken	✓		
Senator Pete Kelly	✓		
Senator Lyda Green			✓
Senator Randy Phillips	✓		
Senator Dave Donley			
Senator Loren Leman			✓
Senator Al Adams			✓
Co-Chair Sean Parnell	✓		
Co-Chair John Torgerson	✓		
<u>Tally</u>			
Yea	5	0	3
Nay		0	
Absent		0	
<u>MOTION</u>	Pass		

CS FOR SENATE JOINT RESOLUTION NO. 40(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska providing that  
2 the governor, United States senators, United States representative, and electors of  
3 the President and Vice-President of the United States be elected by a majority  
4 vote.

5 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 \* Section 1. Article III, sec. 3, Constitution of the State of Alaska, is amended to read:

7 Section 3. Election. The governor shall be chosen by the qualified voters of  
8 the State at a general election. [THE CANDIDATE RECEIVING THE GREATEST  
9 NUMBER OF VOTES SHALL BE GOVERNOR.]

10 \* Sec. 2. Article V, sec. 3, Constitution of the State of Alaska, is amended to read:

11 Section 3. Methods of Voting; Majority Vote Required; Election Contests.  
12 Methods of voting, including absentee voting, shall be prescribed by law. Secrecy of  
13 voting shall be preserved. For the offices of governor and lieutenant governor,  
14 United States senator, and United States representative, the candidate receiving  
15 a majority of votes cast for each office shall be elected. The winning candidate  
16 must be the choice of at least 50 percent plus one of the votes cast for the office.

-1- Amend #2

deleted text

CSSJR 40(FIN)

Amend #1 as amended

1       The procedure for determining election contests, with right of appeal to the courts,  
2       shall be prescribed by law.

3       \* **Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of  
4 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the  
5 State of Alaska, and the election laws of the state.

# LEGAL SERVICES

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### MEMORANDUM

April 3, 2000

**SUBJECT:** SJR 40: Amendment or Revision? (Work Order No. 1-LS1579\A)

**TO:** Senator John Torgerson, Co-Chair  
Senate Finance Committee  
Attn: Darwin Peterson

**FROM:** Kathryn L. Kurtz *KK*  
Legislative Counsel

You have asked whether SJR 40, which would amend the constitution to require a majority vote for election to certain offices, is a constitutional amendment or a revision.

#### **Summary**

The answer depends on how a court would evaluate the quantity and quality of change proposed. The "quality" of change criteria is quite plastic; the court has said that a "simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision ..." Although, based on the decision in the Bess case, I suspect that a court would find the changes proposed in this resolution to be an amendment rather than a revision of the constitution, I can not rule out the possibility that a court could reach the opposite conclusion.

#### **Analysis**

The test for distinguishing between amendments and revisions was set forth by the Alaska Supreme Court in its recent decision in Bess v. Ulmer:

In deciding whether the proposal is an amendment or revision, we must consider both the quantity and quality of the proposed constitutional changes. We agree with the reasoning of the California Supreme Court in Livermore, McFadden, and Amador Valley that

an enactment which is so extensive in its provisions as to change directly the "substantial entirety" of the constitution by the deletion or alteration of numerous existing provisions may well constitute a revision thereof [while] even a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision also.

Senator John Torgerson

April 3, 2000

Page 2

The process of amendment, on the other hand, is proper for those changes which are "few, simple, independent, and of comparatively small importance." The core determination is always the same: whether the changes are so significant as to create a need to consider the constitution as an organic whole.

Bess v. Uimer, 985 P.2d 979, 987 (Alaska 1999), *quoting* Amador Valley Joint Union High School Dist. v. State Board of Equalization, 583 P.2d 1281, 1286 (Cal. 1978) and Judge John A. Jameson, A Treatise on Constitutional Conventions; Their History, Powers, and Modes of Proceeding, sec. 540 (Chicago, Callaghan and Company, 4th ed. 1887).

The core of the test--"whether the changes are so significant as to create a need to consider the constitution as an organic whole"--necessarily calls for an exercise of judgment by the court. It is not possible to predict with certainty how a court would rule if confronted with your question.

Looking at the three resolutions considered by the court under this test in the Bess case, SJR 40 appears closer in terms of the quantity and quality of change proposed to the two resolutions held to be amendments (marriage and reapportionment) than the resolution held to be a revision (rights of prisoners).

Like the marriage and reapportionment amendments considered in that case, the quantity of change proposed in SJR 40 is relatively small; only two sections of the constitution are directly affected. Unlike the marriage amendment, which the court concluded would not "necessarily or inevitably alter the basic governmental framework" of the constitution, this resolution, by changing the requirements for election to office, does seem to present a "significant change in the present system of Alaskan government." *See id.* at 988. However, in the Bess case, even though the court found that the qualitative change proposed in the reapportionment amendment was "significant" and "substantial," it concluded that it was not so "'far reaching and multifarious' as to comprise a revision." *Id.* at 989 (citations omitted).

In terms of the quantity and quality of change proposed, SJR 40 appears to be more like the marriage and reapportionment resolutions considered and found to be amendments in the Bess case than the prisoners rights resolution which was deemed to be a revision. The issue presented appears discrete and would not seem to "create a need to consider the constitution as an organic whole."

KLK:pl

00-120.plm

SENATE FINANCE COMMITTEE

SIGN-IN

SJR 40-MAJORITY VOTE FOR STATEWIDE OFFICES

NAME: Kathleen Sharkey Subject/Bill No: SJR 40  
Co./Dept./Title: Law Phone: 3600  
Address: Box 110300, Tucson Zip: 99811-0300  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

SENATE FINANCE COMMITTEE

SIGN-IN

SJR 40-MAJORITY VOTE FOR STATEWIDE OFFICES

NAME: Chip Waggoner Subject/Bill No: SJR 40  
Co./Dept./Title: Republican Party Phone: 580-1683  
Address: 3294 Pioneer Ave Juneau AK Zip: 99801  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: Kathie Stralitz Subject/Bill No: SJR 40  
Co./Dept./Title: Law Phone: 360  
Address: Box 110300 Juneau Zip: 99811  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: Gail Finumrai Subject/Bill No: SJR 40  
Co./Dept./Title: Elec Nois Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions