SCOMM

#49:23

Linda

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM August 26, 1985

SUBJECT: Initiative petition regarding legislative salaries (Work Order No. 14-1355)

TO: Senator Mitch Abood
Chairman, Legislative Salary Commission

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have asked several questions regarding the initiative petition relating to the compensation for state legislators.

1. [redacted]

Article XI, Section 7, of the constitution of the State of Alaska prohibits the use of initiatives to make or repeal appropriations. The Alaska Supreme Court has recognized that generally appropriations may be defined as

> The setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other. Thomas v. Rosen, 569 P2d 793 (1977) at 796. (Citations omitted.)

If the legislative compensation initiative withdrew a sum of money from the general fund then it would be an appropriation and prohibited by the constitution. However, the initiative merely sets the level of a legislator's salary if an appropriation bill is enacted. [redacted]

2. If the initiative petition is adopted, when does it take effect and when can the legislature amend it?

The state constitution provides that following an election, the lieutenant governor shall certify the results of the election. [redacted] Article XI, Section 6.

This raises a question concerning the distinction between amending or repealing an initiated law. In Warren v. Thomas, 568 P.2d 400 (1977), the court considered whether legislative amendments to AS 39.50, the conflict of interest law which was enacted by initiative, were so substantial as to constitute a repeal of the initiative. The court held that although there were considerable language changes made by the amendments, they did not rise to the level of a legislative repeal. The court, citing Warren v. Boucher, 543 P.2d 731 (1975), stated:

> The central issue in the case at bar is whether the legislature has exceeded that broad power (to amend an initiative) by passing an amendment which so vitiates the initiative as to "constitute its repeal." Id at 737. Warren argues that the changes are so drastic that they make a mockery of the law, that the trial court erred in concluding the legislation was merely "housekeeping," and that the amendments to AS 39.50 amount to a repeal of the law. We disagree. "(A)n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." Meyers v. Board of Sup'rs of Los Angeles County, 110 Cal.App.2d 623, 243 P.2d 38, 42 (1952) . . .; The implied repeal of an act is disfavored and will be limited to that which is necessary to carry out the intent of the legislature. (Citations omitted). In the case at bar, one section and two subsections were expressly repealed in 1975 when the legislature amended the initiated law. Sec. 26, ch. 25, SLA 1975.
>
> Other sections were impliedly repealed by virtue of inconsistent amendatory provisions. However, this does not necessarily mean that the act as a whole was repealed. When AS 39.50 was amended certain of its provisions or portions thereof were repealed and reenacted

> in a modified form. Where it is reasonable to do so, these provisions are considered to be a continuation of the original law which is to be construed with amendments. (Citations omitted.)
>
> Of course there remains the question whether the amendments so emasculate the law that it is effectively repealed. We conclude that they do not. There are considerable language changes, but these clarify and render the law more precise. The fines for violations of the law have been reduced but the penalties are still significant. See AS 39.50.060(a) and AS 39.50.070. Finally, the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure. Id at 403.

If the legislative compensation initiative is adopted, the legislature may amend it at any time but must wait two years before substantially changing it. [redacted]

3. If the legislature enacts legislation establishing a commission to set legislative compensation before the initiative election, what effect will that have on the initiative petition?

Article XI, section 4 of the Alaska Constitution states that

> If, before the election (on an initiative), substantially the same measure has been enacted, the petition is void.

The question, then, is whether legislation implementing a compensation commission is substantially the same as the initiative. The initiative is straightforward. It reinstates the provisions for legislative salaries and per diem

that the legislature changed in 1983. Section 1 reenacts provisions for payment of per diem; section 2 reduces legislative salaries from range 22 to range 10; and section 3 requires the reporting of payments to legislators for salaries, per diem and additional allowances.

Creation of a legislative compensation commission would not have an effect "substantially the same as" the enactment of the initiative petition. The commission would presumably be given authority to determine the appropriate level of legislative salaries and allowances.

In Warren v. Boucher, 543 P.2d 731, (1975), the Alaska Supreme Court found that an initiative regarding campaign financing was substantially the same as an act that the legislature passed in the session following the filing of the petition. The court said

> If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative. (Emphasis added) Id at 736.

Boucher was decided by a 3 - 2 majority, with a strong dissent finding that the measures were not substantially similar.

[redacted]

4. What provisions in the initiative could be changed in legislation adopted next session without removing the legislation from being "substantially similar" to the initiative?

[redacted] The legislature could certainly make changes to the language to conform the style to the drafting manual and also could make minor changes (such as adding to subsection (d) of section 1 that in no case could a legislator receive more than the appropriate per diem rate for expenses) or to section 3's system of reporting (changing dates, for example, or the organization of the report) as long as the basic information sought by the initiative continued to be included.

[redacted] The section could not be less complicated. While the court will consider the entire package of the initiative, clearly section 2 is the centerpiece and evaluation of the complexity and of the intended substance must begin with it. [redacted]

5. If the legislature enacts legislation "substantially similar" to the initiative, thereby removing the initiative from the ballot, what restrictions are there on subsequent legislation concerning legislative compensation.

If the initiative does not pass, either because the legislature enacts measures found by the lieutenant governor to be substantially similar to the subject of the initiative or because the voters decide against the merits of the initiative, then the legislature may act in this subject area without regard to the proposed initiative. There would be no restrictions on subsequent legislation.

If I can be of further assistance please advise.

TC:lmb
L5/010

INITIATIVES AND REFERENDA

INFORMATION

The initiative and referendum procedures appear in AS 15.45.010-15.45.460. The information contained in these sheets is taken from the statutes, however, interested sponsoring committees should still read the statutes.

DEFINITIONS

The initiative is the procedure by which the law-making powers of the legislature are exercised by the people. It enables a specified number of voters to propose the enactment or repeal of a law and secure its submission to the general electorate.

The referendum is the procedure by which the people approve or reject a measure passed by the legislature. The referendum petition must be filed within 90 days after the adjournment of the legislative session at which the act was passed.

RESTRICTIONS

Initiative

No initiative may be proposed:

(1) to dedicate revenues;
(2) to make or repeal appropriations;
(3) to create courts;
(4) to define the jurisdiction of courts or prescribe their rules; or
(5) to enact local or special legislation.

Referendum

No referendum may be applied:

(1) to dedication of revenues;
(2) to appropriation;
(3) to local or special legislation; or
(4) to laws necessary for the immediate preservation of the public peace, health, or safety.

FILING OF APPLICATION PROCEDURES

Initiative

An initiative is proposed by filing an application with the lieutenant governor. A deposit of $100 must accompany this application. The form of an application must include:

(1) the proposed bill to be initiated;
(2) a statement that the sponsors are qualified voters who signed the application with the proposed bill attached;
(3) the designation of an initiative committee of three sponsors who represent all sponsors relating to the initiative; and
(4) the signatures and addresses of no less than 100 qualified voters.

The form of the proposed bill must conform to the following specifications:

(1) it must be confined to one subject;
(2) the subject of the bill must be expressed in the title;
(3) the enacting clause of the bill must be: "Be it enacted by the People of the State of Alaska"; and
(4) the bill must not include restricted subjects. (See "Restrictions" outlined above.)

Referendum

A referendum is proposed by filing an application with the lieutenant governor. A deposit of $100 must accompany the application. The form of the application must include:

(1) the act to be referred;
(2) a statement that the sponsors are qualified voters who signed the application with the proposed bill attached;
(3) the designation of a referendum committee of three sponsors who represent all sponsors relating to the referendum; and
(4) the signatures and addresses of no less than 100 qualified voters.

REVIEW OF APPLICATIONS

Initiative

After review of the application by the Department of Law, the lieutenant governor either certifies the application or denies certification. In either case, he notifies the initiative sponsoring committee of his action.

The lieutenant governor must deny certification if he determines:

(1) that the proposed bill to be initiated is not in the required form;
(2) the application is not substantially in the required form; or
(3) there is an insufficient number of qualified sponsors.

Referendum

Within seven calendar days after the date the application is received, the lieutenant governor must canvass the application. Legal advisement from the Department of Law is obtained. The lieutenant governor either certifies or denies certification and informs the referendum committee of his action.

The lieutenant governor must deny certification if he determines:

(1) the application is not substantially in the required form;
(2) there is an insufficient number of qualified sponsors; or
(3) more than 90 days have expired since the adjournment of the legislative session at which the referred act was passed.

PREPARATION OF PETITIONS

Initiative

If the application is certified, the lieutenant governor prepares petitions containing:

(1) a copy of the proposed bill (if 500 words or less);
(2) an impartial summary of the subject matter of the bill;
(3) a statement of warning;
(4) sufficient space for signatures and addresses; and
(5) other specifications prescribed by lieutenant governor.

The impartial summary will be forwarded to the sponsoring committee for review. If the committee does not like the proposed language, the committee may suggest language for further review. This summary will appear on the ballot if the petition is properly filed.

Referendum

If the application is certified, the lieutenant governor, within 7 calendar days after the date of certification, prepares petitions containing:

(1) a copy of the act to be referred (if 500 words or less);
(2) an impartial summary of the subject matter of the act;
(3) a statement of warning;
(4) sufficient space for signatures and addresses; and
(5) other specifications prescribed by lieutenant governor.

For both the initiative and the referendum, petition books are printed in a quantity which will allow full circulation throught the state. The lieutenant governor keeps a record of the petitions delivered to each sponsor.

FILING OF PETITIONS

Before either an initiative or referendum petition is filed, the petition book must be certified by an affidavit by the sponsor who circulated the petition. This affidavit states:

(1) the person signing the affidavit is a sponsor;
(2) the person is the only circulator of the petition;
(3) the signatures were made in his actual presence; and
(4) the signatures, to the best of the sponsor's knowledge, are those of the persons whose names are signed.

Initiative

The sponsors must file the petition within one year from the time the sponsors received notice from the lieutenant governor that the petitions were ready for delivery to them. If the petition is not filed within one year, the petition has no force or effect.

The petition must be signed by qualified voters:

(a) equal in number to 10% of those who voted in the preceding general election; and

(b) resident in at least two-thirds of the election districts of the state.

(213,173 persons voted in the 1984 General Election. There are 27 election districts in Alaska.)

Referendum

The sponsors must file the petition only within 90 days after the adjournment of the legislative session at which the act was passed.

The petition must be signed by qualified voters:

(a) equal in number to 10% of those who voted in the preceding general election; and

(b) resident in at least two-thirds of the election districts of the state.

