

SJR

7

<TARGET><BILL>SJR 7</BILL><SUBJECT>SJR
7</SUBJECT><COMM>SSTA30</COMM></TARGET>

TALKING POINTS FOR SJR 7

Constitutional Amendment Voter Approval for New Taxes

- Senate Joint Resolution 7 proposes an amendment to the Constitution of the State of Alaska regarding the power of taxation.
- If passed, the Division of Elections Director would place a question on the ballot that goes before the voters at the next general election. The question would amend Article IX, sec. 1 to require a majority of voters to approve any law establishing a tax, tax increase, or another revenue-producing measure.
- I know that amending the constitution has a high bar to clear, this bill before you has three committees of referral and in order to pass we must have a 2/3 vote in both the Senate (14) and the other body (27).
- We have to try. There are a lot of ways that government weighs the opinion of its people on taxes. Many may be familiar with the Anchorage Municipality which uses an advisory vote on any tax increase.
- Or the proposition process that may alter or do away with a tax. In the state of Colorado, voters enshrined the Taxpayer's Bill of Rights (TABOR) into the state constitution in 1992. The premise was simple, if lawmakers want to raise taxes or issue debt, they should ask voters for permission.
- I filed a bill to have any individual or statewide tax increase be implemented only when it is ratified by the voters. I was told by legal that this was unconstitutional.

- In order to try and move this idea forward there were two avenues open to me. 1) a constitutional amendment which you have before you or 2) an advisory vote which I now have in another bill, SB 130.
- It has been many years since the State of Alaska has levied an individual income tax on its citizens. Voters are being asked to approve budget timelines, spending caps, and per diem spending; it makes sense that we consult the people of Alaska on taxation.

Alaska State Legislature



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Senator Kevin Meyer Senate District M

SPONSOR STATEMENT

SJR 7: Constitutional Amendment Voter Approval for New Taxes

This bill proposes an amendment to the Constitution of the State of Alaska regarding the power of taxation. If passed, the Division of Elections Director would place a question on the ballot that goes before the voters at the next general election. The question would amend Article IX, sec. 1 to require a majority of voters to approve any law establishing a tax, tax increase, or another revenue-producing measure.

There are a number of ways governments have weighed the opinion of its people on taxes. Many may be familiar with the Anchorage Municipality which uses an advisory vote on any tax increase. Or the proposition process that may alter or do away with a tax. In the state of Colorado, voters enshrined the Taxpayer's Bill of Rights (TABOR) into the state constitution in 1992. The premise was simple, if lawmakers want to raise taxes or issue debt, they should ask voters for permission.

It has been many years since the State of Alaska has levied an individual income tax on its citizens. There has been much discussion in this era of budget deficits on revenue generation by the implementation of and/or increase in taxes. The intention of this legislation is to explore the idea that before enacting a new tax, be it an individual income or statewide sales tax, it should be ratified by a vote of the people. Voters are being asked to approve budget timelines, spending caps, and per diem spending; it makes sense that we consult the people of Alaska on taxation.

30-LS0788\D
Nauman
3/1/18

CS FOR SENATE JOINT RESOLUTION NO. 7()
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS MEYER, Dunleavy, Hughes

A RESOLUTION

1 **Proposing an amendment to the Constitution of the State of Alaska prohibiting the**
2 **imposition of a broad-based individual income tax or statewide general sales tax without**
3 **the approval of the voters of the state.**

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

5 * **Section 1.** Article IX, sec. 1, Constitution of the State of Alaska, is amended to read:

6 **Section 1. Taxing Power.** The power of taxation shall never be surrendered.
7 This power shall not be suspended or contracted away, except as provided in this
8 article. A law establishing a broad-based individual income tax or a statewide
9 general sales tax shall not take effect until approved by the voters of the State by
10 a majority of the votes cast on the proposed law.

11 * **Sec. 2.** The amendment proposed by this resolution shall be placed before the voters of the
12 state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State
13 of Alaska, and the election laws of the state.

