

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 812

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL: No. 1
Bill Version: CSHJR 2(JUD)
(H) Publish Date: 5/5/92

Revision Date: 01/13/92 Department Affected: Office of the Governor-Elections
Title: Amendment to the Constitution RE: Limit Legislative Service to 12 Years BRU: Division of Elections
Sponsor: Representative Navarre Component: 11-Primary and General Elections
Requestor: House State Affairs

COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) * This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on this measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be: 53.4.

Prepared by: Elizabeth Ziedler, Deputy Director Phone: 465-4611
Division: Elections Date: 01/13/92
Approved by Commissioner: *Charles E. Zuercher*
Agency: Office of the Governor Date: 01-13-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/D8R, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

No. 3
 Bill Version: CSHJR 2 (JUD
 (H) Publish Date: 5/5/92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: _____
 Title: Proposing amendments...limiting the
number of...a person may serve in the Legislature...
 Sponsor: Representative Navarre
 Requestor: House State Affairs

Department Affected: Legislative Affairs Agency
 BRU: Legislative Council

Component: Legislators' Salaries & Allowance

COMPONENT SERIAL NO: 776

Expenditures/Revenues: (Thousands of Dollars)

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact.

Prepared By: Pamela A. Stoops, Director
 Division: Administrative Services

Pamela A. Stoops

Phone: 465-3850
 Date: 2/12/92

Approved By: Warren W. Endicott, Executive Director
 Agency: Legislative Affairs Agency

Warren W. Endicott

Date: 2/12/92

Distribution (by preparer): Leg _____

COMMITTEE COPY

, & Impacted Agency(ies).

Page 1 of 1

CS FOR HOUSE JOINT RESOLUTION NO. 2 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES NAVARRE, Ellis, Ulmer, Brown, Finkelstein, Taylor, Donley

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to terms of
2 representatives and limiting tenure in the legislature.

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

4 * Section 1. Article II, sec. 3, Constitution of the State of Alaska, is amended to read:

5 SECTION 3. ELECTION AND TERMS. Legislators shall be elected at general
6 elections. Their terms begin on the fourth Monday of the January following election unless
7 otherwise provided by law. The term of representatives [SHALL BE TWO YEARS,] and the
8 term of senators shall be [,] four years. One-half of the representatives and one-half of the
9 senators shall be elected every two years. No person may serve more than two full or partial
10 consecutive terms as a representative and two full or partial consecutive terms as a senator.
11 In addition, no person may serve during more than sixteen consecutive full or partial years
12 in the legislature.

13 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding new sections to read:

14 SECTION 29. TENURE OF LEGISLATORS. The 1992 amendment limiting tenure in
15 the legislature (Section 3 of Article II) applies only to periods served in the legislature after the
16 effective date of the amendment.

1 SECTION 30. TERMS OF REPRESENTATIVES. The 1992 amendment changing the
2 terms of representatives to four years (Section 3 of Article II) does not apply to the term of a
3 representative that begins in 1993. At the 1994 State general election one-half of the
4 representatives shall be chosen for two-year terms and one-half of the representatives shall be
5 chosen for four-year terms. The director of elections shall determine by lot which seats are for
6 two-year terms and which seats are for four-year terms.

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

Alaska State Legislature

Legislative Research Agency



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Juneau, AK 99811-3100
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February 13, 1991

MEMORANDUM

TO: Representative Mike Navarre

FROM: Deborah L. Davidson *DL*
Legislative Analyst

RE: Legislative Turnover in the Alaska Legislature Since Statehood
Research Request 91.127

You asked about the turnover of the Alaska House and Senate since statehood. Tables 1 and 2, attached, show the number and percentage of non-incumbent legislators in the House and Senate for each legislature since statehood. In addition, notations have been made regarding appointed legislators and those who previously served in the legislature. This information was compiled using the Legislative Affairs Agency publication *Alaska Legislature, Roster of Members, 1913-1988*, and current legislative membership.

You also asked for information regarding the turnover of the Alaska Congressional delegation since statehood. Listed below are the Congressional delegates and their dates of service.

U.S. House of Representatives:	Ralph J. Rivers	1959 - 1966
	Howard W. Pollock	1967 - 1970
	Nicholas J. Begich	1971 - 1972
	Donald Young	March 1973 - Present
U.S. Senate	E.L. Bartlett	1959 - 1968
	Ted Stevens	1969 - Present
	Ernest Gruening	1959 - 1968
	Mike Gravel	1969 - 1980
	Frank Murkowski	1981 - Present

I hope this information is useful to you. If you have any questions or would like additional information, please call.

Attachment

TABLE ONE
TURNOVER IN THE ALASKA HOUSE OF REPRESENTATIVES SINCE STATEHOOD

Legislature	Incumbents	Freshmen	% Freshmen	Notes
2nd (1961-1962)	17	23	57.5%	2nd session appointee replaced a freshman--did not return in 1963.
3rd (1963-1964)	23	17	42.5%	4 freshmen previously served in the house. 2nd session appointee replaced an incumbent--did not return in 1965
4th (1965-1966)	16	24	60.0%	2 freshmen previously served in the house (1 by appointment); 2 in the senate. Appointee replaced an incumbent--was elected in 1967
5th (1967-1968)	15	25	62.5%	2 freshmen previously served in the house; 1 in the senate. Appointee replaced freshman 2/68--was elected in 1969
6th (1969-1970)	23	17	42.5%	3 freshmen previously served in the house; 2 in the senate
7th (1971-1972)	19	21	52.5%	4 freshman previously served in the house. Appointee replaced freshman 1/72--did not return in 1973.
8th (1973-1974)	20	20	50.0%	4 freshmen previously served in the house. Appointee replaced an incumbent 1/74-- did not return in 1975
9th (1975-1976)	18	22	55.0%	1 freshman previously served in the house; 1 was appointed 1/75--was elected in 1977. Appointee replaced an incumbent 4/75-- was elected in 1977; appointee replaced an incumbent 1/76--was elected in 1977.
10th (1977-1978)	25	15	37.5%	1 freshman previously served in the house; Appointee replaced incumbent in 4/77-- did not return in 1979.
11th (1979-1980)	23	17	42.5%	2 freshmen previously served in the house
12th (1981-1982)	28	12	30.0%	
13th (1983-1984)	17	23	57.5%	1 freshman previously served in the house. Appointee replaced a freshmen 5/84--was elected in 1985
14th (1985-1986)	21	19	47.5%	1 freshman previously served in the house; 1 in the senate
15th (1987-1988)	27	13	32.5%	1 freshman previously served in the house
16th (1989-1990)	33	7	17.5%	Appointee replaced an incumbent 1/90--was elected in 1991
17th (1991-1992)	26	14	35.0%	1 freshman had previously served in the house; 1 was appointed 1/91

TABLE TWO
TURNOVER IN THE ALASKA SENATE SINCE STATEHOOD

Legislature	Incumbents	Freshmen	% Freshmen	Notes
2nd (1961-1962)	15	5	25.0%	
3rd (1963-1964)	12	8	40.0%	1 freshman previously served in the house; 1 was appointed in 1962--was elected in 1964; 1 was appointed in 1963--was elected in 1965
4th (1965-1966)	16	4	20.0%	1 freshman previously served in the senate; 2 in the house
5th (1967-1968)	6	14	70.0%	1 freshman previously served in the senate; 6 in the house
6th (1969-1970)	16	4	20.0%	3 freshmen previously served in the house; appointee replaced an incumbent 3/70--was elected in 1971
7th (1971-1972)	14	6	30.0%	5 freshmen previously served in the house; appointee replaced incumbent 1/72--was elected in 1973
8th (1973-1974)	15	5	25.0%	5 freshmen previously served in the house; appointee replaced incumbent 4/73--did not return in 1975
9th (1975-1976)	11	9	45.0%	5 freshmen previously served in the house; appointee (from house) replaced incumbent 1/75--was elected in 1977
10th (1977-1978)	18	2	10.0%	1 freshman previously served in the house.
11th (1979-1980)	13	7	35.0%	3 freshmen previously served in the house
12th (1981-1982)	16	4	20.0%	2 freshmen previously served in the house; appointee replaced incumbent 3/82--did not return in 1983
13th (1983-1984)	14	6	30.0%	1 freshman previously served in the senate; 2 in the house
14th (1985-1986)	16	4	20.0%	1 freshman previously served in the senate; 2 in the house
15th (1987-1988)	15	5	25.0%	4 freshmen previously served in the house; appointee replaced incumbent 2nd session--did not return in 1989
16th (1989-1990)	16	4	20.0%	4 freshmen previously served in the house
17th (1991-1992)	15	5	25.0%	4 freshmen previously served in the house; appointee (from house) replaced incumbent 1/91

Prepared by the Legislative Research Agency, February 1991 (91.127)

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Juneau, Alaska 99801-2101

MEMORANDUM

April 27, 1992

SUBJECT: Limitation on Terms of Office in Congress

TO: Representative Dave Donley, Chair
House Judiciary Committee

FROM: Tamara Brandt Cook
Director *TBC*

You have asked whether the state may limit the number of terms a person may serve in the United States Congress. While the precise issue has not, so far as I know, been considered by the court, it is likely that the court will find that the qualifications for office in Congress set out in the United States Constitution are the only qualifications that apply to that office and that a state may not impose a limit on terms or otherwise modify those qualifications. (Powell v. McCormack, U.S. (1969))

Recently the voters of Colorado approved an amendment to that state constitution that would limit congressional terms as well as terms of state officials. According to the Legislative Drafting Office of that state, the amendment purports to limit the terms to 6 consecutive terms in the House of Representatives and 3 consecutive terms in the Senate. No limit is placed on the total terms that may be served in Congress and the limit applies only to terms beginning after the effective date of the amendment. I checked with the office of the Secretary of Stat in Colorado this morning, and the term limit has not yet been challenged in court.

I have attached a recent article from the Congressional Quarterly on the subject of term limits.

TBC:gc
92-320.glc

Enclosure

COVER STORY

National Drive To Limit Terms Casts Shadow Over Congress

New Supreme Court may look afresh at constitutional issues, and impact will be felt even without a law

As the heavy bell of the term-limit movement has tolled across the country over the past year, most members of Congress have assumed it did not toll for them. But the din is getting harder to dismiss.

In 1991, term limits in various forms were introduced as bills in 45 states, according to the National Council of State Legislatures. In 1992, at least 11 states are expected to have congressional term limit initiatives on their ballots — and the number could go as high as 18. (*Map, p. 3103*)

The California Supreme Court on Oct. 10 upheld that state's 1990 election law tightly limiting the length of state legislators' careers. While the law did not apply to federal officeholders, the 6-1 ruling in its favor was sweeping enough to raise the blood pressure of incumbents everywhere.

But the most portentous development to date may be the one coming Nov. 5, when Washington state is expected to approve Initiative 553 — by far the toughest term limit measure yet. Polls have shown support for it as high as 73 percent among those surveyed. Will it really pass?

"The more critical question is by what margin," says Seattle Post-Intelligencer columnist Shelby Scates, an opponent of 553.

Washington's is not the first term-limit measure to apply to Congress. Colorado voted in such a limit in 1990. (*1990 Weekly Report, pp. 3796, 3144*)

But Washington's is the first retroactive measure. Its three-terms-and-out rule would retire Speaker Thomas S. Foley and every other Washington House member by the end of 1994.

Foley, a Democrat, has pronounced the measure "patently unconstitutional." He and his colleagues have downplayed their opposition to it. They

By Ronald D. Elving



Speaker Thomas S. Foley's seat could become the test case on the constitutionality of term limits.

have preferred not to make it a referendum on themselves, relying on the courts to strike it down — at least as it pertains to them.

The initiative's victory margin could be important because it may soon go before the state Supreme Court. A landslide could well be meaningful to the court, which is popularly elected.

But even if the constitutional fire wall at the state or federal level proves impenetrable — which is what most legal scholars expect — the term limit movement may prove impossible for members to shake.

The movement may reshape congressional politics without ever impos-

ing term limits by law. It has created great ferment in several statehouses (including California's), where ambitious politicians will be driven to seek new jobs by displacing congressional incumbents.

Many in Washington already blame the shadow of 553 for Democratic Gov. Booth Gardner's decision not to run for a third term in 1992 (a term he would be denied if 553 were approved and upheld). (*Story, p. 3147*)

The movement also could work its will by making permanent incumbency an ever-more-salient election issue. In a July 1991 Public Opinion Strategies poll, 63 percent thought congressional careers should be 10 years or less, and only one respondent in three thought there should be no limit at all.

Even those who might not have had a good word to say about term limits before are devising a new vocabulary.

