

ALASKA LEGISLATURE COMMITTEE FILES 1901-1902 0072

1707 SJ SB 864 - SJR 2

APPENDIX B

ALASKA STATUTES REGARDING LAW REVISION

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ALASKA STATUTES REGARDING LAW REVISION

Sec. 01.05.036. Improvement of statutes. The Legislative Affairs Agency, working in cooperation with the revisor shall make recommendations to the legislative council concerning deficiencies, conflicts or obsolete provisions in and the need for reorganization or revision of the statutes, and, at the direction of the legislative council, shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts or obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state. - - - -

(emphasis added)

Sec. 24.20.060. The legislative council has the following powers:

- - - - -

- (4)(B) conduct a continuing program for the revision and publication of the acts of the legislature.
- (C) execute a program for the oversight of the administration and construction of laws by state agencies and the courts through regulations, opinions and rulings.

(emphasis added)

Section 24.20.065. Examination of Regulations and opinions. (a) The legislative council shall annually examine administrative regulations, published opinions of state and federal courts and of the Department of Law that rely on state statutes, and the final decisions adopted under the Administrative Procedure Act (AS 44.02) to determine whether or not

- (1) the courts and agencies are properly implementing legislative purposes;
- (2) there are court or agency expressions of dissatisfaction with state statutes;
- (3) the opinions or regulations indicate unclear or ambiguous statutes.

(emphasis added)

Sec.24.20.070. Revision of Statutes. - - - - -

- (b) Statute revision is a continuing responsibility of the council.

- - - - -

(emphasis added)

Section 24.20.075. Code Revision Commission. - - - - -

(c) The commission shall:

- (1) examine the statutes of the state and judicial decisions to discover defects and anachronisms in the law.
- (2) review and consider proposed changes in the law recommended by the National Law Institute, the National Conference of Commissioners on Uniform State Laws, the Alaska Judicial Council, the supreme court, the state or local bar associations, principal departments, agencies, boards and commissions of the executive or judicial branch, and committees of the legislative branch.
- (3) receive and consider suggestions from the Alaska bench and ba., public officials, organizations and individuals as to areas of law needing review and remedy;
- (4) recommend changes in law needed to eliminate antiquated and inadequate rules of law and to bring the law into harmony with current needs and conditions.

- - - - -
(emphasis added)

APPENDIX C

TABLE INDICATING HOW OTHER STATES
DEAL WITH CODE REVISION

APPENDIX C
HOW OTHER STATES DEAL WITH CODE REVISION

In 1979, the commission directed inquiries to 45 states seeking information on how those states accomplished code revision. 35 states responded to the survey. Following is a summary of those responses.

States that accomplish code revision through their legislative committee system, and/or the equivalent of Alaska's Legislative Council.

ARIZONA	NEW HAMPSHIRE
MAINE	NORTH DAKOTA
MISSOURI	OHIO
NEBRASKA	WEST VIRGINIA
NEVADA	WISCONSIN

States that accomplish code revision through their revisors of statutes, or through the equivalent of Alaska's Legislative Affairs Agency.

ALABAMA	NEW MEXICO
DELAWARE	OKLAHOMA
HAWAII	RHODE ISLAND
KANSAS	SOUTH DAKOTA
KENTUCKY	TENNESSEE
MINNESOTA	TEXAS
MONTANA	WYOMING

States that accomplish code revision through code revision commissions

CALIFORNIA	MARYLAND (n-s)
COLORADO	MICHIGAN
GEORGIA	NEW YORK
INDIANA (n-s)	NORTH CAROLINA
LOUISIANA	VERMONT (n-s)
VIRGINIA (n-s)	

(n-s) = commissions empowered to consider only non-substantive revisions

APPENDIX D

ALASKA CODE REVISION COMMISSION
BUDGETS FY 77 - FY 82

APPENDIX D
BUDGETS OF THE ALASKA CODE REVISION COMMISSION, FY 77 - FY 82

The following information was obtained from the Authorizations and Expenditures documents of the Legislative Affairs Agency, and from the records of the Alaska Code Revision Commission.

Budget for Fiscal year 1977	-	\$ 57,000
Budget for Fiscal year 1978	-	53,000
Budget for Fiscal year 1979	-	100,000
Budget for Fiscal year 1980	-	119,000
Budget for Fiscal year 1981	-	175,000
Budget for Fiscal year 1982	-	219,000
		<hr/>
TOTAL AUTHORIZED SINCE INCEPTION . . .		\$ 723,000

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
WM. GRANT CALLOW - VICE CHAIRMAN
PATRICK M. RODEY
FRED E. BROWN
L. S. KURTZ, JR.
JAMES L. BALDWIN

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

November 30, 1981

RECEIVED

DEC 01 1981

LEGISLATIVE
AUDIT

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W, State Capitol
Juneau, Alaska 99811

Re: Performance review of the Alaska Code
Revision Commission, October 28, 1981

Dear Mr. Wilkerson:

The Alaska Code Revision Commission acknowledges receipt of the preliminary performance review. Copies were distributed to members for review at the November 23-24, 1981 meeting in Anchorage. We are currently in the process of drafting a response as requested in your November 10, 1981 letter. However, because of further telecommunications between commissioners necessary for a thorough response, there will be a slight delay in submitting it to you within the allotted twenty-day time period. We sincerely regret the delay.

Please call if this creates any problems for you.
Thank you for your consideration.

Very truly yours,

John W. Abbott
by: chw

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
CHARLES G. ANDERSON
L. S. KURTZ, JR.
JUDGE (RET.) THOMAS B. STEWART

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

January 25, 1982

RECEIVED

JAN 27 1982

LEGISLATIVE
AUDIT

Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch WF, State Capitol
Juneau, Alaska 99811

Re: Response to Preliminary Performance Review
of the Alaska Code Revision Commission

Dear Mr. Wilkerson:

Enclosed please find the report as referenced above
as our response to the audit conducted by Mr. R. W. Pavitt
and Associates, Inc.

Please contact me if you require further information
by way of response.

Very truly yours,

John W. Abbott
by: chw

John W. Abbott, Chairman
Alaska Code Revision Commission

JWA:chw

Enclosure

RESPONSE TO PERFORMANCE REVIEW
OF ALASKA CODE REVISION COMMISSION

This response, in addition to addressing matters specifically requested to be addressed, will respond to both information and recommendations contained in the audit review of R. W. Pavitt and Associates, Inc.