REVIEW OF PETITIONS

For either an initiative or a referendum, the lieutenant governor must review it within 60 days from the date the petition was filed. The lieutenant governor then notifies the committee whether the petition was properly or improperly filed and also at which election the proposition will appear on the ballot.

IMPROPER FILING

Initiative

An initiative is improperly filed if:

(1) there is an insufficient number of qualified subscribers; or

(2) the subscribers were not resident in at least two-thirds of the election districts of the state.

Referendum

A referendum is improperly filed if:

(1) there is an insufficient number of qualified subscribers;

(2) the subscribers were not resident in at least two-thirds of the election districts of the state; or

(3) the petition was not filed within 90 days after the adjournment of the legislative session at which the act was passed.

FILING OF SUPPLEMENTARY PETITION

Initiative

If an initiative is improperly filed, the sponsoring committe may amend and correct the petition by circulating and filing a supplementary petition within 30 days of the date the notice was given by the lieutenant governor.

Referendum

If a referendum is improperly filed, the sponsoring committee may amend and correct the petition by circulating and filing a supplementary petition within 10 days of the date that notice was given by the lieutenant governor. However, 90 days must not have expired since the adjournment of the legislative session at which the act was passed.

If the initiative or referendum is properly filed, the $100 deposit will be refunded.

PLACING PROPOSITION ON BALLOT

Initiative

The proposition will be placed on the election ballot of the first statewide general, special or primary election that is held after:

(1) the petition and any supplementary petition has been filed;
(2) a legislative session has convened and adjourned; and
(3) a period of 120 days has expired since the adjournment of the legislative session.

Referendum

The proposition will be placed on the election ballot for the first statewide general, special or primary election that is held more than 180 days after adjournment of the legislative session at which the act was passed.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM August 12, 1985

SUBJECT: Relation of initiative petition and statute

TO: Frank Bickford
Legislative Salary Commission

FROM: Billy G. Berrier
Director
Division of Legal Services

You have asked whether a vote on an initiative may be precluded by enactment of legislation and if so what is required in the statute.

If before the election substantially the same measure has been enacted the initiative petition is void.

Section 4 of Art. XI of the Constitution of the State of Alaska provides:

> SECTION 4. INITIATIVE ELECTION. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

The determination of whether the enactment voids the petition is made by the lieutenant governor with formal concurrence of the attorney general under AS 15.45.210 which provides:

> Sec. 15.45.210. DETERMINATION OF VOID PETITION.
>
> If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the

> legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.

The question of what constitutes "substantially the same measure" has been before our Supreme Court in Warren v. Boucher, 543 P.2d 731 (Alaska 1975). In that case an initiative regarding campaign financing had been filed and an act was passed in the session following the filing on the same subject. The court held that the act, despite some differences, voided the petition saying:

> The words "substantial" or "substantially" are relative, inexact terms. Their meaning is quite elusive.
>
> Application of Scroggins, 103 Cal. App.2d 281, 229 P.2d 489 (1951). The meaning of such terms can be derived only be reference to all the circumstances surrounding the context in which they are used. Atcheson, T. & S.F. Ry. v. Kings county Water District, 47 Cal.2d 140, 302 P.2d 1, 3 (1956). So here, we believe that the term "substantially the same measure" must be viewed against the total structure contemplated in Art. XI of our constitution in the matter of direct legislation.
>
> . . .
>
> It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.
>
> Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The

> broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative.

The court in that case also held constitutional the delegation of the power to determine whether the petition was void to the lieutenant governor and the attorney general.

The case was decided on a 3 to 2 vote with the dissent taking the position that the act was not substantially the same measure.

A copy of the case is enclosed.

It is clear that an act need not be identical in order to void a petition. However, the degree of deviation allowed is a factual matter that must be determined by comparing the petition and the statute enacted.

BGB:ojb
J16/029

Enclosure

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FREE COPY

[redacted]

The above Sponsor is duly authorized to circulate

INITIATIVE PETITION

ENTITLED "PRESCRIBING COMPENSATION FOR STATE LEGISLATORS"

PROPOSITION #83-04

If enacted, this proposed bill would amend state law providing for compensation to state legislators. It would establish the monthly salary for legislators at Step A, Range 10 (currently equal to $1,757) of the salary schedule in AS 39.27.011(a). The bill would also authorize per diem payments for legislators while the legislature is in session. When not in session, legislators on interim committee business would receive reimbursement of actual expenses only. In addition, the proposed bill would require the legislative fiscal officer to report annually to the Office of Management and Budget on all vouchers approving payments to legislators during the year.

WARNING

"A PERSON WHO SIGNS A NAME OTHER THAN HIS OWN ON THIS PETITION, OR WHO KNOWINGLY SIGNS HIS NAME MORE THAN ONCE FOR THE SAME PROPOSITION AT ONE ELECTION, OR WHO SIGNS THE PETITION KNOWING HE OR SHE IS NOT A QUALIFIED VOTER, UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN $1,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH. (AS 15.45.100)"

(See next page for text of bill.)

AN INITIATIVE

For An Act Entitled: "An Act relating to the compensation for state legislators."

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

*Section 1. AS 24.15.010 is reenacted to read:

Sec. 24.15.010. Legislature per diem.

(a) During the legislative session each member of the legislature is entitled to receive per diem at the same rate allowed for a state employee under AS 39.20.110 and 39.20.160, including regional variations in the rate where applicable.

(b) A legislator is entitled to receive per diem at the short-term rate during a legislative session if he does not live in his place of permanent residence during the session.

(c) A legislator is entitled to receive per diem at the long-term rate during a legislative session if he lives in his place of permanent residence during the session.

(d) When the legislature is not in session, instead of receiving per diem a legislator is entitled to be reimbursed for actual expenses incurred while he is on committee business for an interim committee of the legislature in a place which is not his place of permanent residence.

(e) In this section
(1) "long-term rate" means the long-term per diem rate established in regulations adopted by the commissioner of administration under AS 39.20.160;
(2) "short-term rate" means the short-term per diem rate established in regulations adopted by the commissioner of administration under AS 39.20.160.

*Section 2. AS 24.15.020 is amended to read:

Sec. 24.15.020. Salary of legislators. The monthly salary for each member of the legislature is equal to Step A, Range 10, [22] of the salary schedule in AS 39.27.011(a) for Juneau, Alaska. The president of the senate and the speaker of the house of representatives are each entitled to an additional $500 a year during tenure of office.

*Section 3. AS 24.15.040 is amended to read:

Sec. 24.15.040. Method of Payment. Salaries, per diem and additional allowances for members of the legislature shall be paid by warrants drawn on vouchers approved by the legislative fiscal officer. The Legislative fiscal officer shall, by January 31 of each calendar year, file with the Office of Management and Budget a report of all vouchers approved for payment pursuant to this section during the preceding calendar year. The report shall provide, by legislator, the date of each voucher, the amount paid and the basis for approval for payment.

*Section 4. Any provisions of the Alaska Statutes inconsistent with this Act are hereby repealed.

MEMORANDUM

State of Alaska

TO: Honorable Steve McAlpine [redacted]

DATE: August 31, 1[redacted]

FILE NO: 366-108-84

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch [redacted]

By: Diane T. Colvin
Assistant Attorney General

SUBJECT: Review of Application for Initiative Petition Regarding Compensation of Legislators

You have asked us to review the application for an initiative petition for a bill concerning salary and per diem payments for legislators. [redacted]

The application meets the requirements of AS 15.45.030 in that it includes a proposed bill, a statement that the sponsors are qualified voters who signed the application with the proposed bill attached, and a designation of a three-member initiative committee. The remaining requirement of that section is that the application contain the signatures and addresses of not less than 100 qualified voters. Your office must determine that this requirement has been met before you issue a petition.

The proposed bill meets the requirements of AS 15.45.040, in that it is confined to one subject, the subject is expressed in the title, and the enacting clause is in proper form. We also conclude that the bill contains no subjects restricted by AS 15.45.010. That section restates the restrictions provided in article XI, section 7 of the state constitution, as follows:

> The law-making powers assigned to the legislature may be exercised by the people through the initiative. [redacted] to create courts, to define the jurisdiction of courts or prescribe their rules, or to enact local or special legislation.

AS 15.45.010.

[redacted] repeal of an appropriation, since it could

[redacted] There is a question whether the initiative may be made effective to prohibit expenditure of funds appropriated by the legislature because of this constitutional restriction on the use of the initiative to repeal an appropriation. [redacted] If the initiative may be used to prohibit expenditure of funds already appropriated, then the constitutional limitation on the use of the initiative to repeal appropriations would appear to have no real meaning. It remains to be decided whether the initiative would be effective to bar expenditure of funds already appropriated at its effective date. In the meantime, we rely on the general rule that the right to enact legislation by initiative is to be interpreted liberally. Thomas v. Bailey, 595 P.2d 1 (Alaska 1979).

There is also a question as to whether an initiative may be used to repeal a law. The proposed bill would, if enacted, have the effect of repealing the salary currently set by law for legislators, and, in sec. 4, states:

> Any provisions of the Alaska Statutes inconsistent with this Act are hereby repealed.

Doubts regarding the ability to repeal by initiative are based on the plain language of Article XI, § 1:

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

An Opinion of this office dated April 14, 1975 finds that an initiative may be used to repeal a law. There is authority to the contrary, however, and the question has yet to be decided by the Alaska Supreme Court. See, e.g., Forman v. Eagle Thrifty Drugs and Markets, Inc., 516 P.2d 1234 (Nev. 1974).

These and other questions regarding the implementation or constitutionality of the proposed bill should not affect your review of the form of the application. Boucher v. Engstrom, 528 P.2d 456 (Alaska 1974). See also our memorandum dated April 15, 1977, stating that the constitutionality of a proposed initiative is not to be decided until it is enacted.

A proposed ballot title and impartial summary is attached. If you have further questions, please contact us.

DTC:eja

"PRESCRIBING COMPENSATION FOR STATE LEGISLATORS"

If enacted, this proposed bill would amend state law providing for compensation to state legislators. It would establish the monthly salary for legislators at Step A, Range 10 of the salary schedule in AS 39.27.011(a), currently set at $1,757. The bill would also authorize per diem payments for legislators while the legislature is in session. When not in session, legislators on interim committee business would receive reimbursement of actual expenses only. In addition, the proposed bill would require the legislative fiscal officer to report annually to the Office of Management and Budget on all vouchers approving payments to legislators during the year.

AN INITIATIVE

For An Act Entitled: "An Act relating to the compensation for state legislators."