Senate Republican leader Bob Dole of Kansas told an NBC-TV audience Oct. 20 that limits were unnecessary and "not a good idea" for Congress. But he quickly added: "That's not to say they're not going to happen. I think if you had a vote in my state and asked the voters out there, do you think there ought to be term limits, the answer would be yes."

Supporting term limits is already in vogue for candidates: Witness the concept's prominent mention in former California Gov. Edmund G. "Jerry" Brown Jr.'s presidential announcement Oct. 21. (*Story, p. 3148*)

Advocates and critics say term limits could become the symbol around which negative attitudes toward Congress not only coalesce but gain empowerment. For example, a pledge to limit one's terms could be to the politics of the near future what the no-new-taxes pledge was to the politics of the recent past.

A Good Idea?

Much of the term limit debate has pitted incumbent legislators (primarily Democrats) against anti-tax groups and other critics of government who tend to be Republican, conservative or libertarian.

Incumbents are, of course, self-interested: term limit advocates often seem motivated by a political agenda (party control of Congress) or a policy agenda (cutting taxes and shrinking government).

"I'm told term limits would cost us our most experienced legislators," says Ed Crane of the libertarian CATO Institute. "All I can say is I hope so."

It can be difficult to find an objective assessment of term limits' actual effects on the institutions and functions of a state or federal legislature.

A conference on the subject was held Oct. 11-12 in Albany, N.Y., at the Rockefeller Institute of Government, the public policy research arm of the State University of New York (SUNY). On hand were advocates, opponents, journalists and scholars who have made a study of the subject.

Mark P. Petracca of the University of California at Irvine stressed the principle of rotation in office. Petracca cited Thomas Jefferson's support for rotation and followed its roots back to ancient times. Petracca attributed opposition to term limits among political scientists and journalists in part to "infatuation" with elected officials.

But most of the scholars were dubious, pointing to practical pitfalls and unintended consequences.

"One generation's reform becomes another generation's problem," said David Everson of the Illinois Legislative Studies Center, noting that "career legislators" resulted from efforts to professionalize legislatures.

Linda Fowler of Syracuse University suggested that increasing competition in legislative elections might well inhibit statesmanship in office.

Gerald Benjamin of SUNY New Paltz said term limits offered voters "a terrific opportunity to strike out at a legislative institution without striking at an individual legislator they might happen to like."

Michael J. Malbin, director of the SUNY Center for Legislative Studies and a former congressional aide, questioned the underlying supposition that "representative democracy is not working well." He said limits might encourage cross-party coalition-building on given issues. But he said that their effects on party and leadership strength would be hard to predict and that "entrepreneurial grandstanding" and electioneering in office would continue.

Conference participants also discussed the possibility that term limits would function as term guarantees, with potential challengers holding off until an incumbent was forced to vacate.

Ultimately, strong support for term limits could create a climate in which Congress and the legislatures could be induced to amend the Constitution.

Much the same progression of efforts led to the 17th Amendment, which provided for the direct election of U.S. senators by the voters rather than by the state legislatures.

Agitation for direct election of senators commenced at the beginning of the Republic. But it picked up in the Civil War era and gained steam with each decade, becoming part of the Democratic Party platform in 1900.

Some state legislatures regularly called for a constitutional convention on the issue. The House began to pass measures calling for a constitutional amendment. Finally, in 1912, the nec-

essary two-thirds vote of the Senate was obtained (64-24). Within a year, the necessary three-fourths of the state legislatures had ratified the amendment.

Faith in Court

If Congress has been slow to take term limits seriously, its reasons are rooted in the first Article of the Constitution. By restricting voters' choice, many believe, term limits violate the document's democratic principles.

"Is it open and shut? Certainly the Speaker thinks so," says Foley spokesman Jeff Biggs.

The Speaker is far from alone.

"I think it would take an amendment to the Constitution," says Sen. Daniel Patrick Moynihan, D-N.Y.,

probably speaking for the majority in both parties in both chambers.

All 11 pending term limit bills in the House propose amending the Constitution. And it has long been legal scholars' preponderant view that so profound a change in electing Congress would not withstand constitutional scrutiny.

"It would take a constitutional amendment to do it — I think that's abundantly clear," says Walter Berns, a Georgetown Law Center professor and adjunct scholar at the American Enterprise Institute.

Berns cites the 1969 U.S. Supreme Court ruling in *Powell v. McCormack*, which held that the Congress had unlawfully refused to seat a member who met the simple qualifications for office set forth in Article I. By doing so, the court found, Congress added to the constitutional qualifications for office. (*Story*, p. 3104)

It is also often noted that the term limit issue was considered when the Constitution was written.

"Given that we have evidence that the framers did consider and did in fact reject term limits, it is much harder to make the case that term limits would be constitutional without an amendment," says Robert A. Katzmann, a visiting fellow in governmental studies at the Brookings Institution.

At the same time, *Powell* stops "one step short" of disposing of term limits, according to A. E. Dick Howard, a constitutional law professor at the University of Virginia.

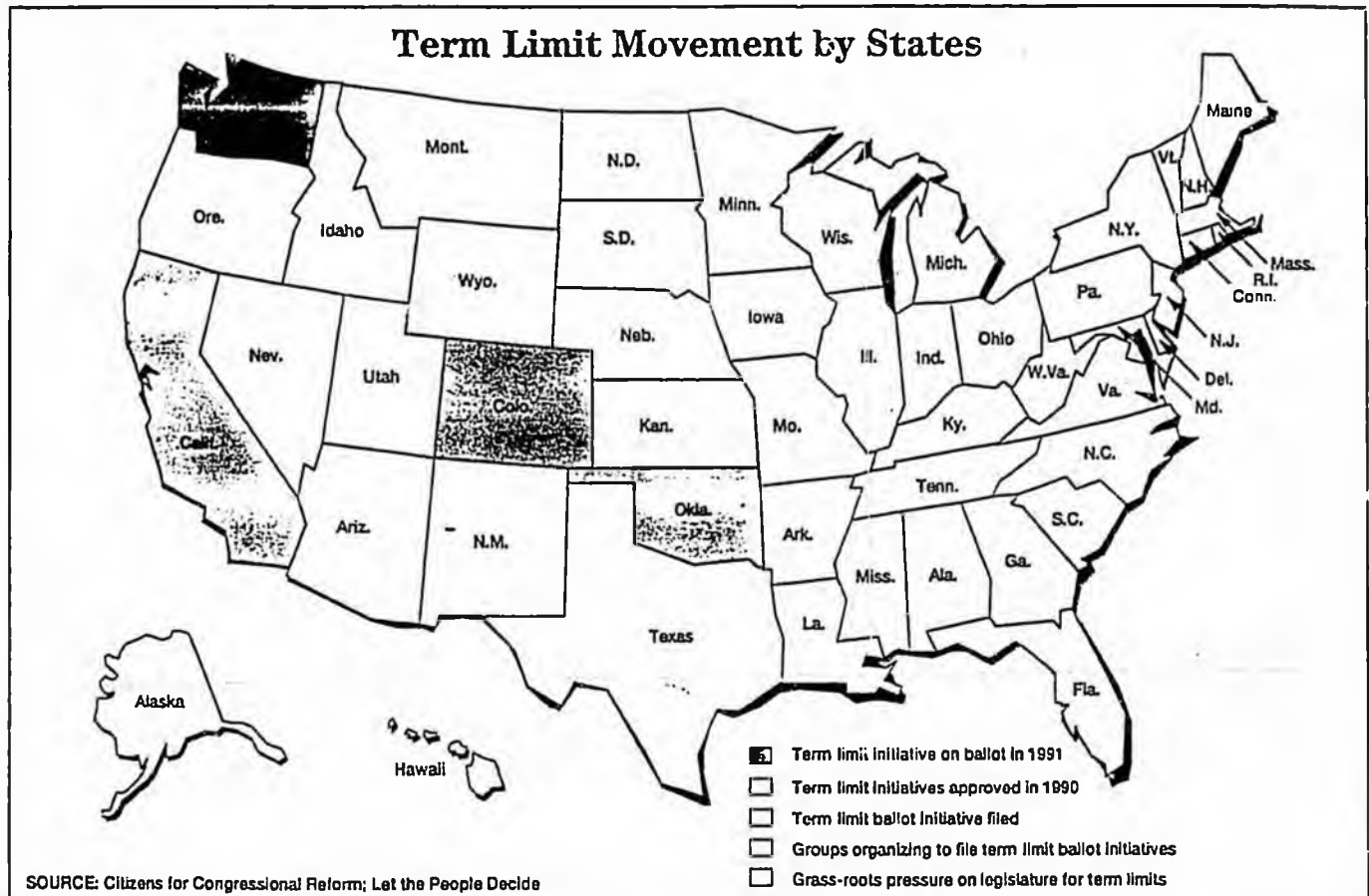
"*Powell* clearly limits what the House might do, but it does not necessarily answer the question of what a state might do," says Howard.

Wallace M. Rudolph, a constitutional law professor at the University of Puget Sound Law School in Tacoma, Wash., goes further.

Rudolph notes that although *Powell* mentions just three qualifications for office, the Constitution also recognizes a prohibition against holding other federal offices while serving in Congress. Many states also have barred felons from running for office or even voting.

"We see the constitutional qualifications as a minimum — not a maximum — number for federal representatives," says Rudolph. "I think we can show historically there have been all kinds of ballot qualifications imposed and enforced and upheld."

The outlook also may have changed in the past 22 years as the Supreme Court's composition has changed. Byron R. White is the only justice left from when *Powell* was decided.



"Looking at the existing court, you've got a whole bunch of people who ... take the view that the states' power to regulate stands except where specifically prohibited by the Constitution," says Rudolph. "I think [Chief Justice William H.] Rehnquist and [Antonin] Scalia and the newer judges in general would take that kind of position."

David J. Olson, a professor of political science at the University of Washington, says, "It's easy to speculate that the courts will turn this down, but when you look at the current composition of the court, I am not convinced."

Adds Howard: "This court certainly respects state power, courts and institutions. If the issue is placed in terms of state interest, they might be inclined to uphold [term limits]."

Washington state members were disappointed over the summer when their state's highest court adjourned without ruling on their effort to strike 533 from the ballot. The court said it did not have time to address the issue in its current session, but its lack of action created an uneasy feeling nonetheless.

Another harbinger came from California this fall, when the highest court in the largest state ruled that term limits did not violate the state constitution.

The California ruling held that there was no constitutional right, federal or state, to run for a given office or to vote for a given person. The court said term limits were a valid protection "against an entrenched, dynastic legislative bureaucracy."

Consigned To Languish

Term limit proposals are perennial in the House, but they are promptly consigned to languish in the Judiciary Committee without a hearing.

The only term limit votes ever taken in Congress were in the Senate. One came in 1947, when Sen. W. Lee "Pappy" O'Daniel, a Texas Democrat, proposed amending the two-term limit on presidents (then being debated) to apply a single six-year term to all federal elected officials. His proposal failed on a vote of 1-82. In 1991, freshman Republican Sen. Hank Brown of Colorado tried to amend the campaign finance bill to impose a two-term limit on senators who used public campaign funding. It was tabled (killed) on a 68-30 vote. (*Weekly Report*, p. 1351; *Vote* 69, p. 1410)

The term limit idea has gained more currency among House Republicans in recent years as frustration with their party's seemingly permanent minority

status has grown. Rep. Joel Hefley was a cosponsor of such bills prior to 1990 but later decided voters' choice should not be restricted. Separate term limit bills have been introduced in the House in this Congress by seven Republicans and three Democrats.

The Washington Model

The crescendo of term limit activity has many points of origin. But perhaps its most fateful impetus came from a failed campaign against veteran Rep. Norm Dicks in the 1990 Democratic primary in his Tacoma-based district.

Accustomed to winning re-election with two-thirds of the vote, Dicks was little concerned with Democratic challenger Mike Collier — at first. But a coalition of liberal activists long unhappy with Dicks' pro-defense profile rallied behind Collier. They mounted enough of a campaign that Dicks returned home, campaigned hard and spent money on broadcast advertising for the primary. Collier wound up with 22 percent of the primary vote.

Collier's partisans were disappointed that the League of Women Voters did not hold debates and the local media paid little attention.

Powell v. McCormack (1969)

When constitutional scholars talk about term limits on federal legislators, they usually talk about one Supreme Court case decided nearly a generation ago: *Powell v. McCormack*.