Purpose and Scope of Review

Although the scope of review as set forth in the audit report was very broad, in fact little or no attention was paid to many factors in evaluating the commission. While the legislative mandate creating this commission is given lip service, in fact the thrust of the audit makes clear some significant misconceptions of commission functions and responsibilities by the auditor.

Little if any attention appears to have been given to Items (2) through (8). Only one present member of the Alaska Code Revision Commission was interviewed. Approximately one-half day of the October 12, 1981 meeting was observed by the auditor. A misconception concerning the work to be performed by the commission pursuant to its statutory mandate and the actual workings of this commission is apparent throughout the audit report and is further reflected in the recommendations contained in the report.

Organization and Function

The commission agrees with the auditor's statement of the organization and function of the commission.

Report Conclusion

The commission does not agree with the recommendation that it should not be continued in its present form. While it agrees with some of the recommendations set out in the report (as indicated below), it does not feel that legislative action is necessary at this time to restructure the commission.

The report conclusion is supported by the following reasons:

1. That in spite of the many hours devoted to producing proposed legislation, few of the commission bills have been adopted.

This rationale is incorrect in two respects:

- (a) It assumes that the function of the commission is to get bills passed. The legislature, not the commission is responsible for the passage of legislation. The commission's work product has been used in many ways other than enactment of

commission proposed bills. The commission's work product has been used by the legislature in a research context; has been used to effect major revisions in existing law (Title 4); has been used as a research tool by Legislative Affairs and the Attorney General's Office; and language drafted by the commission has been used where appropriate in the drafting of many bills by other state agencies.

(b) At the present time there are five major bills proposed by the commission under consideration by this legislature. These include:

- (1) Exemptions Act
- (2) Amendments to Chapters 8 and 9 of the Uniform Commercial Code
- (3) A Revised Recording Act
- (4) A Security Interests Bill
- (5) The Alaska Business Corporations Code

2. That the duties and responsibilities of the commission are substantially similar to those mandated to the Legislative Council, Legislative Affairs, and the Co-Revisors of Statutes.

This rationale is incorrect in the following respects:

(a) The commission, even where the mandate would permit, does not perform certain functions performed by the aforementioned bodies, including:

(i) Revisor duties of a strictly technical nature (e.g., adherence to the legislative drafting style, use of legislative format).

(ii) Review of draft legislation for the legislature or the executive branch of government or drafting.

(iii) Introduction of personal bills or special interest legislation.

(b) The commission reviews model act legislation, statutory changes amending or updating uniform laws, introduction of uniform laws recommended for adoption by the NCCUSL, legislation encompassing an entire title as opposed to amendments of existing laws.

3. That the enabling legislation for the commission has created problems concerning the duplication of legislative-type tasks.

Although the commission's mandate is extremely broad and would allow duplication of functions, in fact there is little or no duplication. The relationships and jurisdiction of the legislative bodies have been worked out through the cooperation of these bodies, and each now performs its own

functions in cooperation with the other legislative bodies.

4. The commission finds no significance in the fact or belief that it originally was patterned after the California Law Revision Commission. The commission's authority results from legislative enactment, and it is irrelevant what California does or does not do.

5. It is also irrelevant what other states have done. In Alaska, the legislature has created by statute the scope of the commission's authority. The statement contained in this paragraph of the audit report that substantive law revisions in Alaska have been successfully handled in the past is entirely incorrect. The success of the Criminal Code Commission provided the impetus for creation of a permanent code revision commission. The Title 4 revision was begun after the commission had half completed its revision of Title 4, and the legislature used all of the commission's factual data and draft legislation. No other major projects like those of the commission have been undertaken by any other body or group.

6. This paragraph is correct insofar as it goes. It fails to mention, however, that the extremely technical nature of the legislation considered by the commission renders it particularly suitable to blue-ribbon panel treatment. Moreover, technical statutory revision as accomplished by the commission has traditionally been deferred by the legislature to select committees, a fact which led to the creation of both the criminal code and the Acode revision commissions.

7. The commission believes that it can continue to provide valuable assistance to the legislature in its present form without any changes in the present law, but is not opposed to legislation to make more clearly known to the commission the desires of the legislature so that the commission may better perform its functions.

Findings and Recommendations

Part I

If the commission is terminated, funds should be provided to allow it to fulfill its existing obligations and cease activities on June 30, 1983.

Part II

The commission now complies (and has in the past complied) with the below-listed recommendations:

(a) Filing of annual reports.

(b) Notification to the Legislative Council of the matters to be considered by the commission.

(c) Complete information, including minutes of all commission meetings, to apprise the Legislative Council of its activities.

(d) Consideration of any topics referred to it by the legislature, by formal or informal request; the formality of a concurrent resolution is not necessary, as the commission has on numerous occasions solicited projects from the legislature and its individual members.

(e) The commission has always maintained a calendar of topics to be considered and has to the extent practicable adhered to it.

The commission agrees that communications between it and the Legislative Council could be improved and has made repeated efforts for the past several years to do so.

The commission also agrees that a better mechanism should be developed to avoid conflicts between it and special legislative committees.

Recommendation No. 2

The commission now sees its mandate as providing advice and assistance to the legislature. All draft legislation is subject to review by the Legislative Council and is actually introduced through the council. Thereafter, it is subject to the same treatment as every bill introduced in the legislature. The commission acts in an advisory role.

Recommendation No. 3

The commission presently examines statutes of the state and judicial decisions as a part of its overall mandate to revise, in toto, anachronistic state laws.

Analysis of Public Need

The commission agrees with all of the paragraph, of this section except:

(a) IX which is responded to in the commission's reponse to Findings and Recommendations, Part II.

Conclusion

The commission performs a task that is not now performed by any other body in the state government: the substantial revision-updating of entire bodies of technical laws. Legislatures in Alaska have never undertaken these projects, and in fact they would normally be beyond its scope. These projects are logically and practically performed by a special commission similar to the Alaska Code Revision Commission.

APPENDIX

Appendix "A" to the Preliminary Audit incorrectly states commission action in a number of instances where column "ACRC action" of the exhibit says "no further action." The commission actively considered the Uniform Brain Death Act (Item 14) and the Uniform Marriage and Divorce Act (Item 12) and decided they were inappropriate for Alaska.