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

*Section 1. AS 24.15.010 is reenacted to read:

Sec. 24.15.010. Legislature per diem.

(a) During the legislative session, each member of the legislature is entitled to receive per diem at the same rate allowed for a state employee under AS 39.20.110 and 39.20.160, including regional variations in the rate where applicable.

(b) A legislator is entitled to receive per diem at the short-term rate during a legislative session if he does not live in his place of permanent residence during the session.

(c) A legislator is entitled to receive per diem at the long-term rate during a legislative session if he lives in his place of permanent residence during the session.

(d) When the legislature is not in session, instead of receiving per diem a legislator is entitled to be reimbursed for actual expenses incurred while he is on committee business for an interim committee of the legislature in a place which is not his place of permanent residence.

(e) In this section
(1) "long-term rate" means the long-term per diem rate established in regulations adopted by the commissioner of administration under AS 39.20.160;
(2) "short-term rate" means the short-term per diem rate established in regulations adopted by the commissioner of administration under AS 39.20.160.

*Section 2. AS 24.15.020 is amended to read:

Sec. 24.15.020. Salary of legislators. The monthly salary for each member of the legislature is equal to Step A, Range 10, [22] of the salary schedule in AS 39.27.011(a) for Juneau, Alaska. The president of the senate and the speaker of the house of representatives are each entitled to an additional $500 a year during tenure of office.

*Section 3. AS 24.15.040 is amended to read:

Sec. 24.15.040. Method of Payment. Salaries, per diem and additional allowances for members of the legislature shall be paid by warrants drawn on vouchers approved by the legislative fiscal officer. The Legislative fiscal officer shall, by January 31 of each calendar year, file with the Office of Management and Budget a report of all vouchers approved for payment pursuant to this section during the preceding calendar year. The report shall provide, by legislator, the date of each voucher, the amount paid and the basis for approval for payment.

*Section 4. Any provisions of the Alaska Statutes inconsistent with this Act are hereby repealed.

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FILE COPY

[redacted]

The above Sponsor is duly authorized to circulate

INITIATIVE PETITION

ENTITLED "PRESCRIBING COMPENSATION FOR STATE LEGISLATORS"

PROPOSITION #83-04

If enacted, this proposed bill would amend state law providing for compensation to state legislators. It would establish the monthly salary for legislators at Step A, Range 10 (currently equal to $1,757) of the salary schedule in AS 39.27.011(a). The bill would also authorize per diem payments for legislators while the legislature is in session. When not in session, legislators on interim committee business would receive reimbursement of actual expenses only. In addition, the proposed bill would require the legislative fiscal officer to report annually to the Office of Management and Budget on all vouchers approving payments to legislators during the year.

WARNING

"A PERSON WHO SIGNS A NAME OTHER THAN HIS OWN ON THIS PETITION, OR WHO KNOWINGLY SIGNS HIS NAME MORE THAN ONCE FOR THE SAME PROPOSITION AT ONE ELECTION, OR WHO SIGNS THE PETITION KNOWING HE OR SHE IS NOT A QUALIFIED VOTER, UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN $1,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH. (AS 15.45.100)"

(See next page for text of bill.)

JOINT SPECIAL COMMITTEE ON LEGISLATIVE SALARIES

INITIATIVE PETITION

ENTITLED "PRESCRIBING COMPENSATION FOR STATE LEGISLATORS"

PROPOSITION #83-04

IF ENACTED, THIS PROPOSED BILL WOULD AMEND STATE LAW PROVIDING FOR COMPENSATION TO STATE LEGISLATORS. IT WOULD ESTABLISH THE MONTH SALARY FOR LEGISLATORS AT STEP A, RANGE 10 (CURRENTLY EQUAL TO $1,757) OF THE SALARY SCHEDULE IN AS 39.27.011(a). THE BILL WOULD ALSO AUTHORIZE PER DIEM PAYMENTS FOR LEGISLATORS WHILE THE LEGISLATURE IS IN SESSION. WHEN NOT IN SESSION, LEGISLATORS ON INTERIM COMMITTEE BUSINESS WOULD RECEIVE REIMBURSEMENT OF ACTUAL EXPENSES ONLY. IN ADDITION, THE PROPOSED BILL WOULD REQUIRE THE LEGISLATIVE FISCAL OFFICER TO REPORT ANNUALLY TO THE OFFICE OF MANAGEMENT AND BUDGET ON ALL VOUCHERS APPROVING PAYMENTS TO LEGISLATORS DURING THE YEAR.

personnel rule, of any employee of the state, if the employee does not purport to speak or act in an official capacity.

(b) The heads of the administrative departments of the state may adopt internal management regulations for their respective departments, specifying exceptions to (a) (5) of this section. These regulations shall be submitted for approval to the personnel board provided for in AS 39.25.060.

(c) The provisions of (a) of this section do not diminish the authority of an authorized law enforcement agency to conduct criminal investigations of state employees suspected of being involved in criminal activity. (§ 1 ch 102 SLA 1971)

Sec. 39.26.015. Dress codes and appearance standards. Dress codes and appearance standards adopted by a department, division, agency, official, or other employee of the state, that are to be applied to state employees shall be in the form of a regulation subject to legislative review under the Administrative Procedure Act (AS 44.62). (§ 1 ch 13 SLA 1976)

Sec. 39.26.020. Application of provisions. The provisions of AS 39.26.010 and 39.26.015 apply to those state employees in the classified and partially exempt services. (§ 1 ch 102 SLA 1971; am § 2 ch 13 SLA 1976)

Chapter 27. Pay Plan for State Employees.

Sec. 39.27.010. Basic salary schedule. [Repealed, § 12 ch 80 SLA 1978. For current law covering the subject matter, see AS 39.27.011.]

Sec. 39.27.011. Salary schedule. (a) The following monthly basic salary schedule is approved as the pay plan for classified and partially exempt employees in the executive branch of the state government who are not members of a collective bargaining unit established under the authority of the Public Employment Relations Act:

Range No.	Step A	Step B	Step C	Step D	Step E	Step F
05	1,321	1,357	1,397	1,435	1,478	1,517
06	1,397	1,435	1,478	1,517	1,561	1,607
07	1,478	1,517	1,561	1,607	1,657	1,708
08	1,561	1,607	1,657	1,708	1,757	1,812

Range No.	Step A	Step B	Step C	Step D	Step E	Step F
09	1,657	1,708	1,757	1,812	1,871	1,924
10	1,757	1,812	1,871	1,924	1,983	2,043
11	1,871	1,924	1,983	2,043	2,111	2,177
12	1,983	2,043	2,111	2,177	2,252	2,329
13	2,111	2,177	2,252	2,329	2,410	2,498
14	2,252	2,329	2,410	2,498	2,586	2,684
15	2,410	2,498	2,586	2,684	2,771	2,876
16	2,586	2,684	2,771	2,876	2,980	3,088
17	2,771	2,876	2,980	3,088	3,193	3,303
18	2,980	3,088	3,193	3,303	3,411	3,540
19	3,193	3,303	3,411	3,540	3,649	3,785
20	3,411	3,540	3,649	3,785	3,900	4,045
21	3,649	3,785	3,900	4,044	4,170	4,321
22	3,900	4,044	4,170	4,321	4,464	4,628
23	4,170	4,321	4,464	4,628	4,782	4,961
24	4,464	4,628	4,782	4,961	5,129	5,303
25	4,782	4,961	5,129	5,303	5,498	5,705
26	4,961	5,129	5,303	5,498	5,705	5,910
27	5,129	5,303	5,498	5,705	5,910	6,135
28	5,303	5,498	5,705	5,910	6,135	6,349
29	5,498	5,705	5,910	6,135	6,349	6,572
30	5,705	5,910	6,135	6,349	6,572	6,804

(b) *[Repealed, § 38 ch 3 SLA 1980.]*

(c) If a state officer or employee is appointed a deputy department head or a division director and, at the time of appointment, the officer or employee is receiving a salary higher than that set for the position to which appointment has been made, the officer or employee is entitled to continue receiving the higher salary. This subsection does not apply to the salary of a person appointed to a position other than a deputy department head or a division director. (§ 12 ch 148 SLA 1976; am § 1 ch 92 SLA 1977; am §§ 1, 10 ch 80 SLA 1978; am §§ 1, 16, 30, 31, 38 ch 3 SLA 1980; am § 1 ch 50 SLA 1982; am § 1 ch 83 SLA 1983)

Cross references. — For applicability of the salary schedule in (a) of this section to employees of the judicial and legislative branches, see § 4, ch. 83, SLA 1983, in the Temporary and Special Acts; for the Public Employment Relations Act, see AS 23.40.

Effect of amendments. — Sections 1, 16, and 30, ch. 3, SLA 1980, all rewrote subsection (a). Section 1 of ch. 3 is retroactive to January 1, 1979 and applied to calendar year 1979; section 16 of ch. 3 is retroactive to January 1, 1980, and applies to calendar year 1980; and section 30 of ch. 3 is effective January 1, 1981. Sections 31 and 38 of ch. 3 repealed subsection (b) and added subsection (c).

The 1982 amendment rewrote subsection (a). Section 6, ch. 50, SLA 1982 provides that the salary increases for the governor and lieutenant governor made by the 1982 amendment through the operation of AS 39.20.010 and 39.20.030, respectively, take effect when the new governor and lieutenant governor take office following November 1982 general election.

The 1983 amendment rewrote subsection (a).

Editor's notes. — Section 6, ch. 83, SLA 1983, provides that the 1983 amendment is retroactive to January 1, 1983.

Sec. 39.27.012. Temporary salary schedules. The director of personnel may establish salary schedules providing lesser amounts than those in the basic salary schedule in order to meet salary limit requirements for receipt and expenditure of federal funds. Salary rates established under authority of this section do not affect the salaries of employees provided for by a collective bargaining agreement negotiated under the authority of the Public Employment Relations Act (AS 23.40). (§ 2 ch 138 SLA 1975)

Revisor's notes. — Section 6, ch. 138, SLA 1975, provides: "This Act takes effect immediately in accordance with AS 01.10.070(c), and terminates upon the effective date of the pay schedule established by the State Personnel Board under AS 39.25.070(7) (as enacted by a version of SB 318, "An Act relating to public employment; and providing for an effective date"). AS 39.25.070(7) was never enacted by a version of SB 318, so no pay schedule was adopted under it.

Sec. 39.27.015. Cost-of-living adjustments. [Repealed, § 12 ch 80 SLA 1978.]