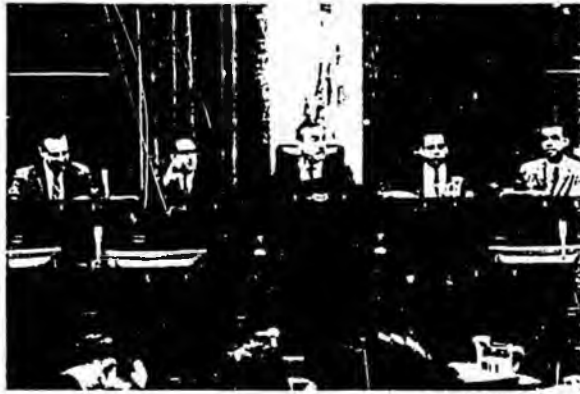
The case arose after the House voted in 1967 to exclude Adam Clayton Powell Jr., D-N.Y., who had represented Harlem for 22 years beginning in World War II. Powell was a flamboyant and controversial figure, repeatedly prosecuted for tax evasion and other alleged offenses and held in contempt of court. He was also criticized for lavish travel at government expense and for various abuses of his office accounts.

After an investigation found Powell misusing the Education and Labor Committee funds, the House Democratic Caucus voted in January 1967 to remove him from the committee chairmanship. Powell called the action "a lynching, Northern style."

But his problems were far from over. The next day, Jan. 10, the House adopted a resolution (offered by Republican leader Gerald R. Ford of Michigan) denying Powell his seat, pending an investigation of his conduct by a select committee. The vote was 363-65, with a majority of both parties in support.

A select committee held hearings in February and submitted a report recommending that Powell be stripped of his seniority, censured for "gross misconduct" and fined \$40,000 (a punishment without precedent in congressional history). The House rejected those recommendations and instead voted 307-116 (with Southern Democrats joining Republicans) to deny Powell his seat for the duration of that Congress (1967-68).

At the hearings, Powell would answer only questions regarding his age, citizenship and residency. He and his lawyers contended that those were the only questions relevant to his being seated as a duly elected member.



The House could take Powell's gavel but not his seat.

After his exclusion, Powell sued (naming Speaker John W. McCormack among other defendants). His suit eventually was heard by the Supreme Court, which ruled 7-1 on June 16, 1969, that Powell had been improperly excluded because Congress could not add to the basic three qualifications set forth by the Constitution (25 years of age, seven years of citizenship and residency in the state to be represented).

The court's opinion was written by Chief Justice Earl

Warren. It held that Powell was elected by the voters and "was not ineligible to serve under any provision of the Constitution," referring specifically to the basic three qualifications. So, the court ruled, "the House was without power to exclude him from its membership."

In other words, the well-worn constitutional phrase — "Each house shall be the judge of the election, returns and qualifications of its own members" — was not considered a license for Congress to set qualifications beyond those explicit in the Constitution.

The only dissent came from Justice Potter Stewart, who said the case was moot because the 90th Congress had ended and the court should let such sensitive matters alone. Legal scholars have since cited *Powell* as confirmation that the Constitution's basic points of qualification are not to be altered without amending the Constitution. That would preclude the states from limiting the terms of their representatives in Congress, although not those of representatives in their own legislatures.

After the decision, Powell was sworn in and seated (having been re-elected in the interim). But he rarely attended, preferring to stay at his retreat in Bimini. In 1970, Charles B. Rangel defeated Powell in the Democratic primary to claim the seat, which he has held since. Powell died in Miami in 1972.

—Ronald D. Elving

"There are only two parties left, the incumbents and the rest of us," said Sherry Bockwinkel, a former photojournalist who had worked for Collier.

The day after Collier's defeat, Bockwinkel and an associate, Gene Morain, read about Oklahoma's passage of a term limit initiative. So they formed LIMIT (Legislative Initiative Mandating Incumbent Terms) and started gathering the 150,001 signatures needed to get a term limit initiative on the next statewide ballot.

In December, Bockwinkel and Morain attended a conference in San

Jose, Calif., sponsored by Citizens for Congressional Reform (CCR), a national term-limit organization affiliated with the anti-tax group Citizens for a Sound Economy.

In San Jose, the two Washington activists met others from their state interested in limiting terms. They also made contact with Americans to Limit Congressional Terms, a national group founded by GOP consultant Eddie Mahe and chaired by former Rep. James K. Coyne of Pennsylvania (1981-83), and Americans Back in Charge (ABIC). ABIC is the successor group to

Coloradans Back in Charge, organizers of the term limit measure in that state. Activists also heard John Fund, an editorial writer for *The Wall Street Journal* who has written a term-limit treatise for the libertarian CATO Institute and speaks widely as an advocate for the concept.

Bockwinkel and Morain returned home and consolidated their state term limit movement under LIMIT. By the end of February, backers of several competing initiatives to impose less stringent limits were supporting what had been numbered Initiative 553.

But by April 10, LIMIT had raised less than \$20,000, and its petition drive was lagging. At that point, CCR stepped in. Over the next three months, the national organization would contribute nearly \$177,000. CCR also brought aboard National Voter Outreach, a California-based company that helps initiatives make the ballot. Some signature gatherers were paid 60 cents per signature, a tactic that led critics to refer to "bounty hunters" influencing the initiative process.

The nascent "No on 553" forces — including good-government organizations such as the League of Women Voters and Common Cause of Washington as well as labor unions, some business groups and the Washington Environmental Council — seized on the paid signatures as an issue. The group also tried to have 553 barred from the ballot by the Washington Supreme Court.

But the signature fracas did not damage the movement's polls, and LIMIT submitted 254,263 signatures by the July 5 filing deadline. Of these, 211,257 were deemed valid by the secretary of state, and 553 was on the ballot.

Opponents Struggle

If anti-553 efforts have faltered, it is not for want of allies. Opinion-makers, including most of the big state newspapers, have condemned 553 — partly as a threat to the state's clout in a Congress run by seniority.

Older Washington residents remember the glory days of legendary Democratic Senators Warren G. Magnuson and Henry M. Jackson — still known as "Maggie" and "Scoop." But even in the more recent era of Foley and Dicks, Washington's share of federal appropriations has been impressive. Much of the state's economy has depended on federal water projects, aircraft contracts and the Navy's dominance in and around Puget Sound.

The "No on 553" forces have been frustrated, however, by their lack of finances to compete.

Even after 553 made the ballot, CCR continued to fuel its campaign. By the most recent disclosure deadline, CCR's overall contribution was approaching \$400,000 — or about 85 percent of all spending in behalf of the measure, according to public filings analyzed by the University of Washington's Olson.

Foley's spokesman, Biggs, acknowledges that Washington members were unenthusiastic about both the cost and the politics of barnstorming against 553.

In Washington, as elsewhere, the opposition has been at a loss for effective

tactics. Stuart Rothenberg, editor of *The Political Report* and a visiting scholar at The Catholic University of America, attributes the movement's growth "in no small part to the virtual invisibility of the opposition."

On Oct. 12, Rothenberg told a scholars' conference at the Rockefeller Institute of Government in Albany, N.Y., that while limits had opponents in every state, "there has been no effective national opposition, and local opposition in most states has been negligible."

An anti-limit organization called

"There has been no effective national opposition, and local opposition in most states has been negligible."

—Political scientist
Stuart Rothenberg

Let the People Decide, underwritten largely by labor unions, started operations in Washington, D.C., in 1991 but suspended operations Oct. 1.

Rick Scott, political director for the American Federation of State, County and Municipal Employees, says Let the People Decide failed to attract substantial participation from other unions and groups.

"It was sort of like the field in 'Field of Dreams,'" says Scott, "only we built it and they never came."

Meanwhile, the drumbeat of unfavorable publicity about Congress has raised support for 553 higher in opinion polls. And the presence of other high-profile measures on the Nov. 5 ballot (including a "death with dignity" initiative and one on abortion rights) is expected to guarantee a sizable turnout.

Targeting Foley

Foley has striven to avoid having the measure perceived as a referendum on him, and neither side of the 553 debate portrays it as such.

Nevertheless, the coincidence is powerful. If the initiative becomes law, Foley will be the logical plaintiff to test its constitutionality in court (state or federal).

Washington Democratic Sen. Brock Adams, in his first term, would be allowed to serve one more six-year term if he is re-elected in 1992. Two-term Republican Sen. Slade Gorton would be allowed to run for a third term because

his first two were not consecutive.

A group of initiative opponents came to Washington in September to get help in financing a \$1.7 million campaign against the measure.

"The delegation sent them packing," Olson says.

Foley would seem at first glance the ultimate argument against a term limit law. By passing such a restriction, Washington would be the first state ever to cast away the power and prestige of the Speakership.

And yet as Speaker, Foley represents more than anyone Congress' institutional identity. And it is the voters' resentment of the institution that is driving the term limit movement.

The Next Shoe

An eventual day of reckoning in court is inevitable, with the prime question being which state's term limits will reach the U.S. Supreme Court first. Colorado's federal term limits are an unlikely candidate because they would not affect any incumbent member of Congress until after the turn of the century.

Some observers say the first effective appeal of a term limit may arise from Florida. There, anti-tax activist Phil Handy has organized support for a term limit initiative for the 1992 ballot. Under Florida law, prospective ballot measures go to the state attorney general for an opinion of their constitutionality. The attorney general has referred the question to the Florida Supreme Court.

But the best bet for a test case is probably the Washington initiative.

Rudolph, the Puget Sound law professor who is preparing to defend 553 in court, says he expects opponents to file suit "fairly quickly" after the voters have spoken. He said if the lawsuit were filed in federal court, it would likely be heard by a special panel of three federal judges whose ruling could be appealed directly to the U.S. Supreme Court.

But Rudolph said he would not be surprised to see 553 opponents submit their suit to a state court instead, with the appeal proceeding directly to the Washington Supreme Court and then to the U.S. Supreme Court.

In general, incumbent House members from Washington would have obvious standing to sue when denied a place on the ballot in 1994.

"Somebody like Foley might be able to show harm and have his standing recognized even sooner," says Rudolph. "He could say 553 was affecting his ability to raise money for his next campaign." ■

PLEASE MICROFILM TOP PAGE ONLY

DOCUMENTS WHICH HAVE NOT BEEN
FILMED BUT ARE AVAILABLE IN THE
ORIGINAL FILE INCLUDE:

→ ILLINOIS LEGISLATIVE RESEARCH - "TERM LIMITS"

→ WALL STREET JOURNAL - DEC. 24, 1991

"A FREE MARKETEEER'S CASE AGAINST TERM LIMITS"

HJR 13

(11)

Date Referred: March 27, 1992

HOUSE COMMITTEE REPORT
FURTHER REFERRALS:

Date of Committee Action: 4/15/92

The FINANCE Committee considered:

HJR 13

HOUSE JOINT RESOLUTION NO. 13

RUN-OFF ELECTION: GOV. & LT. GOV.

Proposing amendments to the Constitution of the State of Alaska requiring that candidates for governor and lieutenant governor receive 40 percent of the votes cast to be elected, and changing the term of office of the governor and the lieutenant governor.

RECOMMENDATIONS: [] the same title
 be replaced with CS HJR 13 (FIN) [] a new title
 [] have attached amendments(s)
 [✓] do pass
 [] do not pass
 [] no recommendations
 [] individual recommendations
 [] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____
 [] fiscal impact _____
 [] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date) _____
 [✓] fiscal note(s) OFFICE OF GOV. 3/18/92
 [✓] zero fiscal note(s) Law 3/18/92

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Eileen P. Mulean ^{MAGUIRE}	✓	Kopmen Kopmen			✓
Mark Boyd ^{BOYD}	X	Sharp Sharp			✓
Ken Brown ^{BROWN}	✓				
Dorena Barnes ^{BARNES}	X				
Ross E. Phillips ^{PHILLIPS}	✓				
Ronald J. Larson ^{LARSON}	X				
John Ulmer ^{ULMER}	X				
Mike Savare ^{SAVARE}	✓				
Greg Jacko ^{JACKO}	✓				

Mike Savare, Eileen P. Mulean
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HJR 13

Revision Date: _____
Title: Amendment to the Constitution-Gov. and Lt. Gov. receive 40% of votes for Election/Change of term
Sponsor: Representative Kubina
Requestor: House State Affairs

Department Affected: Office of the Governor-Elections
BRU: Division of Elections
Component: 11 - Primary and General Elections

COMPONENT SERIAL NO.

0	0	2	2
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Expenditure./Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) * This figure covers cost of inclusion of information about this issue in the Official Election Pamphlet as required by AS 15.58, and programming for Datavote counting of votes cast on this measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing of an additional ballot card, the fiscal impact would be: 53.4.

Prepared by: Elizabeth Ziecier, Deputy Director
Division: Elections

Phone: 465-4611
Date: 01/10/92

Approved by Commissioner: *Charles E. Trustad*
Agency: Office of the Governor

Date: 01/10/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/07/91
JR13.FN

Page 1 of 1

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HJR 13

Revision Date: January 9, 1992 Department Affected: Department of Law
 Title: "...amendments...requiring that candidates...receive 40% of the votes..." BRU: Legal Services
 Component: Operations
 Sponsor: Representative Kubina
 Requestor: House State Affairs COMPONENT SERIAL NO.