The appendix incorrectly states that a legislator referred the insurance code (Items 2 and 26) to the commission. Actually, in 1980 the Department of Commerce and Economic Development asked the commission to review AS 21. The commission realized revision of the insurance code would be a major project, and concluded that it could absorb no more major projects at that time. Later, the commission was informed that the Department of Commerce was working on the project so considered it no further.

The class action problem (Item 3) was solved by court rules. Real property conveyancing (Item 11) was dealt with under Item 22, which resulted in HB 403. The commission decided the matters covered by the Uniform Comparative Fault Act (Item 6) were best left for court resolution, some of which had occurred when that decision was made.

The Uniform Limited Partnership Act (Item 15) was renewed and redrafted by the Legislative Affairs Agency at the request of the commission. It then became apparent that it was a poor uniform act, and the commission decided to table it. This and the Uniform Marriage and Divorce Act are good examples of considerable effort devoted by the commission to reviewing and sometimes hearing testimony on uniform acts. "No further action" is a poor description of the time required for that review.

The commission's work on guardians and conservators was started by legislative request and stopped by legislative request, again not disclosed by the "no further action" in the appendix. The introduction of a bill on the subject by the administration also encouraged the commission to abandon the field.

Alaska Hire (Item 20) still is under active consideration by the commission after having been tabled pending completion of litigation. The commission now is seeking a constitutional law expert to explore the feasibility of new approaches to that legal thicket. Similarly, the commission has repeatedly discussed the Administrative Procedure Act (Item 2). We still are waiting for a statement of the administration's position and legislative action on SB 594 (Senator Rodey's Judiciary Committee bill). If neither the administration nor the legislature pushes the bill, the commission may. However, the commission now is being discouraged by both branches from moving ahead on this bill.

The commission is unaware of legislative direction to work on domestic violence (Item 23). While several legislators may have suggested that, others informed the commission to stay away from the area because bills were being actively considered by the legislature. One passed last year.

The commission started work on a revision of the Small Loans Act (Item 24). After hearing testimony and learning of the activity of the Special Senate Committee on Banking, the commission refrained from taking action on that subject. The commission has not worked on the Alaska Securities Act (Item 27), although the Department of Commerce has asked that the commission look at limited portions of it on several occasions.

R. W. PAVITT AND ASSOCIATES, INC. _____

PLANNING CONSULTANTS

February 5, 1982

Legislative Audit Division
State of Alaska
Pouch W
Juneau, Alaska 99811

Attention: Merle R. Jenson, Deputy Legislative Auditor

Dear Mr. Jenson:

I have completed close scrutiny of the 6-page document entitled RESPONSE TO PERFORMANCE REVIEW OF ALASKA CODE REVISION COMMISSION.

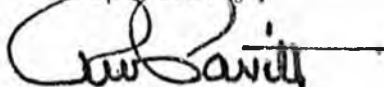
The thrust of the document (hereafter referred to as the Response) appears to hold that the PERFORMANCE REVIEW OF THE ALASKA CODE REVISION COMMISSION (hereafter referred to as the Review) incorrectly assesses the duties and responsibilities assigned to the commission by the Legislature; and, as a result of such misconception, erroneously recommends that the body be restructured or terminated.

I submit that the research accomplished in preparing the Review was thorough and adequate; that the factors considered in the Review are proper and consistent with the "sunset review" process, and that the conclusion and recommendations were arrived at logically and objectively from the evidence and material available.

With the exception of a minor amendment to the title of Appendix A (page - 13 -; change DETAILING to SUMMARIZING), I recommend that the report entitled A PERFORMANCE REVIEW OF THE ALASKA CODE REVISION COMMISSION, as submitted by the contractor, be forwarded to the appropriate legislative committee along with the responses received by the Legislative Audit Division.

As agreed, I will be available for testimony at such time as the committee considers the matter.

Respectfully,



R. W. Pavitt, AICP
President

RWP/bp

REBUTTAL

TO

RESPONSE TO PERFORMANCE REVIEW OF ALASKA CODE REVISION COMMISSION

Purpose and Scope of Review

The Response constitutes an unsupported attack on the methodology and the thoroughness of the performance audit.

- Contrary to the contention of the Response, great weight was given to items (2) through (8).
- In addition to the formal interview of one present member, the auditor, during the October 12, 1981 meeting, spent well over an hour in a direct question and answer session with all members (in attendance) of the commission, and informally discussed the matter of the sunset review further for 15 - 20 minutes during a coffee break with two of the commissioners. Two extensive interviews were also conducted with the Executive Secretary.
- The Response fails to document its contention that "a misconception" is apparent in the Review with respect to the mandate and the workings of the commission.

Organization and Function

The Response agrees with the Review.

Report Conclusion

The Response contends that the results of the commission's efforts in terms of substantive revisions adopted into law by the Alaska Legislature is not a valid measure of the overall effectiveness of the commission; and goes on to disagree with statements in the Review regarding duplication of code revision responsibility, and the conflicts that result from such redundancy of effort.

- Inasmuch as the responsibilities of the commission (AS 24.20.075) boil down to the charge to "recommend changes in law needed to eliminate

antiquated and inadequate rules of law and to bring the law into harmony with current needs and conditions", the acceptance of these recommendations by the Legislature, as reflected in substantive enactments, would appear to be the ultimate test of the commission's effectiveness.

- Interviews conducted with staff attorneys connected with the Legislative Affairs Agency and the Department of Law did not support the contention in the Response that the commission's work product has been an important research tool.
- The fact that the "duties and responsibilities of the commission are substantially similar to those mandated to the Legislative Council, Legislative Affairs and the Co-Revisors of Statutes" is clearly documented in the summary of Alaska Statutes regarding law revision contained in Appendix B to the Review.
- The Response states that "The commission, even where the mandate would permit, does not perform certain functions performed by the aforesaid bodies...." (emphasis added); and acknowledges that the "commission's mandate is extremely broad and would allow duplication of functions",.... (emphasis added). Although the Response holds that duplication and conflicts do not exist, interviews conducted during the Review with Legislative Affairs attorneys and a careful reading of the commission's minutes indicates that they in fact do.

Findings and Recommendations

Part I

The Response agrees with the statement in the Review that if the commission is terminated, sufficient funds should be provided to fulfill its existing obligations and cease activities on June 30, 1983.