Sec. 39.27.020. Pay step differentials by election district and in other states. (a) The following pay step differentials are approved as an amendment to the basic salary schedules provided in AS 39.27.011:

Election District	Pay Steps Above Basic Salary Schedule
1	0
2	1
3	1
4	0
5	2
6a (excluding Valdez Duty Station)	4
6b (Valdez Duty Station)	5
7	1
8	0
9	2
10	2
11	2
12	7
13	7
14	8
15a (excluding Nenana Duty Station)	9
15b (Nenana Duty Station)	8
16a (south of Arctic Circle)	4
16b (north of Arctic Circle)	9

Election District	Pay Steps Above Basic Salary Schedule
17	9
18	9
19	8
In other states	minus 6

(b) For purposes of (a) of this section, "election district" means an election district designated in the governor's proclamation of reapportionment and redistricting of December 7, 1961.

(c) The director shall establish salary differentials for positions in foreign countries. The differentials shall be adjusted annually, effective July 1, to maintain equitable relationships between salaries for positions in foreign countries and salaries for positions in Alaska. (§ 1 ch 158 SLA 1966; am § 8 ch 101 SLA 1969; am § 2 ch 87 SLA 1971; am § 3 ch 47 SLA 1974; am § 3 ch 138 SLA 1975; am § 13 ch 148 SLA 1976; am §§ 32, 33 ch 3 SLA 1980)

Revisor's notes. — Section 6, ch. 138, SLA 1975 provides: This Act takes effect immediately in accordance with AS 01.10.070(c), and terminates upon the effective date of the pay schedule established by the State Personnel Board under AS 39.25.070(7) (as enacted by a version of SB 318, "An Act relating to public employment; and providing for an effective date"). AS 39.25.070(7) was never enacted by a version of SB 318, so no pay schedule was adopted under it.

Effect of amendments. — The 1980 amendment deleted the reference to AS 39.27.010 in the introductory language of subsection (a), substituted "In other states" for "Outside the State" in the last-listed election district in the chart of pay step differentials in subsection (a), and added subsection (c).

Sec. 39.27.022. Pay increments for longevity in state service. (a) Pay increments, computed at the rate of 3.75 per cent of the employee's base salary, shall be provided after an employee has remained in the final step within a given range for two years, provided that the employee has worked continuously for the state for seven years and provided that the current annual rating by the employee's supervisors is designated as "good" or higher.

(b) Additional increments, each computed at the rate of 3.75 per cent of the employee's base salary, shall be provided under the same restrictions as provided in (a) of this section when the employee has remained in the final step for four, nine and thirteen years.

(c) Longevity pay increments provided for in (a) and (b) of this section are approved under AS 39.25.150(2) as an amendment to the pay plan for employees of the state. (§ 1 ch 163 SLA 1972)

Opinions of attorney general. — Interpretating the longevity pay increments provided for by this section, so as to suggest that these increments may not be salary steps and therefore employees receiving these longevity increments who are promoted to a higher job series are not entitled to the salary increases required by Personnel Rule 9.02.13 and article 7 of the agreement between the state of Alaska and Alaska Public Employees Association covering the general government unit would be at variance with the legislative intent expressed in this section. September 11, 1974, Op. Att'y Gen.

NOTES TO DECISIONS

The purposes of this section are twofold, namely: To provide a reward for longevity in state employ, and to reestablish an incentive for employees who have attained the final step within a given range to continue in their employment. Alaska Pub. Employees Ass'n v. State, Sup. Ct. Op. No. 1066 (File No. 1999), 525 P.2d 12 (1974).

Legislative history. — See Alaska Pub. Employees Ass'n v. State, Sup. Ct. Op. No. 1066 (File No. 1999), 525 P.2d 12 (1974).

The language of this section is not clear and unambiguous as to when the pay increments in either subsection (a) or (b) should be granted. Alaska Pub. Employees Ass'n v. State, Sup. Ct. Op. No. 1066 (File No. 1999), 525 P.2d 12 (1974).

But at least some increment intended for immediate implementation. — The language of this section is not clear and unambiguous as to when the pay increments should be implemented. However, the Free Conference Committee Report indicates an intention that at least some increment be implemented immediately. Alaska Pub. Employees Ass'n v. State, Sup. Ct. Op. No. 1066 (File No. 1999), 525 P.2d 12 (1974).

No basis for assigning different implementation times to increments of subsections (a) and (b). — Since the wording of subsections (a) and (b) is nearly identical, there would seem to be no basis for assigning different implementation times to the increments, unless an indication of such legislative intent is to be found elsewhere. The supreme court has discovered no such expression of contrary legislative intent. Alaska Pub. Employees Ass'n v. State, Sup. Ct. Op. No. 1066 (File No. 1999), 525 P.2d 12 (1974).

Thus, employees entitled retroactively to pay increments in subsection (b). — As of July 1, 1972, state employees who otherwise met the statutory eligibility requirements and had been in the last step of their pay range for four, nine, or 13 years should have immediately received the pay increments provided by subsection (b) of this section. Alaska Pub. Employees Ass'n v. State, Sup. Ct. Op. No. 1066 (File No. 1999), 525 P.2d 12 (1974).

Given an indication of retroactivity in the Free Conference Committee Report on the original bill and the similarity in the phrasing of subsections (a) and (b), the most intrinsically reasonable interpretation of the bill would seem to be that, in the absence of any indications of legislative intent to the contrary, if eligibility for the initial pay increase was to become effective on July 1, 1972, then eligibility for all the incremental increases should become effective on that date. Alaska Pub. Employees Ass'n v. State, Sup. Ct. Op. No. 1066 (File No. 1999), 525 P.2d 12 (1974).

Sec. 39.27.025. Swing and graveyard shift differentials. (a) Classified and partially exempt state employees who regularly work a "swing" shift beginning between 12:00 noon and 7:59 p.m. are entitled to a one-step increase over their normal pay established by this chapter.

(b) Classified and partially exempt state employees who regularly work a "graveyard" shift beginning between 8:00 p.m. and 3:59 a.m. are entitled to a two-step increase over their normal pay established by this chapter. (§ 3 ch 87 SLA 1971)

Sec. 39.27.030. Annual salary survey. (a) The director of the division of personnel shall conduct an annual salary survey in the manner prescribed by AS 39.27.030 — 39.27.040, and make recommendations in pay ranges to be applied to all classes of positions in the state's partially exempt and classified service. This survey shall

(1) reflect the costs of living in the various election districts of the state by using the cost of living in Seattle, Washington, as a base of 100;

(2) reflect the competitive position of the state, first, by comparing state salary levels with salary levels of comparable classes in private industry, in other governmental agencies throughout the state, and in other states constituting the prime recruiting areas, using "bench-mark" classes selected by the director of personnel, based on the principle of like pay for like work, from as many employment categories as is necessary to reflect correctly the competitive position of the state salary levels with those paid other employees under this paragraph; and secondly, by comparing fringe benefits in the state service with other governmental agencies and major employers throughout the state.

(b) The director shall use United States Department of Labor statistics or other reliable statistical data in carrying out the provisions of (a) (1) of this section. If reliable statistics are not available, the director shall gather the data by field studies for the survey required by (a) (1) of this section.

(c) The director may use any reliable source of data in carrying out the provisions of (a) (2) of this section. When reliable statistics are not available, the director shall by field studies gather the data to carry out the provisions of (a) (2) of this section.

(d) The director shall, on a regular basis, report to the state employees association by providing a summary of the information accumulated during the data-gathering process; the director shall consult with the employees association and consider its findings before any final recommendation. (§ 1 ch 226 SLA 1970; am §§ 1, 2, 4 ch 42 SLA 1971)

Cross references. — For gathering data reflecting the cost of living in various election districts, see AS 44.31.020(4).

Sec. 39.27.035. Preparation and submission of pay schedules. The director shall prepare an annual pay schedule setting out the base pay for all classes of positions in the state's partially exempt and classified service, taking into account the statistics and reasonable internal pay relationships. The director shall also prepare annual pay schedules for persons in the state service in each election district. These annual pay schedules shall either add to or subtract from the base pay of the person in state service according to the data obtained by the annual salary survey conducted under AS 39.27.030 — 39.27.040. The base pay schedule and the election district differentials shall be prepared annually from data obtained by the annual salary survey provided for in AS 39.27.030 — 39.27.040. The salary schedule shall be reviewed by the personnel board before submission to the legislature. A report and recommended salary schedules shall be submitted to each regular session of the legislature no later than five days after the session convenes. (§ 1 ch 226 SLA 1970)

Sec. 39.27.040. University salary survey. The director shall conduct an annual salary survey in the manner prescribed by AS 39.27.030 — 39.27.035, and make recommendations to the Board of Regents of the University of Alaska on pay ranges to be applied to all classes of positions excluding academic and research positions in the university system. The Board of Regents shall consider these recommendations when establishing pay schedules for employees. (§ 1 ch 226 SLA 1970)

Sec. 39.27.045. Definition. In AS 39.27.030 — 39.27.040, "director" means the director of the division of personnel. (§ 1 ch 226 SLA 1970)

Chapter 30. Insurance and Supplemental Employee Benefits.