		9	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services II Date: January 9, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: January 9, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HJR 13

House Joint Resolution No. 13 proposes amendments to the constitution of the State of Alaska that would require that candidates for governor and lieutenant governor receive forty percent of the votes cast to be elected. The amendments would also change the term of office of the governor and lieutenant governor from noon on the first Monday in December following the governor's election to noon on the first Monday in January following the governor's election. Last, the amendments provides that if no candidate receives forty percent of votes cast for governor, a runoff election between the two candidates receiving the greatest number of votes cast shall be held within forty-five days of the first election. If the resolution is approved by a two-thirds vote of each house of the legislature, the proposed amendments would be placed before the voters at the next general election. The resolution, which asks the voters to consider requiring that future candidates for governor receive a minimum of forty percent of the votes to be elected, should not cause a fiscal impact for the Department of Law.

CS FOR HOUSE JOINT RESOLUTION NO. 13 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES KUBINA, Ulmer, MacLean

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to elections of
 2 the governor and lieutenant governor and changing the term of office of the governor and
 3 the lieutenant governor.

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

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

6 SECTION 3. ELECTION. The governor shall be chosen by the qualified voters of the
 7 State at a general election. The candidate receiving the greatest number of votes equal to or
 8 greater than forty percent of the total number of votes cast for governor shall be governor.
 9 If no candidate receives at least forty percent of the votes cast for governor, a runoff
 10 election between the two candidates receiving the greatest number of votes cast shall be held
 11 on the first Tuesday in December following the general election.

12 * Sec. 2. Article III, sec. 4, Constitution of the State of Alaska, is amended to read:

13 SECTION 4. TERM OF OFFICE. If a runoff election is required to elect a governor,
 14 then the [THE] term of office of the governor begins [IS FOUR YEARS, BEGINNING] at noon
 15 on the second day of January immediately after the election. Otherwise, the term of office

1 of the governor begins at noon on the first Monday in December following the governor's
2 [HIS] election. Election for governor occurs every four years [AND ENDING AT NOON ON
3 THE FIRST MONDAY IN DECEMBER FOUR YEARS LATER].

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

Alaska State Legislature

Chairman
State Affairs
Committee

Legislative Council

Transportation
Committee



Representative Eugene Kubina

During Session:
State Capitol
P.O. Box V
Juneau, Alaska 99811
(907) 465-4859

During Interim:
P.O. Box 2463
Valdez, Alaska 99686
(907) 835-2111

HJR 13: Relating to Run-Off Election: Governor and Lt. Governor

Sponsor Statement

The Constitution of the State of Alaska has given the office of Governor tremendous strength and power. It is extremely important that the person chosen for this weighty position be selected and approved by a significant number of eligible voters. Our electoral system should provide the public with some assurance that their elected governor and lieutenant governor represent something close to a majority of the voters.

Due to the importance of this issue, I introduced a Constitutional Amendment, HJR 13, which would amend our Constitution by requiring candidates for governor and lieutenant governor to receive at least 45 percent of the vote to be elected. At this time, the candidate in the general election who receives the highest number of votes, regardless of percentage, is elected.

Only twice since Statehood has a governor been elected with over 50 percent of the vote. Since the time of Governor Egan, percentages have been declining and two governors have been elected with less than 39 percent of the vote. However, the average percentage in all of the gubernatorial elections has been 47.9 percent and therefore I feel that a 45 percent plurality is a reasonable and realistic electoral requirement.

With the continuing emergence of third parties in Alaska, there exists the possibility that under current law, a governor and lt. governor could be elected by less than one third of the electorate. Considering the fact that our Constitution greatly empowers those offices, it would be a tremendous disservice to the citizens of Alaska to allow persons to govern them who do not have a clear mandate. Our most powerful government officials should be elected with broad public support and a 45 percent requirement is a means to that end.

— DISTRICT SIX —

• Chenega Bay • Chitina • Cooper Landing • Cordova • Hope • Moose Pass • Seward • Tatitlek • Valdez • Whittier •

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

August 2, 1991

The Honorable Eugene Kubina
Alaska State Legislature
P.O. Box 2463
Valdez, Alaska 99686

Dear Representative Kubina:

Thank you for writing the Division of Elections regarding HJR 13 which proposes an amendment to the Alaska Constitution requiring candidates for governor and lieutenant governor to receive 40 percent of the votes cast to be elected. The run-off election, according to HJR 13 would be held within 45 days of the general election.

Our staff has researched how many candidates in the past three general elections this would have affected if this law were in place then. We looked at all races for state senate, house, U.S. House and Senate and gubernatorial races. It appears that last year's gubernatorial race was the only time that candidates have received less than 40 percent of the vote and been elected. Of course, at some point there probably will be a state race with multiple candidates where this will occur again.

The division would have difficulty meeting other statutory deadlines if HJR 13 were passed in its current form. I have worked up two scenarios based on current statutes for your review:

1) Candidate A & B run for governor. "A" receives 39% and B receives 35%, two other candidates split the rest of the votes cast. According to AS 15.15.440, the division must begin the state ballot counting review not later than 11 days from the general election. Typically this review takes about two weeks. Then the election is certified. In 1990 the election was certified on November 23.

Now the division can begin working on the run-off election. According to AS 15.20.082 regarding absentee ballot preparation, overseas voters must have their ballots sent 60 days before the election. The division would need to print a special ballot immediately after the election certification. Domestic absentee ballots have to be received by the division within 10 days after the election. Overseas absentee ballots have to be received within 15 days after the election.

The Honorable Eugene Kubina
Page Two

In short, to allow for these timelines, the division statutorily needs a minimum of 90 days to prepare for an election and an additional 30 days to review the count and wait for absentee ballots to arrive.

2) The second example includes the above facts, but adds the factor of a recount. If it is a very tight race with three candidates, theoretically two candidates could be two or less percentage points apart. For instance, in a gubernatorial race, a losing candidate has three days after the state review to file an application for a recount, AS 15.20.430. The director must fix the date for the recount within three days of approving the application. The recount must be completed within 10 days after fixing the date, AS 15.20.480.

I estimate that the costs of conducting the run-off would be about \$ 1 million, similiar to those quoted for the presidential primary and a statewide recall election.

So as you can see, if this amendment passed, a considerable amount of statutory law would need to be addressed. As to an official position on the bill, the division is philosophically neutral. I would suggest that you ask the Office of the Governor Legislative Liaison to comment on the impact of the timelines on the operations of that office.

Please let me know if there is any additional information you need from the division. I am happy to work with you and meet with your committee this fall.

Sincerely,



Charlot E. Thickstun
Director

CET:et z

cc: Legislative Liaison Office

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

M E M O R A N D U M

DATE: October 29, 1991
TO: Representative Kubina
House Affairs Committee
FROM: Division of Elections
Office of the Governor
SUBJECT: Voting Statistics: 1958 - 1990

DATE/ GOVERNOR	VOTES CAST IN FAVOR	VOTES CAST	PERCENT CAST IN FAVOR
November 25, 1958 Egan	29,189	50,343	57.98025%
November 6, 1962 Egan	29,627	60,084	49.3093%
November 8, 1966 Hickel	33,145	67,361	49.20502%
November 3, 1970 Egan	42,309	82,405	51.34275%
November 5, 1974 Hammond	45,602	98,557	46.26967%
-- Recount	45,840	98,557	46.51115%
November 7, 1978 Hammond	49,580	129,705	38.2252 %
November 2, 1982 Sheffield	89,918	199,358	45.10378%
November 4, 1986 Cowper	84,943	179,555	47.30751%
November 6, 1990 Hickle	75,721	194,750	38.88112%

REPRESENTATIVE TOM MOYER

DISTRICT 19 • 119 N. CUSHMAN ST., SUITE 203 • FAIRBANKS, AK 99701 • (907) 456-8161

International Trade & Tourism, Chair • State Affairs, Vice Chair • Resources, Member

Averages of previous gubernatorial elections:

Previous 9	(1958 thru 1990)...	47.096%
8	(1962 thru 1990)...	45.735%
7	(1966 thru 1990)...	45.225%
6	(1970 thru 1990)...	44.561%
5	(1974 thru 1990)...	43.205%
4	(1978 thru 1990)...	42.379%
3	(1982 thru 1990)...	43.764%
2	(1986 thru 1990)...	43.094%
1	(1990)...	38.881%

ALASKA STATE LEGISLATURE • P.O. Box V • JUNEAU, AK 99811 • (907) 465-4930

Steele Creek/Gilmore • Steese East • Steese West • Goldstream • Ester • Ft. Wainwright • Two Rivers • Fox • Central • Livengood • Circle • Chatanika

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DOCUMENTS WHICH HAVE NOT BEEN
FILMED BUT ARE AVAILABLE IN THE
ORIGINAL FILE INCLUDE:

→ LEGISLATIVE RESEARCH AGENCY REQUEST 91.083
"MAJORITY VOTE REQUIREMENT FOR STATE ELECTIONS"

→ LEGISLATIVE RESEARCH AGENCY REQUEST 91.257
"FEDERAL REQUIREMENTS FOR THE "SUBMARINERS' BALLOT"

HJR 19

HOUSE COMMITTEE REPORT

(11)

Date Referred: May 6, 1992

FURTHER REFERRALS:

Date of Committee Action: 5/7/92

The FINANCE Committee considered:

HJR 19

HOUSE JOINT RESOLUTION NO. 19

TRANSPORTATION FUND

Proposing amendments to the Constitution of the State of Alaska creating a transportation fund.

RECOMMENDATIONS:

be replaced with CS HR 19 (FIN) [] the same title [] a new title

[] have attached amendments(s)

do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact DOT

fiscal note(s) _____

[] zero fiscal note _____

zero fiscal note(s) DOT 5/6/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Mike Savare</i>	<input checked="" type="checkbox"/>	<i>Base Table</i>		<input checked="" type="checkbox"/>	
<i>Mark Bayer</i>	<input checked="" type="checkbox"/>	<i>Key Points</i>			<input checked="" type="checkbox"/>
<i>John Ulmer</i>	<input checked="" type="checkbox"/>	<i>Response</i>			<input checked="" type="checkbox"/>
<i>David [unclear]</i>	<input checked="" type="checkbox"/>	<i>Best things unless amend</i>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
<i>[unclear]</i>	<input checked="" type="checkbox"/>	<i>Eldon Muehlen</i>		<input checked="" type="checkbox"/>	
		<i>General Haines</i>	<input checked="" type="checkbox"/>		

Mike Savare E. Muehlen
CHAIRMAN'S SIGNATURE

1992 LEGISLATIVE SESSION

Revision Date: 01/13/92
 Title: Amendment to the Constitution RE: Transportation Fund
 Sponsor: Transportation Committee
 Requestor: Transportation Committee

Department Affected: Office of the Governor-Elections
 BRU: Division of Elections
 Component: II-Primary and General Elections

COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) * This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on this measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be: 53.4.

Prepared by: Elizabeth Ziegler, Deputy Director
 Division: Elections

Phone: 465-4611
 Date: 01/13/92

Approved by Commissioner: Charles E. Thickett
 Agency: Office of the Governor

Date: 01-13-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HJR-19

Revision Date: 1/22/92

Department Affected: Revenue

Title: Amending the State's constitution to create a transportation fund.

BRU: Operations

Component: Treasury Management

Sponsor: Transportation

Requestor: Judiciary

Component Serial No.

0	1	2	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES		5.0	5.0	5.0	5.0	5.0
TRAVEL						
CONTRACTUAL		20.0	20.0	20.0	20.0	20.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		25.0	25.0	25.0	25.0	25.0

CAPITAL						
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REVENUE						
Unrestricted-General Fund:		(62,000.0)	(62,000.0)	(62,000.0)	(62,000.0)	(62,000.0)
Restricted-Transportation Fund:		62,000.0	62,000.0	62,000.0	62,000.0	62,000.0

FUNDING: (Thousands of Dollars)

GENERAL FUND/Unrestricted						
FEDERAL FUNDS						
OTHER/Transportation Fund		25.0	25.0	25.0	25.0	25.0
TOTAL		25.0	25.0	25.0	25.0	25.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: The 25.0 expenditure in total operating costs is the basic personal services and contractual costs for a trust managed by the Treasury Division. Contractual costs would consist of external investment management, accounting, auditing, and custodial services. Future cost increases are dependent on the asset growth of the trust fund from revenues and appropriations. (continued)

Prepared by: Brian C. Andrews

Phone: 465-2350

Division: Treasury

Date: January 22, 1992

Approved by Commissioner: *David Perini*

Agency: Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Continued Analysis HJR 19

ANALYSIS: This legislation would reduce the unrestricted revenue to the general fund received from the State's licenses and fees for the registration, operation, and use of motor vehicles, aircraft, and watercraft and from net State taxes on fuel used for motor vehicles, aircraft and watercraft by approximately 62 million dollars. These revenues would then be used for authorized expenditures from the transportation fund.