Part II

The Response sets forth the parts of Recommendation No. 1 with which the commission feels it is now complying, and agrees that communications with the Legislative Council need improving, and that a mechanism for avoiding conflict with special legislative committees should be developed.

- Recommendation No. 1, as written, attempts to address these matters.

With respect to Recommendation No. 2, the Response indicates that the commission understands its advisory role in the lawmaking process.

- Recommendation No. 2, as written, seeks to statutorily clarify the relationship of legislative advisors.

Regarding Recommendation No. 3, the Response states that the commission presently sees the review of anachronistic state laws as part of its mandate.

- Recommendation No. 3, as written, seeks to leave this responsibility with the Co-Revisors of Statutes and the Legislative Affairs Agency where it presently is placed (AS 01.05.036)

Appendix

The Response takes umbrage at the use of the term "no further action", and suggests that in a number of instances, that term does not tell the whole story of the commission's consideration with respect to the item of legislation.

- Appendix "A" to the Review summarizes, in brief tabular form, the work of the commission on 30 items. The table was constructed from the minutes of the commission (7/15/76 - 8/5/81). In its preliminary form, it was independently checked for accuracy by a consultant to the commission and by a former member. Both suggested minor additions and corrections which were incorporated into the table.
- The auditor agrees that a 3-page table cannot totally detail 5+ years of commission effort. The table does, however, accurately summarize the actions of the commission and of the legislature. The suggestion is therefore made that the title of the appendix in question be changed to: "TABLE SUMMARIZING SUBJECT MATTER STUDIED BY THE COMMISSION 1976 - 1981"

The Response, in discussing the commission's consideration of the Administrative Procedure Act makes the statement: "If neither the administration nor the legislature pushes the bill, the commission may." (emphasis added)

- While the enthusiasm of the commission for exploring the difficult problems of the Administrative Procedure Act is commendable, the stridency of the statement quoted above appears to be in marked contrast to the claims in the Response that the commission fully perceives its duties and responsibilities vis-a-vis the legislative process.

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February 5, 1982

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CSSB 864 (Jud)
 Title Alaska Code Revision Commission
 Requested by Finance Committee Date 4-12-82

II. FISCAL DETAIL
 Agency Affected Legislative Affairs
 Program Category Affected General Government
 BRU, Program, Or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-				

FUNDING (Thousands of Dollars)

-0-

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

-0-

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The funds for this committee are contained in the General Appropriations Act and no additional funds are requested.

IV DATE 4/27/82 PREPARED BY Wally Harrison, Director
 AGENCY Legislative Affairs Agency
 PHONE 465-3850

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

- I. REQUEST
 Bill/Resolution No. SENATE BILL NO. 864
 Title An Act continuing the existence of the Alaska Code Revision Com-
mission and amending the statutes, etc Date 4-12-82
 Requested by: Senate Finance Committee
- II. FISCAL DETAIL
 Agency Affected Legislative Affairs Agency
 Program Category Affected General Government
 BRU, Program, Or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		101.1	111.2	122.3		
200 TRAVEL		35.4	39.0	42.9		
300 CONTRACTUAL		96.6	106.3	116.9		
400 COMMODITIES		5.2	5.7	6.3		
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		238.3	262.2	288.4		

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		238.3	262.2	288.4		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME		2	2	2		
PART TIME						
TEMPORARY						

- III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)
 Fiscal Year 1983: (Fiscal Years 1984 and 1985 - add 10% per year)

Personal Services ----- 101.1
 Secretary - Range 12K - for 12 months @\$2,379 per month
 Research Director - Range 23C - for 12 mo @\$4,251 per mo.
 Plus benefits at 27%

Travel ----- 35.4
 12 monthly hearings ----- \$29,278
 1 hearing rural Alaska ---- 6,136

Contractual Services ----- 96.6
 Telephone @\$294 per month - \$3,528 Rents/Leases - \$2,943
 Printing/advertising ----- 2,354 Consultants --- 87,800

Supplies and Materials ----- 5.2
 Printing supplies/materials - @\$196 per month - \$2,352
 Stationery and office supplies ----- \$2,825

- IV. DATE 4-12-82 PREPARED BY Wally Harrison, Director
 AGENCY Legislative Affairs Agency
 Original: Legislative Finance PHONE 465-3850
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)



Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • Pouch V • Juneau, Alaska 99811 • (907) 465-4954

Official Business

Mar. 11, 1982

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Mr. President:

In compliance with AS 44.66.050 and referral by the President of the Senate, the Senate Committee on State Affairs has conducted a sunset review of the Alaska Code Revision Commission.

The committee utilized Legislative Audit report 30-022-0025-R, A Performance Review of the Alaska Code Revision Commission, dated October 28, 1981; the 1981 Annual Report of the Alaska Code Revision Commission, dated February 1982; and the Commission's Proposed Budget for FY '83.

Testimony was received from the auditor, R.W. Pavitt, AICP; John W. Abbott, Chair; Billy G. Berrier, Executive Secretary; and James L. Baldwin, member of the Commission. Written communication was received from Patrick M. Rodey, member of the Commission, and Charles R. Webber, Commissioner of the Alaska Department of Commerce and Economic Development.

Findings required by AS 44.66.050 (d) follow:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;

Finding:

As a permanent commission of the legislature, the Commission is charged with the following duties:

- (1) examining the statutes of the state and judicial decisions to discover defects and anomalies in the law;
- (2) reviewing and considering proposed changes in the law recommended by the National Law Institute, the National Conference of Commissioners on Uniform State Laws, the Alaska Judicial Council, the supreme court, the state or local bar associations, principal departments, agencies, boards and commissions of the legislative branch;
- (3) receiving and considering suggestions from the Alaska bench and bar, public officials, organizations, and individuals

as to areas of law needing review and remedy;

(4) recommending changes in law needed to eliminate antiquated and inadequate rules of law and to bring the law into harmony with current needs and conditions.

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;

Finding:

The commission is directed to submit its report and recommendations, and draft legislation as to revision of law, to the Legislative Council, and distributes them to the governor, members of the legislature, and the chief justice of the supreme court. See 1981 Annual Report (attached Exhibit A) for a discussion of its accomplishments.