SENATE JOINT RESOLUTION NO. 7

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY SENATORS MEYER, Dunleavy, Hughes

Introduced: 4/6/17

Referred: Labor and Commerce, Judiciary, Finance

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska prohibiting the
 2 imposition of a tax, the increase of an existing tax, or state retail sales taxation without
 3 the approval of the voters of the state.

any tax (circled around "a tax")
oil fuel property (circled around "existing tax")
not as accurate as sales (circled around "state retail sales taxation")

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

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 9 measure] shall not take effect until approved by the voters of the State by a
 10 majority of the votes cast on the proposed law.

This could be any tax

11 * Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the
 12 state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State
 13 of Alaska, and the election laws of the state.

TALKING POINTS FOR CS SJR 7 VERSION D Constitutional Amendment Voter Approval for New Taxes

- Thank you, Madam Chair, for hearing Senate Joint Resolution 7, which proposes an amendment to the Constitution of the State of Alaska regarding the power of taxation.
- The CS before you, version D makes clear what I intended which is a statewide sales tax or income tax should be approved by a vote of the people.
- If passed, the Division of Elections Director would place a question on the ballot that goes before the voters at the next general election. The question would amend Article IX, sec. 1 to require a majority of voters to approve any law establishing an income tax or a statewide sales tax.
- It has been many years since the State of Alaska has levied an individual income tax on its citizens and while there is local sales tax, there has never been a statewide sales tax. If this is something the state is considering, it makes sense that we consult the people of Alaska on taxation.

- A broad base tax CAN does have AN effect on peoples lives & finances - SO we should have frontload.
- NO + New State of Colorado does this, ~~AND~~ the City of Anch does this.

TALKING POINTS FOR CS SJR 7 VERSION D
Constitutional Amendment Voter Approval for New Taxes

- Thank you, Madam Chair, for hearing Senate Joint Resolution 7, which proposes an amendment to the Constitution of the State of Alaska regarding the power of taxation.
- Last February when the committee heard this bill, Senator Stevens pointed out that the bill would apply to all existing taxes and other taxes besides a state income tax or a statewide sales tax.
- The CS before you, version D remedies that and is what I intended. A statewide sales tax or income tax should be approved by the voters of the State.
- If passed, the Division of Elections Director would place a question on the ballot that goes before the voters at the next general election. The question would amend Article IX, sec. 1 to require a majority of voters to approve any law establishing a tax, tax increase, or another revenue-producing measure. *Income or sales*
- I know that amending the constitution has a high bar to clear, this bill before you has three committees of referral and in order to pass we must have a 2/3 vote in both the Senate (14) and the other body (27). I think we have to try.
- It has been many years since the State of Alaska has levied an individual income tax on its citizens. It makes sense that we consult the people of Alaska on taxation.

TALKING POINTS FOR SJR 7

Constitutional Amendment Voter Approval for New Taxes

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Senator Kevin Meyer Senate District M

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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


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

MEMORANDUM

March 1, 2018

SUBJECT: Constitutional Amendment: Voter Approval of a New Sales or Income Tax (CSSJR 7; Work Order No. 30-LS0788\D)

TO: Senator Kevin Meyer
Attn: Christine Marasigan

FROM: Emily Nauman 
Deputy Director

Attached please find a resolution proposing a constitutional amendment to require voter approval of a new broad-based individual income tax or a statewide general sales tax. I cannot be sure whether this proposal would be found to exceed the legislature's power to amend the constitution because it is a revision under the holding of the Alaska Supreme Court in *Bess v. Ulmer*.¹ Although less likely than not, it is possible that a limitation of the fundamental state power of taxation would be viewed by the court as the type of "sweeping change" that cannot be accomplished in an amendment to the state constitution proposed by the legislature.

Amendment v. Revision

Article XIII, sec. 1, Constitution of the State of Alaska, provides that "*amendments* to [the] constitution may be proposed by a two-thirds vote of the legislature."² Emphasis added. Article XIII, continues, at sec. 4, that "constitutional conventions shall have the plenary power to *amend or revise* the constitution . . ."³ Emphasis added.

¹ 985 P.2d 979 (Alaska 1999).

² Article XIII, sec. 1 in full reads:

Amendments to this constitution may be proposed by a two-thirds vote of each house of the legislature. The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next general election. If a majority of the votes cast on the proposition favor the amendment, it shall be adopted. Unless otherwise provided in the amendment, it becomes effective thirty days after the certification of the election returns by the lieutenant governor.