FY 1991 TRANSPORTATION REVENUES

Unrestricted Revenues - Preliminary (000s)

AKSAS CODE	TITLE	ACTUALS FY 91
60210/20/30	Fuel Taxes	39,917
62210	Motor Vehicle License/Registration	20,760
65311	Airspace Leases	6
64405	Landing Fee	122
64420	Oil & Gas Fee	74
64430/40	Vehicle Parking/Building Rent	(4)
64460	Concession Fee	19
64475	Land Rental	113
55100	Appropriated Unrestricted Revenue	1,008
<hr/> TOTAL TRANSPORTATION FUND		62,015

Source: Treasury Division, 1/14/92.

FISCAL NOTE

Revision Date:
Title: Transportation Fund

Department Affected: DOT&PF
BRU:

Sponsor: House Transportation
Requestor: House Judiciary

Component:
Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Catherine McHugh

Phone: 465-3900

Division: Special Assistant to the Commissioner

Date: May 5, 1992

Approved by Commissioner: 
Frank E. Turpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: May 5, 1992

Distribution By Preparer: Leg. Finance, Leg. Sponsor, Requestor, OMB/DBR, Gov. Leg. Office, Impacted Agency(ies).

CS FOR HOUSE JOINT RESOLUTION NO. 19 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska creating a transportation
2 fund.

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

4 * Section 1. Article IX, sec. 7, Constitution of the State of Alaska, is repealed and readopted to read:

5 SECTION 7. DEDICATED FUNDS PROHIBITED. The proceeds of any State tax or
6 license shall not be dedicated to any special purpose. This provision shall not prohibit the
7 continuance of any dedication for special purposes existing on April 24, 1956, and shall not
8 prohibit the dedication of revenue under Section 15 or Section 18 of this article or when required
9 by the federal government for State participation in federal programs.

10 * Sec. 2. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

11 SECTION 18. TRANSPORTATION FUND. (a) The revenue received after June 30,
12 1993, from State licenses and fees for the registration, operation, and use of motor vehicles,
13 aircraft, and watercraft, from the use of State transportation facilities, and from State taxes on
14 fuel used in and on watercraft and for the propulsion of motor vehicles and aircraft, less refunds,
15 credits, and fee collection costs as provided by law, shall be placed in a transportation fund.
16 Except as provided in (d) of this section, the legislature may make appropriations from the fund

1 only for

2 (1) the maintenance and operation of a state or local government facility that
3 relates to the mode of transportation from which the revenue was collected, and, with regard to
4 revenue obtained from watercraft, also for the improvement and construction of harbor facilities;
5 or

6 (2) the administration and enforcement of motor vehicle laws.

7 (b) This section does not apply

8 (1) to a tax, license, or fee that the State collects on behalf of a local government;

9 (2) to revenue received by a public corporation whose revenue must by federal
10 law be retained and managed by the corporation;

11 (3) to the extent required by law or by the bond covenants, to revenue received
12 from the use or operation of a facility constructed with bond proceeds; and

13 (4) to revenue received from the motor fuel surcharge that is in effect on the
14 effective date of this section and whose purpose is specifically stated in law to be for remedying
15 environmental problems created by underground petroleum storage tanks or underground tank
16 systems.

17 (c) The legislature shall provide by law for the management and investment of the fund
18 balance. The income earned from the management and investment of the fund shall be deposited
19 into the fund.

20 (d) An appropriation from the fund for any public purpose may be made upon an
21 affirmative vote of two-thirds of the members of each house of the legislature.

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

Department of Transportation & Public Facilities



POSITION PAPER

BILL NO: HJR 19

APPROVED:

A handwritten signature in cursive script, likely belonging to a department official.

TITLE: Proposing a dedicated fund

DATE: February 27, 1991

The Department of Transportation and Public Facilities endorses this Resolution proposing a constitutional amendment establishing a dedicated transportation fund. The department has the statutory responsibility for the maintenance and operation of Alaska's transportation system. The department believes that maintaining the state's transportation system in a responsible manner is of vital importance to the economic well-being of all Alaskans. Consequently, the department is concerned that the volatility of current revenue sources make it increasingly difficult to insure that the necessary funds are available to maintain the system in a responsible manner.

The department believes that user fees are one of the more equitable and appropriate methods of attaining a stable funding source for transportation facilities. The department also recognizes that a direct linkage between the expenditures of a fee and the services provided, raises the credibility of the user fee concept and may make increasing those fees more acceptable to system users. Moreover, establishing a direct linkage between the fees collected and the expenditures authorized would provide the consuming public with the ability to make an informed decision about the cost of the services they expect. Since a dedicated fund would create the direct linkage between expenditures authorized and the fees collected, the department believes that establishment of a dedicated fund is the most significant, long-term step needed to better manage the capital assets the State has in its transportation infrastructure.

Alaska Association of Harbormasters & Port Administrators, Inc.

H
File

334 Front Street
Ketchikan, Alaska 99901

January 6, 1992

The Honorable Representative Dave Donley
Alaska State Legislature
House Judiciary Committee
Room 122, Capitol
P. O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

The Alaska Association of Harbormasters and Port Administrators is an organization of the Harbormasters and Port Administrators who are responsible for the maintenance and operation of the majority of the small boat harbors and port facilities located throughout the State. Our Association is 20 years old and has over 64 members.

As stewards of the State-owned small boat harbors we are fully aware of the value of those assets to the State and her people. As professionals we take great pride in our commitment to provide the best in moorage and service to the thousands of vessel operators who use harbor and port facilities each year.

Over the years our members have expressed grave concern over the lack of dedication the State has shown toward the small boat harbors. These valuable assets are aging rapidly. Some harbors are over forty years old and require attention that is beyond the ability of the operators. This situation is the result of maintenance, expensive maintenance, that has been deferred by the State and to some extent the operators.

For many years the Alaska Association of Harbormasters and Port Administrators has advocated establishing a dedicated fund by which the State could fulfill its obligation to perform maintenance in its small boat harbors. On November 7, 1991, our Association unanimously approved a resolution of support for establishing such a fund.

You are currently reviewing House Joint Resolution 19 (Judiciary) which proposes amendments to the Constitution of the State of Alaska, creating a Transportation fund. Our Association supports the resolution and asks that those funds generated by the State tax on fuel used by water craft be made available to fund maintenance of the State's small boat harbors.

On behalf of the membership of the Alaska Association of Harbor-masters and Port Administrators it is requested House Joint Resolution No. 19 be passed out of committee and presented for legislative approval.

Sincerely,



A. D. Ensley II, President
Alaska Association of Harbormasters
and Port Administrators, Inc.

ADE:sd



Rep. D. Donley	H. Springer
Co.	Co. AGC
Dept.	Phone #
Fax # 465-2299	Fax #

ASSOCIATED GENERAL CONTRACTORS of ALASKA

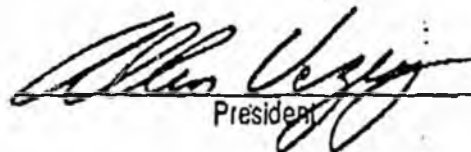
1011 B STREET • ANCHORAGE, ALASKA 99501
P.O. BOX 240009 • ANCHORAGE, ALASKA 99521-0009
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

A RESOLUTION OF THE ASSOCIATED GENERAL CONTRACTORS OF ALASKA REQUESTING THE ALASKA STATE LEGISLATURE TO PASS A RESOLUTION TO PUT THE 1992 GENERAL ELECTION BALLOT A CONSTITUTIONAL AMENDMENT TO DEDICATE TRANSPORTATION USER FEES TO TRANSPORTATION SERVICES

- WHEREAS, fluctuating oil prices create instability in budgets which are dependent on oil revenues, and
- WHEREAS, stability is needed for a proper management of capital assets and for industry to be prepared to manage those assets, and
- WHEREAS, oil production from Prudhoe Bay is expected to decrease, and as a result, the State's oil revenues will also decrease, and
- WHEREAS, the State's transportation systems are so important to Alaska's economic vitality to be subject to this downturn in revenues, and
- WHEREAS, the costs of maintenance and repair brought on by use of the transportation system should be paid by users of the system, and
- WHEREAS, user fees are the most equitable and fair, and therefore the most reasonable source of funding for expenses related to the Alaska transportation system, and
- WHEREAS, dedicated user fees are needed to ensure that these fees go to transportation services and create the connection which will allow adjustments to the levels of revenues being collected, based on needs, and
- WHEREAS, the dedicating of user fees in the State of Alaska requires that voters approve an amendment to the Constitution,

NOW, THEREFORE, BE IT RESOLVED by the Associated General Contractors of Alaska that it requests the Legislature to pass a resolution to put on the 1992 general election ballot a Constitutional Amendment to dedicate transportation user fees to transportation services.

PASSED AND ADOPTED BY AGC OF ALASKA ON THIS 10TH DAY OF FEBRUARY, 1992.



President

FAIRBANKS
P.O. BOX 10065 • FAIRBANKS, AK 99706
(907) 452-1309

JUNEAU
99901 C/O ACILKHEIHIWAY
(907) 561-5354

SITKA
P.O. BOX 350 • SOLDOTNA, AK 99689
(907) 262-2445

Dedicated tax would solve pothole problem

JUNEAU — Because most of us commute regularly, we have a seat-of-the pants feel for the bumps and potholes and roller-coaster ups and downs of troublesome stretches of our roads and highways.

We wonder why repairing our highways has such a low priority in how we spend our state money. Why doesn't our Department of Transportation and Public Facilities get the job done? Is it true they would rather build than repair what we have already?

The answer to all of these questions is understandable. Voter pressure! Your Legislature is very sensitive to the squeaky wheel. And the wheels that want highways repaired have been running quietly. Much too quietly. Not until this session have legislators heard enough from squeaky maintenance wheels to give the transportation department what was asked for to spend on highway maintenance.

Lawmakers are not against maintenance. Not at all. It's just a matter of priorities. Other constituent requests push maintenance to the bottom of the list. How do you solve this?

Well, at transportation department we have a way. Dedicated revenue. Gasoline taxes should be used only for highway maintenance and construction. Aviation



Frank Turpin

fuel taxes should be dedicated to airports. Marine fuels to boat harbors. This is an idea whose time has come. In fact, it is an idea whose worth and effectiveness are already proven in many other states.

We need to take care of what we have. The practice of deferred maintenance, resulting in the past from funding going elsewhere where the pressure to deliver money was stronger, has to be eliminated and the needed money put into upkeep.

Our engineers tell me that we have over \$40 million of deferred maintenance today in our highways and rural airports, and to me that is almost an emergency situation.

There is similar neglect in needed upkeep of public buildings and other facili-

ties. I just don't think that we should permit our public properties and services that depend on them to go that far down. We need to do much more to protect the infrastructure we have in place.

Regarding highways, if we doubled the current 8-cent gasoline tax we would still be well below the national average of 18-cents per gallon while gaining about \$88 million in needed maintenance funds. For rural airports, if we added 2-cents a gallon to the fuel tax, we would have almost all the money we need for their maintenance.

In many instances of the transportation department's responsibility, similar circumstances apply: The facilities and services provided can, unlike many government functions, generate a distinct stream of revenues for their own operation.

A resolution is under consideration in the Legislature that proposes a change in our constitution, to be voted on in 1992, that would permit designated funding for transportation and public facilities maintenance. I think people, if they can be sure their money will provide better facilities and services, will want that.

Frank G. Turpin is Commissioner of the Alaska Department of Transportation and Public Facilities.

HJR 34

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 10, 1991

FURTHER REFERRALS:

Date of Committee Action: 4/19/91

The FINANCE Committee considered:

HJR 34

HOUSE JOINT RESOLUTION NO. 34

TAX DEDUCTIBILITY OF EXXON SETTLEMENT

Relating to the tax deductibility of the Exxon oil spill settlement.