(3) an identification of any other programs having similar, conflicting or duplicate objectives;

Finding:

The duties and responsibilities assigned to the commission by the enabling act (AS 24.20.075) are substantially similar to those mandated to the Legislative Council, the Legislative Affairs Agency and the Co-revisors of Statutes (AS 01.05.036; 24.20.060(4); 24.20.065(a); and 24.20.070(b).

(4) an assessment of alternative methods of achieving the purposes of the program.

Finding:

Substantive revision of law in Alaska can be accomplished by legislatively-appointed special commissions (as in the case of the major Criminal Code revision), by a special committee of the legislature such as the committee that revised Title 4 (Alcoholic Beverages), or by the the Legislative Affairs Agency contracting with consultants.

(5) an assessment of the consequences of eliminating the board, commission, or program and consolidating its activities with another program, or of funding it at a lower level.

Finding:

Elimination of the Commission would remove the breadth of review and participation that accrue as a result of code revision being supervised by a multi-member group. Elimination would not, however, necessarily prevent needed code revisions from being accomplished (see preceding response). Elimination of the Commission would not result in any significant savings, as the Commission members receive no compensation for services rendered. The public member and the designee of the Alaska Bar Association board of governors do receive per diem and travel allowance.

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication or or conflict with other efforts;

Finding:

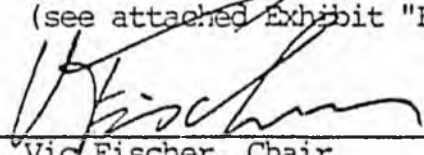
Its broad-based membership of legislative, executive and judicial branch representatives, as well as the public and Alaska Bar members, provide a breadth of legal knowledge, perception and experience that has much potential value as an advisory function to the lawmaking process. Particularly in areas of generally low legislative interest such as probate law, security law, real property conveyancing, bankruptcy law and the like, the Commission has shown that it can provide necessary expertise in recommending statutory revision that "will bring the law into harmony with current needs and conditions." (AS 24.20.075(c)(4)).

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest.

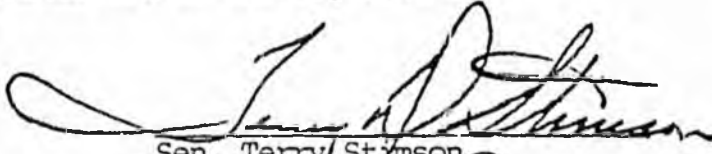
Finding:

The Committee acknowledges the numerous hours and efforts of the Commission but is concerned with the process the Commission utilizes to select topics for study and the duplication of responsibilities with other existing agencies. Therefore, the Committee recommends the following:

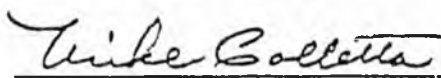
- 1) that the Commission be extended to June 30, 1985; and
- 2) that the Commission's duties be limited to reviewing and considering proposed changes in the law by the National Law Institute, and the National Conference of Commissioners on Uniform State Laws and any other matter referred to the Commission by a concurrent resolution of the legislature (see attached Exhibit "B").



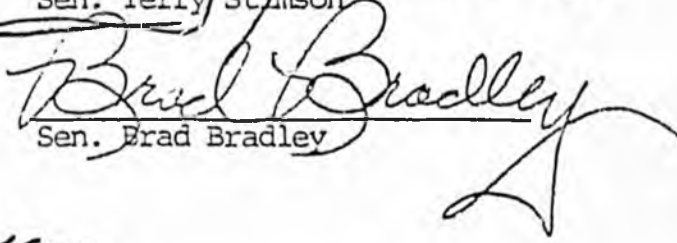
Sen. Vic Fischer, Chair



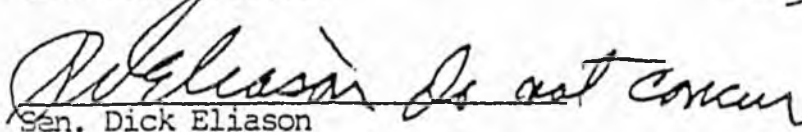
Sen. Terry Stinson



Sen. Mike Colletta



Sen. Brad Bradley



Sen. Dick Eliason



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 5, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SB 327 - "An Act relating to parole of offenders; continuing the existence of the Board of Parole; and providing for an effective date."
- HB 377 - "An Act relating to factors in aggravation for purposes of imposing presumptive terms of imprisonment for felonies."
- SB 686 - "An Act relating to the return of property recovered or seized by law enforcement agencies or acquired as evidence in a criminal proceeding."
- SB 864 - "An Act continuing the existence of the Alaska Code Revisor Commission and amending the statutes relating to its responsibilities."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:40 P.M. Committee members present were: Senators Rodey, Ray, Parr, and Anderson. Senator Bennett was absent.

002 - Call to order.

005 - Chairman Rodey brought SB 327 before the committee.

027 - Senator Anderson moved to delete [\$100] and insert \$150 on Page 3, Line 1. Senator Ray objected.

076 - Senator Anderson's amendment was adopted with Senator's Rodey, Parr, and Anderson a yes vote. Senator Ray voted no.

124 - Senator Parr moved to pass SB 327 with individual recommendations. There was no objection.

184 - Chairman Rodey brought SB 864 before the committee.

220 - Mr. Bruce goes over language.

417 - Senator Parr moved that beginning on Page 2, Line 24 the following language be added: Each draft of legislation submitted by the commission shall be accompanied by a sectional analysis; the commission shall prepare the sectional analysis using language that is understandable to a layman. There was no objection.

531 - Senator Ray moved to strike Sec. 4 of the committee substitute beginning on Page 2, Line 21: [(2) establish one or more subcommissions to assist it in the performance of its duties; the commission may appoint any person to serve on a subcommission established under this paragraph.] There was no objection.

547 - Senator Ray moves to pass SB 864 with individual recommendations. There was no objection.

558 - Chairman Rodey brought HB 377 before the committee.

560 - Mr. Bruce explains the committee substitute.

640 - Senator Anderson moved to adopt the committee substitute for HB 377. Senator Ray objected on the basis that the committee substitute is not germane to the original bill.

659 - Senator Anderson moved to pass HB 377 pending the chair's decision on germaneness.

675 - Chairman Rodey brought SB 686 before the committee.

677 - Pat Conheady, Department of Law, testified, giving the changes in the bill.