³ Article XIII, sec. 4 in full reads:

Senator Kevin Meyer
March 1, 2018
Page 2

The Alaska Supreme Court has expounded on the difference between an amendment and a revision. In *Bess v. Ulmer*⁴ the Court relied on the Proceedings of the Alaska Constitutional Convention, language from a treatise by Judge John A. Jameson, and on California cases applying the distinction between amendment and revision.⁵ The Court adopted a modified version of California's qualitative/quantitative analysis, crafting a test that relates the qualitative and quantitative elements to one another on a sliding scale.⁶ This "hybrid" test requires consideration of both the qualitative and quantitative impact of a proposed constitutional change in determining whether it is an amendment or a revision.⁷ The standard that the Court fashioned is as follows:

[A]n 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.

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.⁸

Thus, the *Bess* standard requires evaluation of the qualitative and quantitative effects of a proposed change to the constitution.

Constitutional conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people. No call for a constitutional convention shall limit these powers of the convention.

⁴ 985 P.2d 979 (Alaska 1999).

⁵ *Id.*

⁶ *Id.*, 985 P.2d at 987.

⁷ *Id.* at 987 - 988.

⁸ *Id.*, 985 P.2d at 987 (citing, *Amador*, 583 P.2d at 1286 and *Jameson* at sec. 540).

Quantitative Effects

This resolution amends only one section of the constitution. Therefore, it seems to be a "relatively simple enactment" as described in *Bess*.⁹ However, it is possible for the Court to find that art. II, secs. 14, 16 - 18; art. X, sec. 2; and art. XI, secs. 1 - 3, and 7 are also affected.¹⁰ I believe this is unlikely because, again, the resolution only amends one section of the constitution and that amendment is likely sufficient to accomplish the intent of the change.

Qualitative Effects

It may also be possible for a court to find the amendment to the constitution in the attached resolution to "substantially alter the substance and integrity of the state constitution as a document of independent force and effect," and therefore constitute a revision.¹¹ It has long been recognized that the power of taxation lies, when discussing separation of powers issues, squarely within the powers of a state legislature. The United States Supreme Court stated "[taxation] is a high act of sovereignty, to be performed only by the legislature upon considerations of policy, necessity, and the public welfare" and continued that a state legislature "[has] the sole power to authorize [a] tax."¹² The Alaska

⁹ *Id.*

¹⁰ Article II must be amended at various locations to accommodate the timing of enactment of a bill contingent upon voter approval. The Alaska Supreme Court stated that art. X, sec. 2, "makes it clear that the legislature may not delegate its taxing power to an entity other than a borough or a city." *State v. Alex*, 646 P.2d 203, 211 (Alaska 1982). Although, the Court may retreat from this stance if the taxing power is returning to the people, the very populous from which the legislature derives its power. However, it would be safer to amend art. X, sec. 2. Article XI must be amended in several places to accommodate for this new type of ballot question. Article XII, sec. 11 should be amended to attune to the possibility that a law passed by the legislature may not be enacted.

¹¹ *Bess*, 985 P.2d at 987, quoting *Raven v. Deukmejian*, 801 P.2d 1077, 1087 (Cal. 1990) (note omitted).

¹² *Meriwether v. Garrett*, 102 U.S. 472, 515, 26 L. Ed. 197 (1880). See also *State ex rel. S. Bank v. Pilsbury*, 105 U.S. 278, 291, 26 L. Ed. 109 (1881) ("The equality and uniformity required throughout the State were only obtainable by confining the exercise of the power of taxation to the legislature, whose authority was coextensive with the territorial limits of the State."); *City of New Orleans v. Clark*, 95 U.S. 644, 654, 24 L. Ed. 521 (1877) ("Of the expediency of the taxation or the wisdom of the appropriation [the legislature] is the sole judge."); *Lane Cty. v. State of Oregon*, 74 U.S. 71, 77, 19 L. Ed. 101 (1868) ("The extent to which [a tax] shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discretion of the legislatures to which the States commit the exercise of the power. That discretion is restrained only by the will of the people expressed in the State constitutions