RECOMMENDATIONS:

be replaced with CS HJR 34 (JUD)

the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) D of REVENUE

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eileen P. Maclean</i> <small>MACLEAN</small>	<input checked="" type="checkbox"/>	<i>James H. Barnes</i> <small>BARNES</small>		<input checked="" type="checkbox"/>	
<i>Mike Navarre</i> <small>NAVARRE</small>	<input checked="" type="checkbox"/>	<i>Bob Sharp</i> <small>SHARP</small>		<input checked="" type="checkbox"/>	
<i>Mark Boyer</i> <small>BOYER</small>	<input checked="" type="checkbox"/>	<i>Roll E. Phillips</i> <small>Phillips</small>		<input checked="" type="checkbox"/>	
<i>Fay Brown</i> <small>BROWN</small>	<input checked="" type="checkbox"/>	<i>Paul Larson</i> <small>LARSON</small>		<input checked="" type="checkbox"/>	
<i>[Signature]</i> <small>KOPONEN</small>	<input checked="" type="checkbox"/>				
<i>[Signature]</i> <small>JUKKO</small>	<input checked="" type="checkbox"/>				
<i>[Signature]</i> <small>ULMER</small>	<input checked="" type="checkbox"/>				

Mike Navarre *Eileen P. Maclean*
 CHAIRMAN'S SIGNATURE
 NAVARRE MACLEAN

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 1
BILL No. Bill Version: CSHJR 34 (JUD)
(H) Publish Date: 4/10/91

Revision Date: _____
Title: Relating to the Tax Deductibility
of the Exxon Oil Spill Settlement
Sponsor: Ellis, Brown, Donley
Requestor: _____

Department Affected: Department of Revenue
BRU: Revenue Operations
Component: Income and Excise Audit
COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY97-02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	490.0	817.0	545.0	381.0	381.0	381.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	490.0	817.0	545.0	381.0	381.0	381.0
FEDERAL FUNDS						
OTHER						
TOTAL	490.0	817.0	545.0	381.0	381.0	381.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: Attach a separate page for analysis.
SEE ATTACHED

Prepared By: Carl Meyer *Carl Meyer* Phone: (907) 465-2320
Division: Income and Excise Audit Division Date: April 5, 1991
Approved by Commissioner: Lee E. Fisher *Lee E. Fisher*
Agency: Department of Revenue Date: 4-5-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

April 5, 1991

HJR 34
FISCAL NOTE ANALYSIS
DEPARTMENT OF REVENUE

HJR 34 urges the United States Congress to amend the federal income tax law to deny to Exxon a deduction for amounts paid to the state in settlement for the Exxon oil spill. Alaska law incorporates certain provisions of the federal law including those provisions which would currently allow spill expenses to be deducted. Therefore, a denial of the expenses under federal law would also result in a corresponding denial of the expenses for purposes of the Alaska Net Income Tax Act.

The estimated fiscal impact of the denial of a deduction for the settlement payments is based on payments of \$90,000,000 this summer or fall, \$150,000,000 on September 1, 1992, \$100,000,000 on September 1, 1993, and \$70,000,000 on September 1 of 1994 through 2001. Additional amounts to be paid as fines or penalties are not reflected in the fiscal note as these amounts are not deductible under current law. Also, the fiscal note does not take into account the provision providing for an additional \$100,000,000 payment if the settlement agreement is reopened to consider currently unknown injuries.

CS FOR HOUSE JOINT RESOLUTION NO. 34 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/10/91

Referred: Finance

Sponsor(s): REPRESENTATIVES ELLIS, Brown, Donley

A RESOLUTION

1 Relating to the tax deductibility by Exxon and other major polluters of cleanup expenses,
2 civil claims settlement costs, and civil judgment payments.

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

4 **WHEREAS** on the night of March 23 - 24, 1989, the T/V Exxon Valdez, owned by Exxon
5 Shipping, went aground on Bligh Reef in Prince William Sound in Alaska; and

6 **WHEREAS** as a result of the grounding, several of the vessel's cargo tanks ruptured and
7 approximately 11,000,000 gallons of crude oil owned by Exxon Corporation spilled into Prince William
8 Sound; and

9 **WHEREAS** on March 12, 1991, the United States, Exxon Corporation, Exxon Shipping
10 Company, Exxon Pipeline Company, and Governor Hickel for the State of Alaska entered into a
11 proposed agreement and consent decree to settle the claims between them arising out of the oil spill; and

12 **WHEREAS** under the agreement Exxon agrees to pay Alaska a specified sum of money as
13 compensatory and remedial damages for the oil spill; and

14 **WHEREAS** under the present income tax laws of the United States, Exxon will be able to reduce
15 its income tax liability by deducting a portion of the money to be paid under the agreement; and

16 **WHEREAS** the deduction by Exxon means that the taxpayers of the United States pay that part

1 of the settlement amount that is deducted from Exxon's income taxes, because the United States will not
2 receive that amount in taxes; and

3 **WHEREAS** the taxpayers of the United States should not have to pay for Exxon's negligence,
4 and Exxon should not receive a tax break for compensating the State of Alaska for Exxon's negligence;
5 and

6 **WHEREAS** there is movement in the United States Congress to repeal the income tax laws that
7 allow Exxon to receive the tax break;

8 **BE IT RESOLVED** that the Alaska State Legislature urges the United States Congress to amend
9 the income tax laws of the United States so that Exxon may not reduce its income tax liability by
10 deducting any of the money that Exxon pays to the State of Alaska and the United States government
11 as settlement for the Exxon oil spill; and be it

12 **FURTHER RESOLVED** that the Alaska State Legislature urges the United States Congress to
13 amend the income tax laws of the United States so that major polluters may not reduce their income tax
14 liability by deducting the cleanup expenses, civil claims settlement costs, and civil judgment payments
15 that result from their pollution.

16 **COPIES** of this resolution shall be sent to the Honorable Dan Quayle, Vice-President of the
17 United States and President of the U.S. Senate; the Honorable Thomas S. Foley, Speaker of the U.S.
18 House of Representatives; the Honorable Lloyd Bentsen, Chair of the Senate Committee on Finance; the
19 Honorable Dan Rostenkowski, Chair of the House Ways and Means Committee; and to the Honorable
20 Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S.
21 Representative, members of the Alaska delegation in Congress.

102D CONGRESS
1ST SESSION

H. R. 1539

I

To amend the Internal Revenue Code of 1986 to limit the ability of taxpayers to deduct the cost of cleaning up oil and hazardous substances spills.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 1991

Mr. LIPINSKI introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to limit the ability of taxpayers to deduct the cost of cleaning up oil and hazardous substances spills.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Oil Spill Tax Act".

5 **SEC. 2. DISALLOWANCE OF COSTS FOR CLEANUP OF OIL**
6 **OR HAZARDOUS SUBSTANCE DISCHARGES.**

7 (a) IN GENERAL.—Section 162 of the Internal Reve-
8 nue Code of 1986 (relating to deduction for trade or busi-
9 ness expenses) is amended by redesignating subsection

1 (m) as subsection (n) and by inserting after subsection
2 (1) the following new subsection:

3 “(m) OIL AND HAZARDOUS SUBSTANCES CLEANUP
4 COSTS.—

5 “(1) GENERAL RULE.—No deduction shall be
6 allowed under subsection (a) for any applicable oil or
7 hazardous substances cleanup costs if—

8 “(A) the Secretary receives notification
9 from the Commandant of the Coast Guard or
10 his delegate that the taxpayer has failed to
11 comply with section 311(c) or 311(e) of the
12 Federal Water Pollution Control Act, or any
13 administrative or judicial order or consent de-
14 cree issued under section 311 of the Federal
15 Water Pollution Control Act or the provisions
16 of the National Contingency Plan for oil dis-
17 charges; or

18 “(B) the Secretary receives notification
19 from the Administrator of the Environmental
20 Protection Agency or his delegate that the tax-
21 payer has failed to comply with any administra-
22 tive or judicial order or consent decree issued
23 under section 104, 106 or 122 of the Com-
24 prehensive Environmental Response, Com-
25 pensation and Liability Act (CERCLA), section

1 3008(h) or 7003 of the Resource Conservation
2 and Recovery Act or under applicable State
3 statutes for hazardous substances discharges.

4 “(2) NEGLIGENCE.—Notwithstanding any other
5 provision of this subsection, no deduction shall be al-
6 lowed under subsection (a) for any applicable oil or
7 hazardous substances cleanup costs where it can be
8 shown that the oil or hazardous substance discharge
9 was the result of willful negligence or willful mis-
10 conduct.

11 “(3) REDUCTION OF TAX ATTRIBUTES.—The
12 tax attributes of the taxpayer shall be reduced in the
13 manner prescribed in section 108(b)(2) (without ref-
14 erence to sections 108(b)(4) and 108(b)(5)) by an
15 amount equal to the amount disallowed under para-
16 graph (1) or (2).

17 “(4) ITEMIZATION OF COSTS.—The costs de-
18 scribed in this subsection shall be separately stated
19 in such manner as the Secretary may prescribe on
20 a form accompanying the return of tax for the tax-
21 able year in which such costs were paid or incurred.

22 “(5) DEFINITIONS.—For purposes of this sub-
23 section the term—

24 “(A) ‘applicable oil or hazardous sub-
25 stances cleanup costs’ means any costs paid or

1 incurred (whether or not in the taxable year in
2 which the discharge occurs) in connection with
3 the cleanup of any oil or hazardous substances
4 discharged by the taxpayer.

5 “(B) The term ‘applicable oil or hazardous
6 substances cleanup costs’ includes, but is not
7 limited to—

8 “(i) any legal expenses arising directly
9 or indirectly from a discharge of oil or haz-
10 ardous substances;

11 “(ii) any payments or restitution to
12 any person arising out of such discharge;

13 “(iii) any costs incurred to restore
14 and replace natural resources damaged by
15 such discharges; and

16 “(iv) any costs required by any appli-
17 cable Federal law or regulation.

18 “(C) ‘discharge’ means—

19 “(i) ‘discharge’ as defined in section
20 311(a)(2) of the Federal Water Pollution
21 Control Act; and

22 “(ii) ‘release’ as defined in 42 USC
23 section 9601(22) and section 101(22) of
24 the Comprehensive Environmental Re-

1 sponse, Compensation and Liability Act
2 (CERCLA), as amended;

3 “(D) ‘oil’ shall have the meaning provided
4 in section 311(a)(1) of the Federal Water Pol-
5 lution Control Act (33 USC, Section
6 1321(a)(1));

7 “(E) ‘hazardous substance’ shall have the
8 meaning provided in 42 USC, section 9601(14)
9 and section 101(14) of the Comprehensive En-
10 vironmental Response, Compensation and Li-
11 ability Act (CERCLA), as amended.”

12 **SEC. 3. DENIAL OF DEDUCTION FOR LOSSES RESULTING**
13 **FROM CERTAIN OIL OR HAZARDOUS SUB-**
14 **STANCE DISCHARGES.**

15 Section 165 of the Internal Revenue Code of 1986
16 (relating to deductions for losses) is amended by redesignig-
17 nating subsection (m) as subsection (n) and by inserting
18 after subsection (l) the following new subsection:

19 “(m) DENIAL OF DEDUCTION FOR LOSSES RESULT-
20 ING FROM CERTAIN OIL OR HAZARDOUS SUBSTANCE
21 DISCHARGES.—Nothing in subsection (a) or in any other
22 provision of law shall be construed to provide a deduction
23 for any loss sustained by a taxpayer if the loss is attrib-
24 utable to, results from, or arises in connection with, any
25 oil or hazardous substance discharge the cleanup costs of

1 which are disallowed as a deduction under section
2 162(m).”

3 **SEC. 4. LIMITATIONS ON DEFICIENCIES AND CREDITS ARISING FROM CLEANUP NOTIFICATION.**
4

5 (a) **DEFICIENCIES.**—Section 6501 of the Internal
6 Revenue Code of 1986 is amended by redesignating sub-
7 section (o) as subsection (p) and inserting after subsection
8 (n) the following new subsection:

9 “(o) **SPECIAL RULE FOR CLEANUP NOTIFICATION.**—
10 In the case of any deduction disallowed under section
11 162(m), if the Secretary receives the notification described
12 in section 162(m)(1)(A) or 162(m)(1)(B), the period for
13 assessing any deficiency attributable to the receipt of such
14 notification shall not expire before the date which is 1 year
15 after the date on which such notification is issued.”

16 (b) **CREDITS.**—Section 6511 of such Code is amend-
17 ed by redesignating subsection (h) as (i) and inserting
18 after subsection (g) the following new subsection:

19 “(h) **SPECIAL RULE FOR CLEANUP NOTIFICATION.**—
20 In the case of any deduction disallowed under section
21 162(m), if the Secretary receives the notification described
22 in section 162(m)(1)(A) or 162(m)(1)(B), the period for
23 filing a claim for credit or refund attributable to receipt
24 of such notification shall not expire before the date which

1 is 1 year after the date on which such notification is is-
2 sued.”

3 **SEC. 5. DISTRIBUTION OF LOST DEDUCTION TO EXISTING**
4 **TRUST FUNDS.**

5 (a) **IN GENERAL.**—There is established in the Treas-
6 ury of the United States an account, consisting of such
7 amounts as may be appropriated to the account as pro-
8 vided in subsection (b).