107 - Don Magnuson, representing the Alaska Retailers Association, testified in favor of photographing evidence.

180 - SB 686 returned to file.

183 - Adjourned at 3:15 P.M.

2506-1

SUNSET HEARING ON ALASKA CODE REVISION COMMISSION

PROPOSED STATUTE CHANGES

-STATUTORY LANGUAGE-

Sec. 24.20.075. Code Revision Commission. (a) The Code Revision Commission is established as permanent commission of the legislature.

(b) The commission consists of two legislators, one from each house, appointed by the presiding officer, (one) four public member s, who (is) are not (an) employee s of the state government, appointed by the governor; a designee of the governor, who is an attorney employed by the executive branch of the state government; a designee of the chief justice of the supreme court; and a designee of the Alaska Bar Association appointed by the board of governors of the association. Legislative members serve at the pleasure of the presiding officer, and appointed members serve at the pleasure of the appointing authority. Members receive the standard per diem for board members, or the regular legislative per diem if they are legislators, for days spend on commission business. The commission selects its chairman and vice-chairman. The director of legal services for the Legislative Affairs Agency, or his designee serves as executive secretary for the commission.

(c) The commission shall

(1) examine the statutes of the state and judicial decisions to discover defects and anachronisms in the law;

(2) review and consider proposed changes in the law recommended by the National Law Institute, the National Conference of Commissioners on Uniform State Laws, the Alaska Judicial Council, the supreme court, the state or local bar associations, principal departments, agencies, boards and commissions of the executive or judicial branch and committees of the legislative branch;

(3) receive and consider suggestions from the Legislative Council as to proposed statute revisions mandated by the Council in 24.20(4)(b) and 24.20.070(a) and (b).

(4) receive and consider suggestions from the Alaska bench and bar, public officials, organizations, and individuals as to areas of law needing review and remedy;

(5) recommend changes in law needed to eliminate antiquated and inadequate rules of law and to bring the law into harmony with current needs and conditions.

(d) The commission may

(1) hold public hearings and other meetings as necessary throughout the state and shall determine an appropriate quorum for conducting business;

(2) establish one or more subcommissions to assist it in the performance of its duties. Persons from the public sector may be solicited by commission members to act as advisory members or the duly established subcommissions.

(e) The staff of the Legislative Affairs serves as staff for the commission. Subject to appropriation for the purpose, the commissions may request the agency to contract with other agencies or persons for the performance of necessary services.

(f) The commission shall submit its reports and recommendations, and draft legislation as to revision of law, to the Legislative Council and shall distribute them to the governor, members of the legislature, and the chief justice of the supreme court.

(g) Within 30 days of the convening of each legislative session, the commission shall address a joint session of the legislature. In the address the chairman or his designee shall inform the legislators of the primary pieces of legislation they have been working on and which the commission feels should be taken up by the two houses and the reasons why.

(h) All branches of state government shall provide information and documents requested by the commission necessary to the accomplishment of its work.

(i) The commission shall make a formal request to the Legislative Council for funds it considers necessary for the per diem, travel and contractual expenses of the commission. Funds appropriated to the commission are to be disbursed and accounted for under procedure required by the Legislative Affairs Agency. The commission chairman shall approve all expenditure documents (1 ch 114 SLA 1976; am 1 ch 57 SLA 1977)

The above amendments to existing law are an attempt at addressing the following problem areas highlighted in the Alaska Revision Commission Sunset Hearings:

A) The need for additional public input to make proposed legislation more pertinent to legislators and public alike.

B) Implementation of language to provide a closer more cohesive relationship between the Legislative Council and the A.C.R.C., and eliminate possible overlap of work between the two bodies.

C) If the legislation the commission is working on is to be acted up by the legislature, the addition of a joint session informing the members of the proposed legislation would provide the two houses with the initial information necessary to make them aware that such legislation exists through the work of the Code Revision Commission.

* An additional recommendation to the Alaska Code Revision Commission (not included in statutory changes or requirements) would be to have the commission implement as a top priority the active pursuit of enactment, by the legislature, the legislation they believe to be of vital importance.

SCR

/

COMMITTEE REPORT

SENATE

4/29/81

FURTHER: None

Date: May 18, 1981

Mr. President:

The Committee on JUDICIARY has had SCR 1

Proposing an amendment to the Uniform Rules of the ~~Senate~~ State Legislature relating to conference committees and free conference committees

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Opposed to
House No Rec.

Chairman
CHAIRMAN

SCR

9

Copy of this publication is in LAA file.

JH 7/6/82

TRANSCRIPTS OF HEARINGS
held by
JOINT COMMITTEE ON
CONSTITUTIONAL CONVENTION COMMITTEE

Prepared and edited by:

GUY A. VAN DOREN,
Administrative Assistant
to the Committee

January 10, 1981

TO: Senator Rodey, Chairman
and
All Members of the Judiciary Committee

FROM: Constitutional Convention Committee
Guy A. Van Doren, Administrative Assistant

SUBJECT: Information Packet Re: Joint Committee
on Constitutional Convention

HISTORICAL PERSPECTIVE:

Alaskans wrote and approved their state constitution two years before Congress granted statehood to Alaska. A constitutional convention with 55 (the number of members who drafted the United States Constitution in 1787) elected citizens met in what is now known as Constitution Hall on the campus of the University of Alaska a few miles west of Fairbanks, on November 8, 1955, and adjourned February 6, 1956. The voters ratified the work of the convention by a two-to-one margin in a special referendum April 24, 1956.

Article XIII, Section 3, provides, "If, during any ten-year period, a constitutional convention has not been held, the Lieutenant Governor shall place on the ballot for the next general election the question: 'shall there be a constitutional convention?' If a majority of the voters cast on the question are in the negative, the question need not be placed on the ballot until the end of the next ten-year period. If a majority of the votes cast on the question are in the affirmative, dele-

gates to the convention shall be chosen at the next statewide election, unless the legislature provides for the election of the delegates at a special election. The Lieutenant Governor shall issue the call for the convention. Unless other provisions have been made by law, the call shall conform as nearly as possible to the act calling the Alaska Constitutional Convention of 1955, including, but not limited to, number of members, districts, election and certification of delegates, and submission and ratification of revisions and ordinances. The appropriate provisions of the call shall be self-executing and shall constitute a first claim on the State Treasury."