Senator Kevin Meyer
March 1, 2018
Page 4

Supreme Court has also recognized "taxation is inherently a function of the legislature."¹³ The Alaska Supreme Court seems to back away from the rigidity of the language of the United States Supreme Court, perhaps because the people may legally shape the tax law of the state by initiative. Given the importance of the taxing power and its historical assignment of that power to the legislature, a limitation of that power may constitute a significant change to the structure of the constitution amounting to a revision. On the other hand, the court might consider the change an amendment on the basis that it is similar to existing initiative and referendum authority to add or repeal taxes, and thus does not constitute a significant revision to the general structure of the constitution. This factor does seem more likely to me to trigger a finding of a revision by a court. However, the fact that the change only relates to two kinds of taxes, and the existing initiative power of the voters in the constitution, I think it is slightly more likely a court would find this to be an amendment.

Summary

It is difficult to determine whether the attached resolution constitutes a revision to the constitution. If forced to decide, I would lean towards the attached resolution being an amendment. Please be aware that the analysis in this memo relies primarily on the test developed in *Bess*; it is the only case outlining the difference between an amendment and a revision for purposes of interpreting the state constitution. The *Bess* decision itself indicated that the Court was looking to decide these types of questions on a case-by-case basis. These two facts make predicting the outcome of a revision versus amendment question difficult. The distinction may become more clear as additional case law is developed.

If I may be of further assistance, please advise.

ELN:dls
18-092.dls

Attachments

or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the national government.").

¹³ *Dissolution of Mountain View Pub. Util. Dist. No. 1, In re*, 359 P.2d 951, 955 (Alaska 1961) ("Taxation is inherently a function of the legislature and can be exercised only under its authority.").

Christine Marasigan

From: Chuck Burnham
Sent: Tuesday, January 30, 2018 10:00 AM
To: 'Christine.Marasigan@akleg.gov'
Subject: Voter approval of statewide tax measures

Good morning Christine – Per your request, please find below information on a number of measures in other states that required voter approval in order to implement statewide taxation. If you require more information, please don't hesitate to let us know.

California

Californians have voted on 10 statewide sales tax-related ballot measures since 1932. Of those 10, four were defeated and six were approved. Most recently, voters approved Proposition 30 which increased the state tax rate by .25 percent, from 7.25 to 7.5 percent until the end of 2016, when it reverted to 7.25 percent.

https://ballotpedia.org/Sales_tax_in_California

Colorado

When Colorado voters enshrined the Taxpayer's Bill of Rights into the state constitution in 1992, it had a simple premise: If lawmakers want to raise taxes or issue debt, they should ask voters for permission.

<https://www.denverpost.com/2017/08/20/colorado-voters-taxpayer-bill-rights/>

Oregon

In a referendum pitting new taxes against health care coverage, Oregonians voted Tuesday to back the Legislature's plan for keeping 350,000 low-income residents on the Oregon Health Plan.

<http://www.statesmanjournal.com/story/news/politics/2018/01/23/early-returns-show-oregon-voters-support-health-care-tax-measure/1060236001/>

Washington

Washington voters have been asked on 11 separate occasions to adopt a state personal income tax or corporate income tax. Only the first vote, in 1932, was successful, and that measure was subsequently thrown out by the state Supreme Court on a 5-4 decision on September 8, 1933.

<https://www.sos.wa.gov/elections/research/income-tax-ballot-measures.aspx>

Multi-State

Preliminary Nov. 8 election results show voters in 22 states approved ballot measures that will provide \$201 billion in funding extensions and new revenue for state and local transportation projects. More than two thirds (69 percent) of the 280 transportation funding ballot measures were approved, with results still pending for seven local areas, according to an analysis by ARTBA's "Transportation Investment Advocacy Center™" (ARTBA-TIAC).

<http://newsline.artba.org/2016/11/09/voters-approve-record-number-of-state-and-local-transportation-investment-ballot-measures/>

Chuck Burnham
Research Services
Legislative Affairs Agency
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Income Tax Ballot Measures

Washington voters have been asked on 11 separate occasions to adopt a state personal income tax or corporate income tax. Only the first vote, in 1932, was successful, and that measure was subsequently thrown out by the state Supreme Court on a 5-4 decision on September 8, 1933.