Article
1. Old Age and Surviviors Insurance (§§ 39.30.010 — 39.30.080)
2. Group Life and Health Insurance (§§ 39.30.090 — 39.30.100)
3. Special Hazard Insurance (§ 39.30.130)
4. Supplemental Employee Benefits on Withdrawal from Social Security (§§ 39.30.150 — 39.30.180)

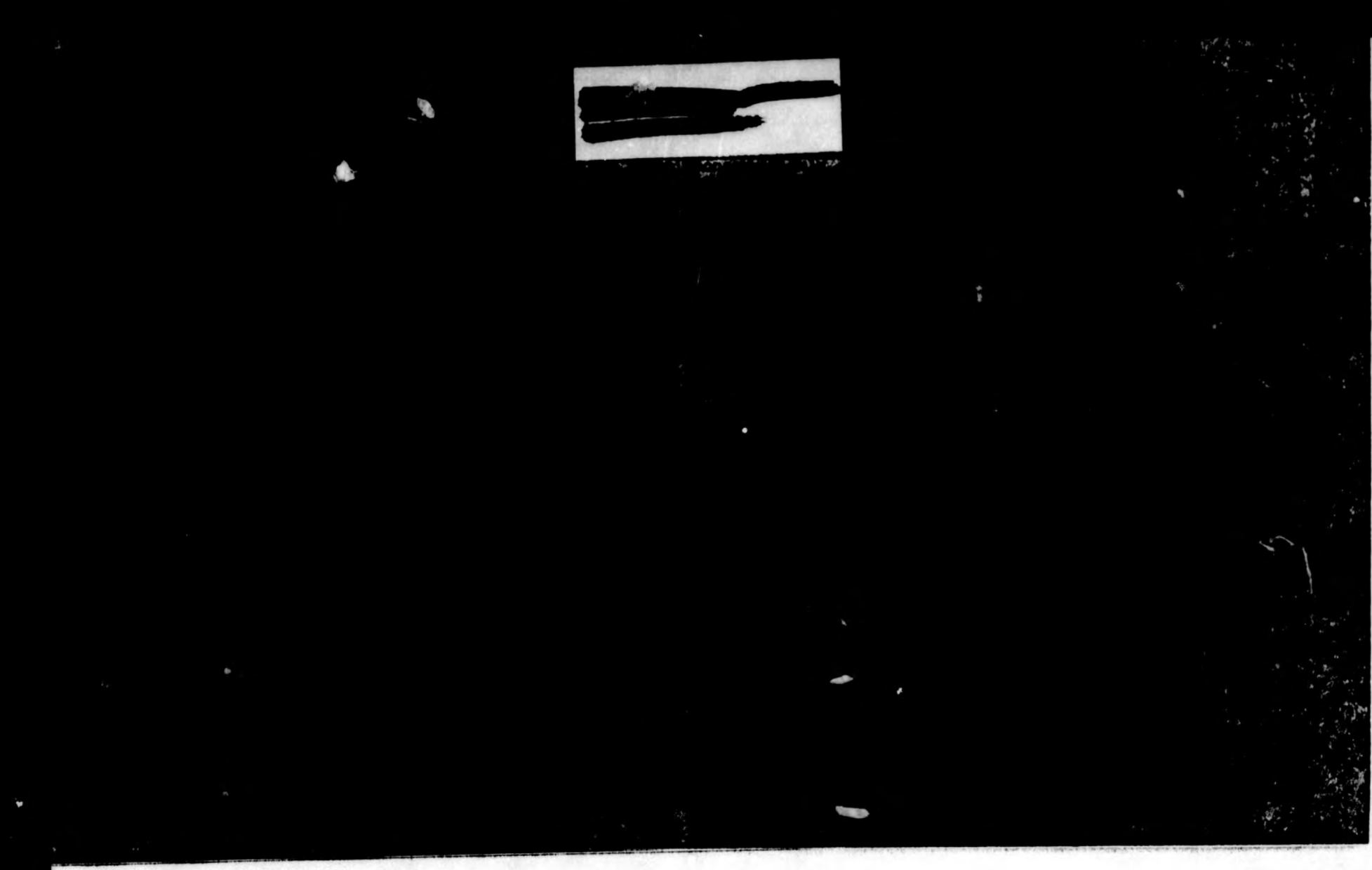
Article 1. Old Age and Survivors Insurance.

Section
10. Federal territorial agreement
20. Contributions by employees
30. Plans for coverage of employees of political subdivisions
40. Deposits and withdrawals
50. Administrative costs
60. Regulations
70. Studies and reports
80. Definitions

Sec. 39.30.010. Federal territorial agreement. (a) The director of finance, with the approval of the governor, may on behalf of the territory enter into an agreement with the Federal Security Administrator, consistent with AS 39.30.010 — 39.30.080, for the purpose of extending the benefits of the federal old age and survivors insurance system to employees of the territory or a political subdivision with respect to services specified in the agreement that constitute employment.

(b) The agreement may contain provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions that the parties agree upon, but, except as may be otherwise required under the Social Security Act as to the services to be covered, the agreement shall provide in effect that

(1) benefits will be provided for employees whose services are covered by the agreement, and their dependents and survivors, on the same basis as though the services constituted employment within the meaning of 42 U.S.C. 401 — 433 (Title II, Social Security Act);



MEMORANDUM August 16, 1985

Subject: Summary of August 12, 1985 Billy Berrier Memo

From: Frank Bickford FB
Legislative Salary Committee

The determination of whether the enactment voids the petition is made by the lietutenant governor with formal concurrence of the attorney general under AS 15.45.210 which provides:

> Sec. 15.45.210 DETERMINATION OF VOID PETITION.
>
> If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substanially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.

If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems that are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the iniatiative.

It is clear that an act need not be identical in order to void a petition. However, the degree of deviation allowed is a factual matter that must be determined by comparing the petition and the statue enacted.

Clifford E. WARREN, Appellant,
v.
H. A. (Red) BOUCHER and State of Alaska, Appellees.
No. 2315.

Supreme Court of Alaska.
Nov. 28, 1975.

Plaintiff sued for declaratory and injunctive relief to compel lieutenant governor to place initiative proposal on ballot, although lieutenant governor had determined that initiative was void since substantially similar to an act of the legislature. The Superior Court, Third Judicial District, Anchorage, Victor D. Carlson, J., rendered summary judgment for defendant and plaintiff appealed. The Supreme Court, Connor, J., held that the statute permitting lieutenant governor to determine substantial similarity between act and proposal is not an unconstitutional delegation of judicial power to the executive and that the measures were substantially similar within constitutional provision permitting legislature to void an initiative by passing a substantially similar measure.

Affirmed.

Erwin, J., dissented and filed opinion in which Burke, J., joined.

1. Statutes ⇐301

Constitutional provisions for determination of election contests as prescribed by law and defining "by law" as identical with "by the legislature," gave legislature power to enact method of determining whether act and initiative provision are substantially the same, so as to void initiative. AS 15.45.210; Const. art. 5, § 3; art. 11, § 4; art. 12, § 11.

2. Constitutional Law ⇐70.1(1)

Court is disinclined to pass judgment on means selected by legislature to accomplish legitimate purposes unless such means clearly violate Constitution.

3. Constitutional Law ⇐80(1)
Statutes ⇐302

Statute authorizing lieutenant governor to determine whether act is substantially the same as initiative proposal, so as to void initiative, is not unconstitutional delegation of judicial function to executive officer. AS 15.45.210; Const. art. 11, § 4.

4. Constitutional Law ⇐12

Purposes and intentions of framers of Constitution must be inferred from language of Constitution itself, with careful regard for apparent aim framers had in mind.

5. Statutes ⇐301

Under constitutional provision permitting legislature to void initiative petition by enacting "substantially the same measure," legislature's discretion is reasonably broad; there is substantial similarity if in the main the act achieves same general purposes as initative and accomplishes purpose by means or systems which are fairly comparable; it is not necessary that the two measures correspond in minor particulars or even as to all major features and the broader the reach of the subject matter, the more latitude must be allowed legislature. Const. art. 11, § 4.

See publication Words and Phrases for other judicial constructions and definitions.

6. Statutes ⇐301

Legislative act relating to election campaigns was substantially similar to initiative proposal relating to compaign contributions, expenditures, and their limitations, despite differences between the measures, and act effectively displaced initiative. AS 15.13.010 et seq., 15.45.210; Const. art. 11, § 4.

Clifford E. Warren, pro se.

Timothy G. Middleton, Asst. Atty. Gen., Anchorage, Norman C. Gorsuch, Atty. Gen., Juneau, for appellees.

OPINION

Before RABINOWITZ, C. J., and CONNOR, ERWIN, BOOCHEVER and BURKE, JJ.

CONNOR, Justice.

This case raises issues regarding the initiative procedure in Alaska. Specifically, it is concerned with the process and conditions, if any, by which enactments of the legislature can operate to prevent an initiative from appearing on the ballot.

I.

The procedural history antedating this appeal is undisputed. Prior to the regular 1974 session of the Alaska legislature, an initiative petition entitled "An Act relating to campaign contributions, expenditures, and their limitations" was filed with the lieutenant governor. During that session, the legislature enacted Ch. 76, SLA 1974. That act is entitled, "An Act relating to the election campaigns; and providing for an effective date."

Pursuant to AS 15.45.210,[1] the lieutenant governor, H. A. (Red) Boucher, sought to determine whether the act and the initiative were substantially the same. An opinion of the attorney general, Norman C. Gorsuch, was sent to the lieutenant governor in a letter dated June 17, 1974. The attorney general's opinion was that the measures were substantially the same and, therefore, the initiative was void. The lieutenant governor concurred and notified the initiative committee that the initiative would not appear on the ballot.

This case was initiated on June 25, 1974, when Clifford E. Warren filed a "Complaint for Declaratory Judgment" in the superior court. Warren sought a preliminary injunction requiring the lieutenant governor to place the initiative on the primary ballot of August 27, 1974, or, alternatively, on the general election ballot.

Oral argument was heard on June 2[illegible] 1974, and the preliminary injunction was denied.

On July 16, 1974, Warren brought a petition for review to this court. The petition was initially denied, but on motion for reconsideration review was granted and, on August 20, 1974, we remanded the case to the superior court with directions to proceed to a final determination of the action as expeditiously as possible.

On September 6, 1974, Judge Carlson granted summary judgment for defendant in a memorandum decision. From this judgment this appeal has been taken.

II.

Warren offers two significant arguments in contending that the initiative should be placed before the voters. He asserts that

(1) AS 15.45.210[2] is unconstitutional because the legislature has improperly delegated a judicial function to an executive officer;

(2) Ch. 76, SLA 1974 and the initiative are not substantially similar;

Several additional arguments are offered by appellant, though not all of them warrant extended analysis.

III.

Appellant strongly urges that AS 15.45.210 improperly delegates to the lieutenant governor the duty of determining, in the first instance, whether an act and an initiative are "substantially the same." He argues that this law violates the separation of powers doctrine by vesting the construction of constitutional language in an executive officer of the state, rather than

1. AS 15.45.210 provides:

"If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of election, the petition is void and the lieutenant governor shall so notify the committee."

2. *Id.*

the courts.[3] The statute, enacted in 1960, provides:

> "*Determination of void petition.* If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee."

Obviously, the statute was enacted to effectuate Art. XI, Sec. 4, of the Alaska Constitution. That provision states:

> "*Initiative Election.* An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void."

[1] At the outset, we note that Art. XI, Sec. 4, does not expressly confer on any branch or agency the power to determine whether an act and an initiative are "substantially the same." However, Alaska Constitution, Art. V, Sec. 3, declares in part:

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

Alaska Constitution, Art. XII, Sec. 11, provides, in part:

> "As used in this constitution, the terms 'by law' and 'by the legislature,' or variations of these terms, are used interchangeably when related to law-making powers."