In 1970, the voters, by a slim margin, approved a convention call; however, that referendum was voided by the Supreme Court because of improper wording of the question on the ballot. Voting on the issue again on November 7, 1972, the voters rejected the proposition. In accordance with the constitution, Alaska voters will be asked at the November 1982 general election whether or not a convention should be held.

CURRENT STATUS:

A conference held in Fairbanks in October 1976 to review the state constitution twenty years after it was written and first approved, concluded that a general revision was not needed,

although some issues were deemed to deserve further study and possible change. Most delegates to the original convention -- legislators and others who attended the conference -- felt that a new convention was not necessary and, if there were to be a convention, it would open the whole constitution to unnecessary tinkering and possible massive revision since Article XIII, Section 4, Powers, states, "Constitutional Conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people. No call for a constitutional convention shall limit these powers of the convention." (Emphasis added).

In general, most conferees concluded that the constitution was adequate for our own time and in the foreseeable future.

Although there has not been a convention since statehood, the constitution has been changed over the years. Approximately 250 resolutions to amend the constitution have been introduced in the legislature since the first session of the first legislature. Of those 250, 23 have passed both houses of the legislature and have been placed before the public. Sixteen of those have been ratified by the voters and have become part of the constitution. Generally, voters have supported changes recommended by the legislature.

Recently, certain issues have surfaced which supporters feel can only be solved through changes in the constitution at a constitutional convention. These issues have been introduced many times in the legislature but have not passed both houses. Supporters feel they would receive fairer consideration by non-partisan convention delegates. These issues include:

- | | |
|---------------------------------|----------------------|
| 1. Election of judges | Introduced 5 times |
| 2. Election of Attorney General | Introduced 18 times |
| 3. Length of session | Indtroduced 23 times |
| 4. Unicameral Legislature | Introduced 13 times |

New issues have surfaced which supporters feel necessitate changes in the constitution. These issues include:

1. Right-to-live vs. abortion choice;
3. Capitol move;
4. Land distribution;
5. Limitations on taxes and expenditures.

Any of the above issues could bring about a convention oriented toward individual causes rather than one concerned with general governmental structure and constitutional integrity.

To:

1. Assure that the public will be given a chance to express their feelings on the above, and other issues, will be informed

on the pros and cons of calling a convention, and will be appraised of alternative methods of achieving the goals;

2. Provide a plan and develop material relating to the Alaska Constitution, Constitutional revision and a constitutional convention;

3. Insure successful and well planned convention should one be called.

The Joint Committee on the Constitutional Convention was formed during the interim period of 1979.

In 1979 the committee solicited work from various instate consultants relating to constitutional conventions, issues, proposed amendments, the calling of a constitutional convention.

In 1980, the Legislature felt that the work of the committee was important enough to continue the committee. During the 1980 interim, the committee decided to accomplish certain tasks. Unfortunately, the committee which was originally scheduled to begin its work in the month of June, was not even formed until August 29, 1980, three months late. Because of the delay, the committee was not able to accomplish all of the goals it had set for itself.

The major undertaking of the committee during the 1980 interim was to meet with recognized experts on constitutional conventions, revision and issues. From those meetings came invaluable advice on conventions, preparation for, holding of and post convention work. Changes and issues relating to the Alaska constitution were also discussed.

The transcripts of those meetings have been edited and reproduced and have led to various "occasional papers" being developed by staff to outline various provisions of constitutional convention planning and revision.

The committee has engaged the services of a person to write "A Citizen's Guide to the Alaska Constitution", which will be useful to both people in government and the public at large even if the voters do not approve the calling of a convention. This guide will be published during the 1981 interim. It has begun the work of translating the Alaska constitution into the Yupik language in order that some 15 to 20 thousand people can read the constitution in their "first" language.

The committee is planning on distributing a pamphlet to explain the Alaska constitution, constitutional revision, and the functions of a constitutional convention and has entered into a contract with the League of Women Voters to provide materials

and conduct meetings with the public to discuss issues of revision, the constitution and or a constitutional convention.

THE FUTURE:

As mentioned earlier, in 1980 the committee began its work three months late. There are only twenty months before the people of the state must decide on the very important question of whether or not to call a convention. The committee feels that it is imperative that as much information on the constitution and a convention, as possible, should be distributed to the public prior to the vote and that preparation for a convention should continue in the event the electorate votes for calling a convention. Every person involved with constitutional revision and conventions the committee met with, stressed the importance of preparatory work.

In the event the people do not approve the calling of a convention, the materials gathered will undoubtedly be useful in the future. Prior to the work of the committee, no work had been done relating to preparation for a convention.

You have all received a brief outline of the plans for the committee separate from this memo, but I am including the proposed schedule in order to refresh your memory.

FLOW CHART FOR WORK TO BE COMPLETED
FOR JOINT COMMITTEE ON CONSTITUTIONAL CONVENTION

1981 Session

1. Adopt enabling and procedures act.
2. Continue Joint Committee (adopt resolution).
3. Complete Citizen's Guide.
4. Complete brochure.
5. Conduct public opinion survey.
6. Yupik translation (Phases I & II).
7. Possible pre-information work by League of Women Voters.

1981 Interim

1. Publish "Citizen's Guide" and brochure.
2. Public information begins - Committee and League of Women Voters.
3. Convention site survey.
4. Committee public hearings.
5. Prepare constitutional amendment package(?).
6. Solicit public papers and print same.
7. Yupik Translation completed (Phases II & III).

1982 Session

1. Contingent appropriations for convention.
(a) Planning and election
2. Adoption of amendment package (?).
3. Convention logistics planning begins.

1982 Interim

1. Convention logistics planning.
2. Public information program.
(a) begin drafting materials
(b) committee hearings.
3. If affirmative vote, begin choosing preparatory staff.

November 1982

Vote by the people.

1983

1. Appropriation for convention.
2. Convention drafting manual completed.
3. Temporary rules preparation.
4. Election of Delegates (May).
5. Delegate studies materials ready.
6. Convention logistics completed.
7. Solicit and prepare lists of staff and consultants available for convention to use.

INTERIM COMMITTEE
ON
THE CONSTITUTIONAL CONVENTION

Chairman:
Rep. Brian Rogers

Members:

- ~~Sen. Wehman~~
- Sen. Mulcahy
- Sen. Sackett
- Sen. Ziegler
- Rep. Gardiner
- Rep. Hayes

Pouch Y, Room 107
Capitol Building
Juneau, Alaska
99811
(907) 465-3743
Staff:
Guy Van Doren,
Admin. Asst.