9 (b) **TRANSFER TO ACCOUNT.**—There is hereby ap-
10 propriated to the account for each fiscal year an amount
11 equal to the amount which the Secretary or his delegate
12 determines to be the increase in revenues for such fiscal
13 year by reason of the amendments made by this Act. The
14 amounts appropriated by the preceding sentence shall be
15 transferred to the account from the general fund of the
16 Treasury in the manner provided under section 9601 of
17 the Internal Revenue Code of 1986.

18 (c) **EXPENDITURES FROM ACCOUNT.**—Amounts in
19 the account established under subsection (a) shall be avail-
20 able, as provided in appropriation Acts, only—

21 (1) in the case of amounts attributable to any
22 oil discharge, for making expenditures for the pur-
23 poses described in section 311(k) of the Federal
24 Water Pollution Control Act (33 USC, section
25 1321(k)), or

1 (2) in the case of any other amounts, for trans-
2 fer to the Hazardous Substance Superfund estab-
3 lished under section 9507 of the Internal Revenue
4 Act of 1986.

5 **SEC. 6. EFFECTIVE DATE.**

6 The provisions of this Act are effective for all dis-
7 charges occurring after the date of the enactment of this
8 Act, in taxable years ending after such date.

9 **SEC. 7. STUDY AND REPORT.**

10 (a) **STUDY OF REVENUE LOSS.**—Not later than 6
11 months after the date of enactment of this Act, the Sec-
12 retary or his delegate shall submit to the House Commit-
13 tee on Ways and Means and the Senate Committee on Fi-
14 nance an estimate of the decrease of Federal revenues dur-
15 ing the period beginning January 1, 1970, and ending De-
16 cember 31, 1988, by reason of the allowance of applicable
17 cleanup costs (within the meaning of section 162(m) of
18 the Internal Revenue Code of 1986).

19 (b) **ANNUAL REPORT TO CONGRESS.**—The Secretary
20 or his delegate shall make an annual report to the House
21 Committee on Ways and Means and the Senate Committee
22 on Finance detailing the amount expended on environ-
23 mental cleanup costs and the amount accruing to the
24 Treasury under section 162(m) of the Internal Revenue
25 Code of 1986.

1 (c) EFFECTIVE DATE.—The first report required by
2 subsection (b) shall be submitted 12 months after the
3 study in subsection (a) is submitted to Congress.

○

102D CONGRESS
1ST SESSION

H. R. 1561

To amend the Internal Revenue Code of 1986 to deny any deduction for certain oil and hazardous substance cleanup costs.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1991

Mr. GUARINI (for himself, Mr. SCHULZE, Mr. GIBBONS, Mr. MOODY, Mr. RANGEL, Mr. LIPINSKI, Ms. KAPTUR, Mr. FROST, Mr. JONTZ, Mr. DWYER of New Jersey, Mr. VENTO, Mr. BUSTAMANTE, Mr. HUGHES, Mr. SCHEUER, Mr. MACHTLEY, Mr. SANTORUM, and Mr. NEAL of North Carolina) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to deny any deduction for certain oil and hazardous substance clean-up costs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DISALLOWANCE OF DEDUCTION FOR CERTAIN**
4 **OIL OR HAZARDOUS SUBSTANCE CLEANUP**
5 **COSTS.**

6 (a) GENERAL RULE.—Part IX of subchapter B of
7 chapter 1 of the Internal Revenue Code of 1986 (relating

1 to certain items not deductible) is amended by adding at
2 the end thereof the following new section:

3 **"SEC. 280I. DISALLOWANCE OF CERTAIN OIL OR HAZARD-**
4 **OUS SUBSTANCE CLEANUP COSTS.**

5 **"(a) GENERAL RULE.—**Except as otherwise provided
6 in this section, no deduction shall be allowed for any appli-
7 cable discharge costs.

8 **"(b) EXCEPTIONS.—**

9 **"(1) IN GENERAL.—**Subsection (a) shall not
10 apply to any applicable discharge costs of any tax-
11 payer which are attributable to any oil discharge or
12 hazardous substance release if—

13 **"(A)** such taxpayer has a complete liability
14 defense with respect to such discharge or re-
15 lease (as the case may be), or

16 **"(B)** such taxpayer qualifies for a liability
17 limitation with respect to such discharge or re-
18 lease (as the case may be), and is not liable for
19 any punitive damages.

20 **"(2) COMPLETE LIABILITY DEFENSE.—**For
21 purposes of paragraph (1), a taxpayer has a com-
22 plete liability defense with respect to—

23 **"(A)** any oil discharge, if it is determined
24 under section 1003 of the Oil Pollution Act of
25 1990 that such taxpayer has no liability under

1 section 1002 of such Act with respect to such
2 discharge, or

3 “(B) any hazardous substance release, if it
4 is determined under section 107(b) of the Com-
5 prehensive Environmental Response, Com-
6 pensation, and Liability Act of 1980 that such
7 taxpayer has no liability under section 107(a) of
8 such Act with respect to such release.

9 “(3) LIABILITY LIMITATION.—For purposes of
10 paragraph (1), a taxpayer qualifies for a liability
11 limitation with respect to—

12 “(A) any oil discharge, if it is determined
13 under the Oil Pollution Act of 1990 that the li-
14 ability limitation of section 1004(a) of such Act
15 applies to such taxpayer with respect to such
16 discharge, or

17 “(B) any hazardous substance release, if it
18 is determined under the Comprehensive Envi-
19 ronmental Response, Compensation, and Liabil-
20 ity Act of 1980 that the liability limitation of
21 section 107(e) of such Act applies to such tax-
22 payer and that the taxpayer is not liable for pu-
23 nitive damages with respect to such release.

24 “(c) APPLICABLE DISCHARGE COSTS.—For purposes
25 of this section, the term ‘applicable discharge costs’ means

1 any of the following costs incurred in connection with any
2 oil discharge or hazardous substance release:

3 “(1) Any costs incurred in removing or at-
4 tempting to remove the oil or hazardous substance.

5 “(2) Any costs to prevent, minimize, or mitigate
6 pollution or other damages resulting from such dis-
7 charge or release.

8 “(3) Any costs attributable to liabilities for
9 damages, fines, or penalties from such discharge or
10 release.

11 “(4) Any costs incurred in determining the
12 amount of the taxpayer’s liability for any of the
13 foregoing.

14 “(5) Any amount deductible on account of the
15 loss of the material discharged or released.

16 “(d) OTHER DEFINITIONS.—For purposes of this
17 section—

18 “(1) OIL DISCHARGE.—The term ‘oil discharge’
19 means any discharge (as defined in section 1001 of
20 the Oil Pollution Act of 1990) of oil (as defined in
21 such section 1001).

22 “(2) HAZARDOUS SUBSTANCE RELEASE.—The
23 term ‘hazardous substance release’ means any re-
24 lease (as defined in section 101 of the Com-
25 prehensive Environmental Response, Compensation,

1 and Liability Act of 1980) of any hazardous sub-
2 stance (as defined in such section 101).

3 “(e) TREATMENT OF CERTAIN INSURANCE PRO-
4 CEEDS, ETC.—Gross income shall include any com-
5 pensation by insurance or otherwise received with respect
6 to costs for which a deduction is disallowed under sub-
7 section (a).”

8 (b) PROHIBITION AGAINST OFFSET BY NET OPERAT-
9 ING LOSS DEDUCTION.—Section 172 of such Code is
10 amended by redesignating subsection (i) as subsection (j)
11 and by inserting after subsection (h) the following new
12 subsection:

13 “(i) LIMITATION ON USE TO OFFSET DEDUCTIONS
14 DISALLOWED UNDER SECTION 280I.—The deduction al-
15 lowed under this section shall not reduce taxable income
16 for any taxable year to an amount less than the amount
17 disallowed under section 280I for such taxable year. Ap-
18 propriate adjustments in the application of subsection
19 (b)(2) shall be made to take into account the provisions
20 of this subsection.”

21 (c) CLERICAL AMENDMENT.—The table of sections
22 for part IX of subchapter B of chapter 1 of such Code
23 is amended by adding at the end thereof the following new
24 item:

“Sec. 280I. Disallowance of certain oil or hazardous substance
cleanup costs.”

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply in the case of discharges or re-
3 leases on or after March 23, 1989.

○

HJR 45

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 2, 1992

FURTHER REFERRALS:

Date of Committee Action: 3/9/92

The FINANCE Committee considered:

HJR 45

HOUSE JOINT RESOLUTION NO. 45

REAPPORTIONMENT BOARD & REAPPORTIONMENT

Proposing amendments to the Constitution of the State of Alaska relating to reapportionment of the legislature.

RECOMMENDATIONS:

be replaced with CS HJR 45 (Jud) the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) Office of Gov 1/29/92

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Eileen P. Mullen</u> Mullen	✓	<u>James Barnes</u> Barnes	X		
<u>Chick Savarese</u> Savarese	✓	<u>Bert Sharp</u> Sharp			X
<u>Mark Boyer</u> Boyer	X	<u>Roll E. Phillips</u> R. Phillips		✓	
<u>Tam Brown</u> Brown	✓				
<u>John Koponen</u> Koponen	✓				
<u>John Jacko</u> Jacko	✓				
<u>Ronald J. Hansen</u> Hansen	X				
<u>J. Ulmer</u> Ulmer	X				

Mike ... E.O. ... P.H.A. 1.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HJR 45

Revision Date: _____
Title: Amendment to the Constitution-Reapportionment of
the legislature.
Sponsor: House Judiciary Committee
Requestor: House State Affairs

Department Affected: Office of the Governor-Elections
BRU: Division of Elections
Component: II - Primary and General Elections

COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) * This figure covers cost of inclusion of information about this issue in the Official Election Pamphlet as required by AS 15.58, and programming for Datavote counting of votes cast on this measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing of an additional ballot card, the fiscal impact would be: 53.4.

Prepared by: Elizabeth Ziegler, Deputy Director
Division: Elections

Phone: 465-4611
Date: 01/10/92

Approved by Commissioner: *W. H. ...*
Agency: Office of the Governor

Date: 01/10/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

CS FOR HOUSE JOINT RESOLUTION NO. 45 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/2/92
Referred: Finance

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to
2 reapportionment of the legislature.

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

4 * Section 1. Article II, sec. 2, Constitution of the State of Alaska, is amended to read:

5 SECTION 2. MEMBERS' QUALIFICATIONS. A member of the legislature shall be
6 a qualified voter who has been a resident of Alaska for at least three years and, except as
7 provided in Section 12 of Article VI, of the district from which elected for at least one year,
8 immediately preceding his filing for office. A senator shall be at least twenty-five years of age
9 and a representative at least twenty-one years of age.

10 * Sec. 2. Article VI, sec. 1, Constitution of the State of Alaska, is amended to read:

11 SECTION 1. ELECTION DISTRICTS. Members of the house of representatives shall
12 be elected by the qualified voters of the respective election districts. The boundaries of the
13 election districts shall be set under this article after each decennial census of the United
14 States [UNTIL REAPPORTIONMENT, ELECTION DISTRICTS AND THE NUMBER OF
15 REPRESENTATIVES TO BE ELECTED FROM EACH DISTRICT SHALL BE AS SET
16 FORTH IN SECTION 1 OF ARTICLE XIV].

1 * Sec. 3. Article VI, sec. 2, Constitution of the State of Alaska, is amended to read:

2 SECTION 2. SENATE DISTRICTS. Members of the senate shall be elected by the
3 qualified voters of the respective senate districts. The boundaries of the senate districts shall
4 be set under this article after each decennial census of the United States [SENATE
5 DISTRICTS SHALL BE AS SET FORTH IN SECTION 2 OF ARTICLE XIV, SUBJECT TO
6 CHANGES AUTHORIZED IN THIS ARTICLE].

7 * Sec. 4. Article VI, sec. 3, Constitution of the State of Alaska, is amended to read:

8 SECTION 3. REAPPORTIONMENT OF HOUSE AND SENATE. The
9 Reapportionment Board [GOVERNOR] shall reapportion the house of representatives and the
10 senate immediately following the official reporting of each decennial census of the United
11 States. Reapportionment shall be based upon resident [CIVILIAN] population within each
12 election district as reported by the census.