Year	Title	Description	Yes	No
1932	Initiative to the People 69	An Act relating to and requiring the payment of a graduated tax on the incomes of persons, firms, corporations, associations, joint stock companies and common law trusts, the proceeds therefrom to be placed in the state current school fund and other state funds, as a means of reducing or eliminating the annual tax on general property which now provides revenues for such funds; providing penalties for violation; and making an appropriation from the general fund of the state treasury for paying expenses of administration of the act.	70%	30%
1934	House Joint Resolution 11	A resolution amending section 1 of Article VII of the constitution by providing that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only; providing that there shall be such exemptions from taxation as the legislature may by general law provide; and providing that nothing contained in this section shall be construed to prevent the enactment of a graduated net income tax law.	43%	57%
1936	Senate Joint Resolution 7	A Proposal to repeal section 12, article XI and amend sections 1 and 9, article VII of the constitution by providing: uniform taxation upon the same class of subjects; that the legislature may provide exemptions and graduated net income tax, may vest municipalities with power to make local improvements by special assessment or taxation; cannot require counties or municipalities to tax for county or municipal purposes but may under legislative restriction, vest them with such authority.	22%	78%
1938	Senate Joint Resolution 5	A Proposal to amend Section 1, Article VII of the Constitution of the State of Washington relating to taxation by providing that nothing contained in said section shall be construed to prevent the enactment of a graduated net income tax law.	33%	67%

1942	Constitutional Amendment Article VII, Sec. 2	A Proposal to amend Article VII of the Constitution by adding a new section, section 2, providing that income shall not be construed as property for the purpose of taxation, and empowering the legislature to enact graduated net income taxes, and to provide exemptions, offsets and deductions.	34%	66%
1944	Initiative to the People 158	An act relating to revenue and taxation; providing for the levy and collection of a three per cent tax on gross income; providing for certain exemptions and deductions; providing for the disposition of revenue derived hereunder; prescribing monthly payments of not less than sixty dollars to certain aged, blind, disabled or widowed persons from an Employment and Retirement Mutual Insurance Fund, herein created; prescribing duties of officers and procedure in relation hereto; regulating disposition of payments by beneficiaries; defining terms and prescribing penalties.	30%	70%
1970	House Joint Resolution 42	Shall the state constitution be amended to reduce the maximum allowable rate of taxation against property to 1 percent of true and fair value in the absence of authorized excess levies, and to permit the legislature to tax income at a single rate without regard to this limitation or, after 1975, at a graduated rate if the voters in that year or thereafter approve the removal of the single rate limitation?	32%	68%
1973	House Joint Resolution 37	Shall a graduated net income tax be authorized, excess levies for school operations be prohibited, and some excise taxes limited?	23%	77%
1975	Initiative to the People 314	Shall corporations pay a 12% excise tax measured by income so that special school levies may be reduced or eliminated?	33%	67%
1982	Initiative to the People 435	Shall corporate franchise taxes, measured by net income, replace sales taxes on food and state corporate business and occupation taxes?	34%	66%
2010	Initiative Measure 1098	Initiative Measure No. 1098 concerns establishing a state income tax and reducing other taxes. This measure would tax 'adjusted gross income' above \$200,000 (individuals) and \$400,000 (joint-filers), reduce state property tax levies, reduce certain business and occupation taxes, and direct any increased revenues to education and health.	36%	64%

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version: SJR 7
Fiscal Note Number: _____
() Publish Date: _____

Identifier: SJR7-LEG-LEG-02-26-18
Title: CONST. AM: VOTER APPROVAL FOR NEW TAXES
Sponsor: MEYER
Requester: SENATE STATE AFFAIRS

Department:
Appropriation:
Allocation:
OMB Component Number: 0

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
OPERATING EXPENDITURES	FY 2019	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency?
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version/comments:

N/A INITIAL VERSION. ONE PAGE. ZERO NOTE.

Prepared By: <u>SANTE LESH, BUDGET ANALYST</u>	Phone: <u>(907)465-4824</u>
Division: <u>LEGISLATIVE AFFAIRS AGENCY</u>	Date: <u>02/26/2018 08:53 AM</u>
Approved By: <u>JESSICA GEARY, EXECUTIVE DIRECTOR</u>	Date: <u>02/26/2018</u>
Agency: <u>LEGISLATIVE AFFAIRS AGENCY</u>	