We conclude that these constitutional provisions, when read in harmony, give the legislature the power to enact a method of determining whether two provisions are "substantially the same," as used in Art. XI, Sec. 4, of the Alaska Constitution.

[2] The legislature has expressly delegated its power in this regard to the lieutenant governor,[4] subject to review by the courts.[5] In reviewing that delegation of power, we reiterate that we are disinclined to pass judgment on the means selected by the legislature to accomplish legitimate purposes, unless such means clearly violate the Constitution. *DeArmond v. Alaska State Development Corp.*, 376 P.2d 717, 724 (Alaska 1962).

Courts in modern times have been reluctant to declare legislation unconstitutional on the ground of improper delegation of power.[6] Indeed, Professor Louis L. Jaffe, in commenting on the United States Supreme Court's attitude toward such challenges, has noted:

> "The Court has given the Congress a latitude broad enough for almost any administrative experiment presently believed necessary."[7]

3. Warren also contends that AS 15.45.210 violates Alaska Constitution, Art. III, Sec. 22.
> "All executive and administrative offices, departments, and agencies of the state government and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department."

4. *See* AS 15.45.210, n. 1, *supra*.

5. AS 15.45.240 provides:
> "Any person aggrieved by a determination made by the lieutenant governor may bring an action to have the determination reviewed within 30 days of the date on which notice of the determination was given by any appropriate remedy in the superior court."

6. *See generally*, Jaffe, *An Essay on the Delegation of Legislative Power*, 47 Colum.L.Rev. 359 and 561 (1947).

7. *Id.* at 581.

And Professor Kenneth C. Davis has stated:

> "We have learned that the danger of tyranny or injustice lurks in unchecked power, not in blended power."[8]

This does not mean that the legislature has an unlimited right to delegate its responsibilities. But where it would be impractical or cumbersome for the legislature to undertake the task in question, a limited delegation, subject to appropriate review, has been upheld.[9]

[3] Turning to the case at bar, the legislature has divested itself of a fact finding task which has no direct relation to that body's law making functions. Comparative analysis of varying pieces of legislation can be an arduous and time consuming endeavor. We find that the delegation in this case is based on sound, practical considerations.

In delegating the responsibility to the lieutenant governor,[10] the legislature has assigned the task to the person who is in charge of administering and supervising the conduct of all state elections.[11] In addition, the lieutenant governor performs extensive ministerial functions related to the initiative process.[12] Thus, the legislature has delegated its authority to a logical governmental officer.

The delegated function, in this instance, is definitionally narrow. The lieutenant governor, aided by the attorney general, must make a simple factual determination. Are two documents substantially the same in their content? In carrying out this determination, the lieutenant governor is not formulating policy. The framers of the Alaska Constitution have already decided that an initiative is void if legislation which is substantially the same, exists. By determining whether two documents are substantially the same, the lieutenant governor is simply effectuating constitutional policy.

Similar non-discretionary delegations have been upheld in other jurisdictions.[13] The Alaska legislature has expressly afforded an aggrieved party the right to judicial review.[14] In these circumstances, we hold the delegation of power in AS 15.45.210 to be both reasonable and constitutional.

IV.

Warren also urges that the superior court erred in ruling that the initiative and the act are "substantially the same."

In his memorandum decision of September 6, 1974, the trial judge undertook to define the phrase "substantially the same" as used in Article XI, Sec. 4, of the Alaska Constitution. He concluded that the phrase is broad enough to include a statute which "treats the same problem as that sought to be reached by the proposed initiative." He then granted summary judgment for the state because he found that

8. K. Davis, *Administrative Law Text* § 1.08, at 25 (1972).

9. *See, e. g., Union Bridge Co. v. United States*, 204 U.S. 364, 387, 27 S.Ct. 367, 51 L.Ed. 523 (1907); *Meadowlark Farms, Inc. v. Ill. Pollution Control Bd.*, 17 Ill.App.3d 851, 308 N.E.2d 829, 832 (1974); *Leininger v. Alger*, 316 Mich. 644, 26 N.W.2d 348, 352 (1948).

10. The delegation initially went to the secretary of state, but that office was supplanted by the creation of the lieutenant governor's post in 1970.

11. *See* AS 15.15.010 *et seq.*

12. *See* AS 15.45.010 *et seq.*

13. *See, e. g., Adams v. Bolin*, 74 Ariz. 269, 247 P.2d 617, 627–28 (1952); *Hodges v. Dawdy*, 104 Ark. 583, 149 S.W. 656, 658 (Ark.1912); *Leininger v. Alger*, 316 Mich. 644, 26 N.W.2d 348, 352 (1948); *Schmidt v. Gronna*, 68 N.D. 488, 281 N.W. 57, 60 (1938); *Brazell v. Ziegler*, 26 Okl. 826, 110 P. 107 (1910); *White v. Welling*, 89 Utah 335, 57 P.2d 703, 705 (1936).

Cf. Union Bridge Co. v. United States, 204 U.S. 364, 385–86, 27 S.Ct. 367, 51 L.Ed. 523 (1907); *Meadow Lark Farms, Inc. v. Illinois Pollution Control Bd.*, 17 Ill.App. 851, 308 N.E.2d 829, 832 (Ill.App.1974); *Joseph E. Seagrams & Sons, Inc. v. Hostetter*, 45 Misc.2d 956, 258 N.Y.S.2d 442, 451 (Sup. Ct.1965).

14. *See* n. 5, *supra*.

...e statute and the initiative "attempt to ...each the same results, more effective elec...on campaigns."

In reaching his definition, the trial judge ...lied, in part, on commentary which ac...mpanied the Constitutional Convention ...ommittee's Proposal No. 3, concerning ...itiatives and referendums. That propos..., in pertinent part, stated:

". . . Laws proposed by the initiative shall be submitted to the voters by ballot title at an election not later than 180 days after the adjournment of the legislative session following the filing of the petition, *unless the legislature enacts the measure initiated during the session.* . . ." (emphasis added)

The commentary, which did not refer to ...y specific phrase within Proposal No. 3, ...tated:

"If the legislature adopts a measure that is the subject of the initiative, the measure does not have to be submitted to the people."

Subsequent to the introduction of Proposal No. 3, several amendments to it were made. Article XI, Sec. 4, now reads:

"An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. *If, before the election, substantially the same measure has been enacted, the petition is void.*" (emphasis added)

In view of the changes which this provision underwent after its introduction, we find the committee commentary which guided the trial court to be less than conclusive. As we stated in *Walters v. Cease*, 388 P.2d 263, 266 (Alaska 1964):

"While such a statement might have been a valuable aid for ascertaining the intention of the convention with respect to the constitutional provision then under consideration, it loses any value it may have had because Proposal No. 3 . . . was later amended so as to materially change its meaning." (footnotes omitted)

The committee proposal was first taken up by the constitutional convention as a committee of the whole. Later the proposed article was considered a number of times through floor discussions of some length, and numerous amendments were adopted. However, there is no helpful discussion of what was the intended scope of the words "substantially the same measure." Thus the ultimate construction of this critical language devolves upon this court.

[4] Our dissenting colleagues rightly observe that the article on direct legislation was the subject of extensive debate at the constitutional convention. They read the term "substantially the same measure" as permitting legislative displacement of an initiative only within rather narrow confines. However, we find nothing in the legislative history of the article, or in the vigorous floor debates thereon, which points to an agreed upon meaning or a consciously adopted definition of what this critical language should mean. Many views were expressed by individual delegates, but these expressions do not in this instance provide a reliable guide to what the constitutional convention as a whole intended by the adoption of the phrase in question, or what it meant to the voters who ratified the constitution. In order to interpret this language we must analyze its functional relationship to other constitutional provisions. We must infer the purposes and intentions of the framers from the language of the constitution itself, with careful regard for the apparent aims which the framers had in mind.[15]

15. The dissent refers to the frustrations experienced by Alaskans under territorial government, and the deeply felt need for self-government which led to convening the con-

The words "substantial" or "substantially" are relative, inexact terms. Their meaning is quite elusive. *Application of Scroggins*, 103 Cal.App.2d 281, 229 P.2d 489 (1951). The meaning of such terms can be derived only be reference to all the circumstances surrounding the context in which they are used. *Atcheson, T. & S.F. Ry. v. Kings County Water District*, 47 Cal.2d 140, 302 P.2d 1, 3 (1956). So here, we believe that the term "substantially the same measure" must be viewed against the total structure contemplated in Art. XI of our constitution in the matter of direct legislation.

It is evident that the framers wanted to avoid a constitutional system in which any and all types of law could be enacted by direct legislation. Thus they placed a number of specific restrictions upon its use. Art. XI, Sec. 7, states:

> "The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety."

A less absolute, more relative restriction on the use of the initiative comes about by reason of the language which must be construed in the case at bar. By providing that the legislative enactment of substantially the same measure could have the effect of voiding an initiative, the framers empowered the legislature to cut off initiated legislation from consideration and vote by the general public. The manner in which Art. XI, Sec. 4, was amended in the constitutional convention makes this clear. The original proposal at the convention would have required that an initiative could be voided only by legislative enactment of "the measure initiated". Read literally, this would require that the language of both measures be identical. However, as discussed above, the final constitutional language requires merely that "substantially the same measure" be enacted by the legislature in order to void an initiative petition.

It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.

[5] Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative.

We are fortified in this understanding of the constitutional language, and the intention of the framers, by a companion provision of the constitution. Under Art. XI, Sec. 5, an initiative, once enacted, cannot be repealed by the legislature within two years of its effective date. But it may be amended at any time. Here, as with Art. XI, Sec. 4, a considerable change occurred in the constitutional convention in the language first proposed and that finally adopted. Committee Proposal No. (Committee on Direct Legislation, Amend-

stitutional convention as part of the statehood movement. Nothing in that background, however, has any direct bearing on how the term "substantially the same measure" should be interpreted.

ment and Revision, December 9, 1965), provided:

> "No law passed by initiative may be vetoed by the Governor nor amended or repealed by the legislature for a period of three years."

The final constitutional provision states in pertinent part:

> "An initiated law . . . is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time . . . ."

The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital governmental functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.[16]

What is significant to us here is the effect which the amendatory power of the legislature has upon our interpretation of the words "substantially the same measure." For if the legislature has broad power of amendment, it follows that it has broad power to change an initiative by an enactment covering the same subject as the initiated measure. In short, we must interpret Art. XI, Sec. 4, broadly and not narrowly as to the scope of legislative power. We, of course, are not passing here on the question of whether an amendment so vitiates an act passed by initiative as to constitute its repeal.