13 * Sec. 5. Article VI, sec. 4, Constitution of the State of Alaska, is amended to read:

14 SECTION 4. METHOD. Reapportionment shall be by the method of equal proportions,
15 The Reapportionment Board shall establish single-member election districts unless, in the
16 judgment of the board, circumstances require the use of dual-member election districts or
17 a combination of single-member and dual-member election districts. A dual-member
18 election district may not elect more than two representatives. A senate district shall be
19 composed of one dual-member election district or two contiguous single-member election
20 districts, but each senate district shall elect only one senator [, EXCEPT THAT EACH
21 ELECTION DISTRICT HAVING THE MAJOR FRACTION OF THE QUOTIENT OBTAINED
22 BY DIVIDING TOTAL CIVILIAN POPULATION BY FORTY SHALL HAVE ONE
23 REPRESENTATIVE].

24 * Sec. 6. Article VI, sec. 6, Constitution of the State of Alaska, is amended to read:

25 SECTION 6. DISTRICT BOUNDARIES. Election districts and senate districts
26 [REDISTRICTING. THE GOVERNOR MAY FURTHER REDISTRICT BY CHANGING THE
27 SIZE AND AREA OF ELECTION DISTRICTS, SUBJECT TO THE LIMITATIONS OF THIS
28 ARTICLE. EACH NEW DISTRICT SO CREATED] shall be formed of contiguous and compact
29 territory containing as nearly as practicable a relatively integrated socio-economic area. [EACH
30 SHALL CONTAIN A POPULATION AT LEAST EQUAL TO THE QUOTIENT OBTAINED
31 BY DIVIDING THE TOTAL CIVILIAN POPULATION BY FORTY.] Consideration may be
32 given to local government boundaries. Drainage and other geographic features shall be used in

1 describing boundaries wherever possible. Election district and senate district boundaries may
2 not be drawn with the intent of giving an advantage to a political party.

3 * Sec. 7. Article VI, sec. 8, Constitution of the State of Alaska, is amended to read:

4 SECTION 8. REAPPORTIONMENT BOARD. (a) There shall be a Reapportionment
5 Board [THE GOVERNOR SHALL APPOINT A REAPPORTIONMENT BOARD TO ACT IN
6 AN ADVISORY CAPACITY TO HIM]. It shall consist of nine [FIVE] members, all of whom
7 shall be residents of the state and none of whom may be public employees or officials. At
8 least one member [EACH] shall be appointed from each judicial district established by law
9 under Section 1 of Article IV and no more than five members shall be appointed from a
10 judicial district. Members shall be residents of the judicial district from which appointed
11 [THE SOUTHEASTERN, SOUTHCENTRAL, CENTRAL, AND NORTHWESTERN SENATE
12 DISTRICTS]. Appointments shall be made without regard to political affiliation, and no more
13 than five members may be members of the same political party. Board members shall be
14 compensated as provided by law.

15 (b) Board members shall be appointed during the first fifteen days of the first
16 regular session of the legislature that convenes in a year following a year in which the
17 census is taken. Board members shall be appointed as follows:

18 (1) one member shall be appointed by the governor;

19 (2) two members shall be appointed by a caucus of the members of the house
20 of representatives representing the political party with the largest number of members in
21 the house of representatives;

22 (3) two members shall be appointed by a caucus of the members of the house
23 of representatives representing the political party with the second largest number of
24 members in the house of representatives;

25 (4) two members shall be appointed by a caucus of the members of the senate
26 representing the political party with the largest number of members in the senate; and

27 (5) two members shall be appointed by a caucus of the members of the senate
28 representing the political party with the second largest number of members in the senate.

29 (c) The legislature shall provide by law for a random selection process to make the
30 appointments of board members under this section. If the legislature fails to make
31 provision by law, the governor may establish a random selection process to make the
32 appointments.

1 (d) A board member may be removed for misfeasance or nonfeasance in office by
2 the entity that appointed the member. A vacancy on the board shall be filled by the entity
3 that appointed the member whose seat is vacant.

4 (e) A member of the Reapportionment Board may not be a candidate for the
5 legislature in the two general elections following the adoption of a final reapportionment
6 plan under this article.

7 * Sec. 8. Article VI, sec. 9, Constitution of the State of Alaska, is amended to read:

8 SECTION 9. ORGANIZATION. The board shall elect one of its members chairman and
9 may employ temporary assistants. Concurrence of five [THREE] members is required for a
10 ruling or determination, except for the adoption of a final reapportionment plan, but a lesser
11 number may conduct hearings or otherwise act for the board.

12 * Sec. 9. Article VI, sec. 10, Constitution of the State of Alaska, is amended to read:

13 SECTION 10. REAPPORTIONMENT PLAN [AND PROCLAMATION]. (a) Except
14 as provided under (c) of this section, no later than the date that is eighteen months before
15 the date of the first general election following the official reporting of each decennial census,
16 the Reapportionment Board shall adopt a proposed reapportionment plan. The board shall
17 hold public hearings on the proposed plan and shall hold at least one hearing in each
18 judicial district established by law under Section 1 of Article IV. No later than the date
19 that is fourteen months before the date of the first general election following the official
20 reporting of each decennial census, the board shall adopt a final reapportionment plan
21 [WITHIN NINETY DAYS FOLLOWING THE OFFICIAL REPORTING OF EACH
22 DECENNIAL CENSUS, THE BOARD SHALL SUBMIT TO THE GOVERNOR A PLAN FOR
23 REAPPORTIONMENT AND REDISTRICTING AS PROVIDED IN THIS ARTICLE. WITHIN
24 NINETY DAYS AFTER RECEIPT OF THE PLAN, THE GOVERNOR SHALL ISSUE A
25 PROCLAMATION OF REAPPORTIONMENT AND REDISTRICTING. AN
26 ACCOMPANYING STATEMENT SHALL EXPLAIN ANY CHANGE FROM THE PLAN OF
27 THE BOARD]. The final reapportionment plan adopted under this section shall set out
28 election district and senate district boundaries and [REDISTRICTING] shall be effective for
29 the election of members of the legislature until after the official reporting of the next decennial
30 census.

31 (b) Adoption of a final reapportionment plan shall require the affirmative votes of
32 six members of the board.

1 (c) If the board is unable to adopt a final plan by the date specified in (a) or (d)(3)
2 of this section, the supreme court shall appoint a panel of three superior court judges. The
3 board shall, within ten days, transmit to the panel the three proposed plans receiving the
4 greatest number of votes by the board. Within forty-five days of the transmittal, from
5 among the plans received from the board the panel shall adopt one of the proposed plans
6 without change as a final plan. The supreme court shall adopt rules for proceedings before
7 the three-judge panel under this subsection.

8 (d) If the data from a decennial census is not available to the board by the date that
9 is sixteen months before the date of the first general election following a decennial census
10 year,

11 (1) a plan adopted shall not take effect until the second general election
12 following the decennial census year;

13 (2) for the first general election following the decennial census year, members
14 of the legislature shall be elected from districts in existence as a result of the previous
15 reapportionment plan or proclamation; and

16 (3) the board shall adopt a proposed plan within four months of the receipt
17 of the census data and shall adopt a final plan within four months of the adoption of the
18 proposed plan.

19 * Sec. 10. Article VI, sec. 11, Constitution of the State of Alaska, is amended to read:

20 SECTION 11. ENFORCEMENT. Any qualified voter may apply to the superior court
21 to compel the governor, the members of the legislature, or the Reapportionment Board [BY
22 MANDAMUS OR OTHERWISE,] to perform their [HIS] reapportionment duties or to correct
23 any error in redistricting or reapportionment. Application to compel performance of [THE
24 GOVERNOR TO PERFORM HIS] reapportionment duties must be filed within thirty days of
25 the date that an act is required to be done under [EXPIRATION OF EITHER OF THE TWO
26 NINETY-DAY PERIODS SPECIFIED IN] this article. Application to compel correction of any
27 error in redistricting or reapportionment must be filed within thirty days following the adoption
28 of the final plan by the Reapportionment Board or by the three-judge superior court panel
29 appointed by the supreme court under Section 10 of this article [PROCLAMATION].
30 Original jurisdiction in these matters is hereby vested in the superior court. On appeal, the cause
31 shall be reviewed by the supreme court upon the law and the facts. A disposition by the
32 superior court and an appeal before the supreme court under this section shall have priority

1 over all other matters pending before the respective court. The superior court shall render
2 a decision in a matter before it under this section not more than ninety days after
3 application is made to compel correction, and the supreme court shall render a decision in
4 a matter on appeal not more than forty-five days after submission of a complete record of
5 appeal.

6 * Sec. 11. Article XV, Constitution of the State of Alaska, is amended by adding a new section to
7 read:

8 SECTION 29. REAPPORTIONMENT OF LEGISLATURE FOLLOWING 1990
9 CENSUS. (a) A proclamation of reapportionment issued by the governor following the 1990
10 census shall remain in effect until the decennial census in the year 2000 if, on the effective date
11 of the 1992 amendments to Article VI,

12 (1) the proclamation has been in effect for over thirty days without judicial review
13 being sought;

14 (2) the proclamation has been upheld by the superior court under Section 11 of
15 Article VI and the time for appeal to the supreme court has run without an appeal being taken;

16 (3) the proclamation has been upheld by the supreme court and the time to request
17 reconsideration of the supreme court's ruling has run;

18 (4) the proclamation is still subject to a request for judicial review under Section
19 11 of Article VI and a request is not made in a timely fashion; or

20 (5) the proclamation is undergoing judicial review under Section 11 of Article VI
21 and the proclamation is upheld by the courts.

22 (b) Reapportionment of the legislature following the 1990 census shall be done by the
23 Reapportionment Board established in Section 8 of Article VI, as amended by the 1992
24 amendments, if, on the effective date of the 1992 amendments to Article VI,

25 (1) there is no valid proclamation of reapportionment in effect because of judicial
26 invalidation of a prior proclamation; or

27 (2) a proclamation of reapportionment is undergoing judicial review under Section
28 11 of Article VI and that judicial review results in the invalidation of that proclamation or results
29 in a court order making significant and substantial changes to that proclamation.

30 * Sec. 12. Article VI, secs. 5 and 7, and Article XIV, Constitution of the State of Alaska, are
31 repealed.

32 * Sec. 13. The amendments proposed by this resolution shall be placed before the voters of the state

1 at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and
2 the election laws of the state.

Alaska State Legislature



House of Representatives House Judiciary Committee Chairman Dave Donley

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

MEMORANDUM

TO: Representative Mike Navarre, Co-Chair
Representative Eileen MacLean, Co-Chair
House Finance Committee

FROM: Representative Dave Donley, Chair D
House Judiciary Committee

RE: Scheduling CSHJR 45 (JUD), "Proposing amendments to the Constitution of the State of Alaska relating to reapportionment of the legislature".

DATE: March 3, 1992

The House Judiciary Committee has completed its work on CSHJR 45 (Jud) and, on behalf of the committee, I am requesting an expeditious hearing on this important piece of legislation.

After more than three decades of contentious debate and litigation over every reapportionment effort, we felt that it was time to recognize that our constitution's reapportionment framework does not and cannot work in the manner envisioned by the framers.

Why amend the state constitution regarding reapportionment?

First

Much of the Alaska Constitution's language on reapportionment is in violation of the federal constitution or is obsolete. Because of this, it is impossible by reading our state constitution to obtain an accurate explanation of the reapportionment process in Alaska. The following sections or portions of sections of Article VI of the Alaska Constitution are either unconstitutional or are obsolete:

Section 2, Senate Districts, is not constitutional as written. In Wade v. Nolan, 414 P.2d 689 (Alaska 1966), the Alaska Supreme Court concluded that the state's senate districts did not comport with the U.S. Constitution.

Section 3, Reapportionment of House, is outmoded in part and unconstitutional in part. The constitution gives reapportionment authority to the governor and the board only as to the house. However, since Nolan, this authority has been interpreted to allow reapportionment of the senate as well as the house. The second sentence, requiring reapportionment to be based solely on civilian population, was declared unconstitutional in Egan v. Hammond, 502 P.2d 856 (Alaska 1972), because it disenfranchises the military.

Sections 4 and 5, Method of Reapportionment and Districts, are inconsistent with U.S. Supreme Court decisions and are no longer considered by the reapportionment boards or cited by the courts in their reapportionment decisions.

Section 6, Redistricting, insofar as it refers to the retaining or combining of election districts provided for in Sections 4 and 5 and refers to civilian population, is unconstitutional. Otherwise Section 6 is still viable.

Section 7, Modification of Senate Districts, is clearly unconstitutional and dead. Its intent was to preserve senate districts based on geographic area and not population.

Sections 8 - 11 retain their viability.

Second

Alaska is the only state which places exclusive power of reapportionment with the governor. The reason for this unique system no longer exists and Alaska should adopt a fairer system in conformity with other states.

The framers of the Alaska Constitution decided to provide for reapportionment of the legislature through a reapportionment board in the executive branch rather than allowing the legislature to reapportion itself, as is the case in a vast majority of the states.