Turning now to the initiative and legislative act before us, it is clear that they both cover the same general subject matter. Both are aimed at the control of election campaign contributions and expenditures. The main points of similarity in the two measures are these: The amount a candidate may spend on his campaign is limited; contributions and expenditures must be reported; contributions of $100 or more under the act, and all contributions under the initiative, must be reported; the persons covered include candidates for governor, lieutenant governor, and state legislature;[17] criminal misdemeanor penalties are imposed for the violation of the respective provisions of both measures;[18] acceptance of anonymous contributions is prohibited; a responsible campaign treasurer must be appointed by each candidate; certain violations under each measure work a forfeiture of nomination or election; required reports must be made available for inspection by the public; and provision is made for citizen enforcement of the law, by court action under the initiative, and under the act by a complaint to the elec-

16. The discussions on the floor of the constitutional convention reveal a belief by a number of framers that a countervailing consideration would act as a balance against legislative arbitrariness in this respect. It was believed that the natural desire of many legislators to be re-elected, or at least to demonstrate creditable performance as public officials, would cause them to think carefully before amending an initiative out of existence, because of the effect which such action might have on the electorate in the future.

17. The initiative covers all municipal elections. The act permits a municipality to exempt itself from the coverage of the law. The initiative covers candidates for Congress, while the act does not. It should be noted that candidates for federal office are regulated extensively by the federal election campaign disclosure act passed in 1972. *See* 2 U.S.C. §§ 431–454.

18. AS 15.13.120(a) imposes penalties of up to one year of imprisonment or a fine up to $5,000 for violation of the act. We do not view the act, as does the dissent, as eliminating almost all individual penalties for enforcement.

tion compaign commission and appeal to the supreme court.

Under the initiative a watchdog committee is created, composed of three members of each major political party and three independent persons, plus one member from any other recognized political party. The ultimate appointive authority as to the committee is in the governor. Under the act there is created an election campaign commission. The governor appoints to the commission two members from each major political party, and they select by majority vote a fifth member.

There are certain points of contrast between the two measures. The initiative places most of the supervisory and administrative responsibilities on the lieutenant governor. The act places these functions in the election campaign commission. The initiative requires commercial advertisers to file reports of political advertising; the act does not require this. The initiative attempts to place out-of-state contributors under the jurisdiction of the Alaska courts; the act is silent on this subject.[19] The act defines and regulates political groups formed to support or oppose a political candidacy; the initiative does not reach such groups. Under the act a $1,000 limit is placed upon individual contributions; the initiative imposes no limit. Under the initiative candidates for governor and lieutenant governor cannot use more than 40% of their expenditures for "communications media." The act contains no such limitation.

The dissent views the act as eliminating all subpoena or investigatory power of the watchdog committee. However, the act, AS 15.13.030, requires that the commission must receive and hold open for public inspection the reports filed under the act. The commission is empowered to adopt regulations necessary to effectuate and clarify the act, and to conduct investigations of claimed violations of the act. AS 15.13.030(10) and .120(d). If the commission finds that violations have occurred it must report them to the attorney general for action. The attorney general may, of course, obtain subpoenas by resort to grand jury proceedings. We do not view the act as hampering investigation and prosecution of prohibited activities. Therefore, the elimination of the watchdog committee's subpoena power does not, in our opinion, create a significant difference between the two measures.

We are unable to accept the view, expressed in the dissent, that enforcement of the act will be less effective because violations must be referred to the attorney general. The practical or political problems posed by that method of enforcement, as contrasted with the watchdog committee envisaged by the initiative, may not in actuality operate as a serious barrier to enforcement. To some extent such problems inhere in the process of criminal prosecution generally. The countervailing forces are an aroused public opinion and the constitutional obligation resting on the executive to see that the laws are faithfully executed. These forces are operative in the processing of criminal matters of all types. We will not assume that practical or political considerations will frustrate effective enforcement.

The act does not place limitations on media spending, does not impose reporting requirements on media, does not require permits for media advertising, and does not provide for the reporting of surplus funds collected, in the same manner as does the initiative. But that is not to say that these subjects are unregulated. Under AS 15.13.110(d) all persons supplying services to any candidate must maintain a record of each transaction and must file appropriate reports with the commission. While the act does not limit the amount of media

19. This does not mean that out-of-state contributions go unregulated. Under the act these contributions must be reported; they may not exceed $1,000 in the aggregate per annum for any one candidate; and it is a criminal offense to accept a contribution in violation of the act. See AS 15.13.040, .070, and .120(a)(6).

[6] It is our opinion that substantial similarity exists between the two measures. The act effectively displaced the initiative. The lieutenant governor was correct in withholding the initiative from the ballot. We affirm the judgment of the superior court.

Affirmed.

ERWIN and BURKE, JJ., dissent.

ERWIN, Justice, with whom BURKE, Justice joins, dissenting.

I dissent.

The power of initiative and referendum is the basic recognition that under our republican form of government the ultimate political power exists with the people and not in some legislative body.[1] These provisions permit the people to enact laws when the legislature refuses to act, or repeal acts of the legislature which are unpopular or unfair. Moreover, it is an additional check and balance on the governmental process because it acts upon the legislative awareness that such power exists with the people[2]

One set of critics at the constitutional convention claimed, however, that its limitations make it less than effective as a popular tool of government. They argued that the requirement of obtaining a large number of signatures from residents in order to put the issue before the voters significantly limited the use of the initiative process in all but a few cases.[3]

Now the majority opinion further restricts this process by countenancing substantial legislative limitation of the initiative procedure. When this court determines that the legislature may decide how much of the legislation supported by the people they want, the basic political right of initiative disappears, for it is not the will of the people that is paramount, it is the will of the legislature.

I find that the minutes of the Alaska constitutional convention and the commentary thereon are not as limited as the majority opinion indicates.

The initial proposal filed by the Committee on Direct Legislation contained the following language:

> . . . Laws proposed by the initiative shall be submitted to the voters by ballot title at an election not later than 180 days after the adjournment of the legislative session following the filing of the petition, unless the legislature enacts the measure initiated during the session. . . .[4]

In the accompanying commentary the committee explained the content of the legislative enactment in the following terms:

> If the legislature adopts a measure *that is the subject of the initiative*, the measure does not have to be submitted to the people. [emphasis added][5]

The discussion and amendment of this initiative proposal was perhaps the most extensive and hotly contested[6] of the entire constitution, covering 7½ days of proposals and counter proposals.[7] This discussion included an extensive debate on the power to amend as being the power to amend and not the power to destroy.[8]

1. 2 Alaska Constitutional Convention Proceedings, 931–975. See particularly the statements of Delegates Marston and Taylor, 959–961, before defeat of the motion to delete all reference to referendum in the article on 973.

2. Fischer, Alaska Constitutional Convention, 79–81 (University of Alaska Press, 1975).

3. *Id.* at 79.

4. 6 Alaska Constitutional Convention Proceedings, 19.

5. *Id.* at 23; 2 Alaska Constitutional Convention Proceedings, 929.

6. Fischer, *supra* note 2, at 79–81.

7. 2 Alaska Constitutional Convention Proceedings, 928–1200; 3 Alaska Constitutional Convention Proceedings, 2960–2993.

8. 2 Alaska Constitutional Convention Proceedings, 1173–1177.

Subsequently the convention changed the proposal to provide as follows:

> A referendum petition may be filed at any time. The secretary of state shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, *before* the election, *substantially the same measure has been enacted*, the petition is void.[9] [emphasis added]

The majority opinion finds this constitutional history inclusive and suggests that it may be supportive of the conclusion that the convention intended to give wide latitude to the legislature to change the initiative. I find it supports the exact opposite conclusion because of the extensive debate on the convention floor concerning the need for the initiative process, which was the subject of public hearings during the Christmas recess of the constitutional convention.

Further, the political climate of Alaska preceding, during and after the constitutional convention does not support a theory of distrust of the popular electorate or the legislation it would sponsor. Alaska's history is replete with instances of frustration to get an absentee government in Washington to deal with pressing problems.[10] In fact, such inaction was the greatest single boost to statehood. The members of the Alaska constitutional convention understood, more than most, the necessity of the initiative process for unpopular acts—for without it, the long years of struggle to achieve local control over our political destiny would have been cheapened.

In this case the legislature took the initiative title and enacted a measure which clearly was more politically palatable to them, but which is definitely not "substantially the same" as the initiative sponsored by the people.

In reviewing the referendum and the statute, I find that of the 19 separate sections of the initiative, only six are the same as the statute, and as part of the six I am including the section dealing with the powers and duties of the watchdog committee and the reporting system, which is only 50% of that stated in the initiative.

Seven sections have been eliminated entirely by the statute. This includes:

1. All references to United States senators and congressmen.[11]
2. Coverage of local elections is changed to local option.[12]
3. The requirement that out-of-state contributors submit themselves to Alaska jurisdiction.[13]
4. Almost all individual penalties for enforcement of the provisions of the act.[14]
5. All subpoena or investigatory power of the watchdog committee.[15]
6. All limitations on media spending.[16]
7. All requirements for equal charges by media and for equal time to candidates.[17]
8. Almost all reporting requirements by media, as well as all requirements that permits be obtained before media advertising is undertaken by a candidate.[18]
9. All requirements for the reporting and disposition of surplus funds collected.[19]

9. Section 4, Article XI, Alaska Constitution.
10. Gruening, *Many Battles*, pp. 281–396 (Liveright 1973); Gruening, *The State of Alaska*, Chapter 28; "Self Government: The Quest for Statehood," p. 460 (Random House 1954).
11. Section 2 of Initiative.
12. Section 18 of Initiative.
13. Section 13 of Initiative.
14. Sections 7 and 19 of Initiative.
15. Section 4 of Initiative.
16. Section 2 of Initiative.
17. Section 16 of Initiative.
18. Sections 5, 6 and 15 of Initiative.
19. Section 10 of Initiative.

10. Most definitions and the statement of purpose.[20]

In addition, the dollar amount of expenditures has been changed in every instance to a higher figure.

Governor/Lt. Governor	$125,000 to	$130,000
House	6,000 to	7,500
Senate	8,000 to	15,000[21]

Whereas the initiative required the disclosure of persons who contributed in excess of $50 to a candidate, the measure passed by the legislature requires only contributors of $100 or more need to be identified and reported.[22] Moreover, every section dealing with failure to report, false reports, or perjury in reporting has been deleted, together with those provisions which provide for substantial fines for all people who refuse access to the records of a candidate.[23] In addition, all sections permitting citizens to sue to enforce the provisions of the initiative have been eliminated.[24]

All power of the watchdog committee to delay certification of candidates or to bring charges requiring a delay of certification has been eliminated,[25] as has the power of the court to declare the second highest vote-getter elected where expenditure violations were found.[26]

Additionally, the legislature removed most enforcement teeth by requiring that any violation found by the commission must be referred to the Attorney General for a decision of whether or not the violator would be prosecuted.[27] The discretion to prosecute is an area of [illegible] versy, but such clearly depend[ent] tors outside the issue of whet[her] violation has occurred.[28] [Such] the manpower of the office, the work, and the seriousness problems[29] can combine to m[ake] ment of this area somewhat [un]To these practical problems is a litical reality which casts sh[ade] the decision to prosecute or n[ot] cute. The Attorney General [is] by the Governor; thus there known political factor which ca[n] decision where the candidate one approved by the political p[ar]er.

While the act does not expl[icitly] watchdog committee will obta[in] of violations without investigat[ive] poena power, the statute is cle[ar] is no method of delaying cer[tain] removing a candidate who is without a court proceeding.[30] any case for voiding the elect[ion] the Attorney General must th[en] by the Supreme Court of Al[aska] original proceeding,[31] rather normal way of all other cases trict or Superior Court. Su[pe]preme Court must sit as five j[us]cumbersome body to hear t[he] particularly in view of its [geo]graphic situs and other work process becomes even more [ex]and somewhat questionable i[n] rights of jury trial in certain [cases].[32]

20. Sections 1 and 20 of Initiative.

21. Section 2 of Initiative. The majority refers to the last decennial census of 1970 to suggest $120,000 as the figure for Governor. However, constantly new census figures are validated to show changes for federal-state revenue-sharing purposes. The latest figures for 1975 make the $130,000 figure conservative.

22. Section 9 of Initiative.

23. Section 7 of Initiative.

24. Section 19 of Initiative.

25. Section 3 of Initiative.

26. Section 19 of Initiative.

27. AS 15.13.120(d).

28. See *Public Defender Agency v. Superior Court of Third Judicial District*, [illegible] 949–951 (Alaska 1974), for a discussion of the Attorney General's discretion in prosecution in child support cases.

29. Fischer, *supra* note 3, at 949.

30. AS 15.13.120(b).

31. AS 15.13.120(b).

32. See *Baker v. City of Fairbanks*, [illegible] 386, 401–402 (Alaska 1970), for a discussion of cases where jury trial is required.

...ntory rights[33] to appeal all cases to the ...preme Court are considered.

...The initiative recognized these problems ...permitting the commission and private ...ties to bring suit to enforce its provi... and gave to the committee investiga... and subpoena power to insure compli...ce. The elimination of these provisions ... to the heart of the enforcement provi... and leaves, to a large extent, an illu...y remedy. The initiative and the mea...re passed by the legislature have the ...e title and some similar reporting re...rements, but by no stretch of the imagi...tion are they substantially the same.[34] ...The majority attempts to excuse the ...l for a number of the deleted sections ...noting that certain federal reporting re...rements or court decisions make them ...ecessary. While disregarding the prop...tion that federal laws can provide effec... regulation for Alaska elections when ...omplaints must be filed in Washington, ... I submit that this argument misses ... point. The question is not whether the ...ovisions are wise, but whether the legis...ve act is *substantially* the same as the ...tiative. It is for the people to provide ...y decision in situations such as this be...se the legislature failed to act until ...olded by the electorate. By their inaction the legislators simply lost their ability to challenge the utility of the provisions. Their only power was to nearly duplicate the initiative, for that is just what the words "substantially the same" mean.

The majority's final suggestion that the powers and duties referred to in several of the eliminated sections can be implied from other provisions of AS 15.13 flies in the face of two canons of construction which have been adopted in almost every jurisdiction: (1) criminal statutes are to be strictly construed, and (2) where there has been a material change in language of an act, it is presumed that the legislature intended to indicate a change in legal rights and obligations thereunder.[35]

I agree with the implication of the majority opinion that the sections eliminated affect the workings of the commission and various other provisions throughout the statute. However, I am unable as a matter of logic to find the flexibility in the act passed by the legislature to cover the gaps left by those sections deleted from the original initiative.

I would reverse the decision of the trial court and remand this case with instructions to place the initiative on the ballot of the next general election.

...AS 22.05.010.

...The only similar sections found in AS 15.-...010–110 provide for
(1) a monitoring committee (.020 to .030);
(2) the reporting of contributions over $100.00 (.040);
(3) the registration of groups and the appointment of a treasurer (.050 and .060);
(4) limitations of spending by candidates in various races (.070);
(5) certain reporting requirements of contributors and a schedule for candidates (.080 to .110).

Additionally, the legislature added a tax credit of $50.00 from state income tax for political contributions. Also, publication of an election pamphlet containing background information on the candidates, costing each House candidate $25.00 and each Senate candidate $50.00.

35. *See* Horack, Sutherland Statutory Construction, Vol. 1, § 1930, p. 412–414 (3rd Ed.1943).

MEMORANDUM August 16, 1985

Subject: Summary of August 12, 1985 Billy Berrier Memo

From: Frank Bickford FB
Legislative Salary Committee

The determination of whether the enactment voids the petition is made by the lietutenant governor with formal concurrence of the attorney general under AS 15.45.210 which provides:

> Sec. 15.45.210 DETERMINATION OF VOID PETITION.
>
> If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substanially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.

If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems that are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the iniatiative.

It is clear that an act need not be identical in order to void a petition. However, the degree of deviation allowed is a factual matter that must be determined by comparing the petition and the statue enacted.

THE

CONSTITUTION

of the

STATE OF ALASKA

Sen. Abood

ARTICLE XI

INITIATIVE, REFERENDUM, AND RECALL

[redacted] and [redacted]

SECTION 1. [redacted]

Application

SECTION 2. An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred qualified voters as sponsors, and shall be filed with the lieutenant governor. If he finds it in proper form he shall so certify. Denial of certification shall be subject to judicial review.

(The amendment to this section was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. The words "secretary of state" were changed to "lieutenant governor".)

Petition

SECTION 3. After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by qualified voters, equal in number to ten per cent of those who voted in the preceding general election and resident in at least two-thirds of the election districts of the State, it may be filed with the lieutenant governor.

(The amendment to this section was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. The words "secretary of state" were changed to "lieutenant governor".)

Initiative Election

SECTION 4. [redacted] The lieutenant governor shall prepare a [redacted] and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing [redacted]

[redacted] was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. The words "secretary of state" were changed to "lieutenant governor".)

Referendum Election

SECTION 5. A referendum petition may be filed only within ninety days after adjournment of the legislative session at which the act was passed. The lieutenant governor shall prepare a ballot title and proposition summarizing the act and shall place them on the ballot for the first statewide election held more than one hundred eighty days after adjournment of that session.

(The amendment to this section was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. The words "secretary of state" were changed to "lieutenant governor".)

Enactment

SECTION 6. If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. [redacted]. An act rejected by referendum is void thirty days after certification. Additional procedures for the initiative and referendum may be prescribed by law.

(The amendment to this section was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. The words "secretary of state" were changed to "lieutenant governor".)

Restrictions

SECTION 7. [redacted] create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety.

ing to, or returning from legislative sessions are not subject to civil process and are privileged from arrest except for felony or breach of the peace.

[redacted]

Regular Sessions

SECTION 8. The legislature shall convene in regular session each year on the fourth Monday in January, but the month and day may be changed by law. The legislature shall adjourn from regular session no later than one hundred twenty consecutive calendar days from the date it convenes except that a regular session may be extended once for up to ten consecutive calendar days. An extension of the regular session requires the affirmative vote of at least two-thirds of the membership of each house of the legislature. The legislature shall adopt as part of the uniform rules of procedure deadlines for scheduling session work not inconsistent with provisions controlling the length of the session. [Amendment approved November 6, 1984]

Special Sessions

SECTION 9. Special sessions may be called by the governor or by vote of two-thirds of the legislators. The vote may be conducted by the legislative council or as prescribed by law. At special sessions called by the governor, legislation shall be limited to subjects designated in his proclamation calling the session, to subjects presented by him, and the reconsideration of bills vetoed by him after adjournment of the last regular session. Special sessions are limited to thirty days.

(The amendment of this section was approved by the voters of the state November 2, 1976 and became effective December 23, 1976. This amendment deleted "or" preceding "to subjects" in the third sentence and added "and the reconsideration of bills vetoed by him after adjournment of the last regular session.")

Adjournment

SECTION 10. Neither house may adjourn or recess for longer than three days unless the other concurs. If the two houses cannot agree on the time of adjournment and either house certifies the disagreement to the governor, he may adjourn the legislature.

Title and Authority

SECTION 14. When the lieutenant governor succeeds to the office of governor, he shall have the title, powers, duties and emoluments of that office.

(The amendment to this section was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. The words "secretary of state" were changed to "lieutenant governor".)

[redacted]

[redacted]

(The amendment to this section was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. The words "secretary of state" were changed to "lieutenant governor".)

Governor: Authority

SECTION 16. The governor shall be responsible for the faithful execution of the laws. He may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions. This authority shall not be construed to authorize any action or proceeding against the legislature.

Convening Legislature

SECTION 17. Whenever the governor considers it in the public interest, he may convene the legislature, either house, or the two houses in joint session.

Message to Legislature

SECTION 18. The governor shall, at the beginning of each session, and may at other times, give the legislature information concerning the affairs of the State and recommend the measures he considers necessary.

Military Authority

SECTION 19. The governor is commander-in-chief of the armed forces of the State. He may call out these forces to execute the laws, suppress or prevent insurrection or lawless violence, or repel

elected by the justices and judges of state courts; three members who have practiced law in this state for ten years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of the members of the legislature in joint session; and three persons who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. In addition to being subject to impeachment under Section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law. [Amendment approved November 2, 1982]

Retirement

SECTION 11. Justices and judges shall be retired at the age of seventy except as provided in this article. The basis and amount of retirement pay shall be prescribed by law. Retired judges shall render no further service on the bench except for special assignments as provided by court rule.

Impeachment

SECTION 12. Impeachment of any justice or judge for malfeasance or misfeasance in the performance of his official duties shall be according to procedure prescribed for civil officers.

[redacted]