*initials
2/15 mem.
Bultrouch Room
see 9*



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Senator Hohman
Representative Brian Rogers
Senator Mulcahy
Senator Sackett
Senator Ziegler
Representative Gardiner
Representative Hayes

FROM: Kevin K. Bruce, Committee Aide

DATE: February 27, 1981

SUBJECT: SCR 9 "Establishing a joint committee of Twelfth Legislature concerned with organization and procedures of a state constitutional convention."

This is to advise you that the Judiciary Committee will hold its initial hearing on the above-referenced legislation on Monday, March 2, 1981. The hearing will be in the John Butrovich Committee Room at approximately 2:15 p.m.

KKB/ods

JOINT COMMITTEE ON
CONSTITUTIONAL CONVENTION

Minutes
Meeting of
January 10, 1981

The January 10, 1981 meeting of the Joint Committee on Constitutional Convention was held in the Butrovich Committee Room in the Capitol Building, Juneau, Alaska.

Members Present:

Representative Brian Rogers, Chairman
Representative Joe Hayes
Senator Bob Mulcahy
Senator Robert H. Ziegler, Sr.

Members Absent:

Representative Terry Gardiner
Senator George H. Hohman
Senator John C. Sackett

Staff Present:

Guy A. Van Doren, Administrative Assistant
Landa B. Krossa, Secretary

Chairman Rogers called the meeting to order at 10:07 a.m.

There was a work session on proposed legislation entitled "An Act relating to a constitutional convention; and providing for an effective date", with changes suggested and unanimously agreed upon by the members of the committee.

There was review of the proposed senate concurrent resolution relating to "Establishing as a joint committee of the Twelfth Legislature a committee concerned with the organization and procedures of a state constitutional convention." There was general discussion and it was unanimously agreed to submit a resolution continuing the committee until the 1982 election.

There was discussion regarding the Yupik translation of the Alaska constitution. There is a contract prepared which was agreed to by the University of Alaska and the members of the committee. The translation is to be completed in two phases, and the contract signed by Chairman Rogers on 1/10/81 will authorize the first phase to be completed by the University of Alaska.

The members of the committee reviewed RFP's received from Ditman Research, Gordon Harrison and Associates, Rowan Group and George Braden.

There was discussion regarding the League of Women Voters becoming involved in the public education phase of preparation for the convention.

Guy A. Van Doren, Administrative Assistant to the Committee, gave a verbal status report, and submitted a flow chart for work to be completed, a copy of which is attached to these minutes.

Mr. Van Doren gave a verbal summary of the completed meeting transcripts, and will submit written summaries at the next meeting of the committee.

There was a motion to approve the introduction of the bill relating to an enabling act for a constitutional convention. There was no objection and the motion passed unanimously.

There was a motion to approve the contract with the University of Alaska for translation of the Alaska constitution to Yupik. There was no objection, and the motion passed unanimously.

The committee unanimously voted to approve travel and expenses for Mr. Braden to travel to Juneau to assist the committee and Mr. Gordon Harrison with the writing of "A Citizen's Guide to the Alaska Constitution." Mr. Braden will be working at no fee. The total amount approved for travel and expenses is not to exceed \$3,000.

The Committee also unanimously approved an amount not to exceed \$2,000 for services provided to the committee relating to assistance in the editing of the "Guide" and for writing an introduction to the "Guide".

There was a motion to accept the proposal of Gordon Harrison and Associates for the completion of a "Citizen's Guide to the Alaska Constitution", for \$18,000. There was no objection, and the motion was passed unanimously.

There was discussion of the committee budget. Chairman Rogers stated that he would request approval from the Legislative Council to fund monies for any educational program services by the League of Women Voters, the illustration of an informational brochure and a statewide survey relating to constitutional issues, constitutional revision and a constitutional convention. Any unused money would revert back to the Legislative Council. There were no objections.

Senator Ziegler commented on and commended Mr. Van Doren's work.

There being no further business, the meeting was adjourned at 11:45 a.m.

Landa Krossa
Secretary

FLOW CHART FOR WORK TO BE COMPLETED
FOR JOINT COMMITTEE ON CONSTITUTIONAL CONVENTION

1981 Session

1. Adopt enabling and procedures act.
2. Continue Joint Committee (adopt resolution).
3. Complete Citizen's Guide.
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SCR

20



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Senator Ed Dankworth

FROM: Senator Rodey

PMR

DATE: April 14, 1981

SUBJECT: SCR 20

In response to your memo of April 13, this is to advise you that SCR 20 has been scheduled for hearing before the Judiciary Committee on Friday, April 24, at 1:30 p.m. in the Butrovich Committee Room.

PMR/ods

cc: Senator Ray

Alaska State Legislature

SENATOR
M. "ED" DANKWORTH

REPRESENTING
SENATE DISTRICT 12-J

COMMITTEES
FINANCE, CO-CHAIRMAN
RULES, VICE-CHAIRMAN

TRANSPORTATION
LEGISLATIVE BUDGET & AUDIT



Senate

HOME ADDRESS
2425 HIALEAH DRIVE
ANCHORAGE, ALASKA 99503
HOME PHONE: (907) 277-0683

IN SESSION
POUCH V
JUNEAU, ALASKA 99811
PHONE: (907) 465-3753

April 13, 1981

*Send Schedule
to Dankworth*

To: Senator Rodey, Chairman
Senate Judiciary Committee

From: Senator Dankworth *ED*

Re: SCR 20

SCR 20, which limits amendments to a bill that requires a change in the bill title, as you know, has been referred to your committee. Senator Ray, as my co-sponsor on the measure, has agreed to carry the Resolution in Judiciary Committee. I would appreciate your scheduling this measure for testimony before the committee as your earliest convenience. Thank you.

C.C: Senator Ray

SCR

37



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MARCH 1, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SJR 6 - Proposing an amendment to the Constitution of the State of Alaska relating to sessions of the legislature.

SB 167 - "An Act relating to election campaigns and to the composition and responsibilities of the Alaska Public Offices Commission; and providing for an effective date."

SCR 37 - Relating to the use of computers and telecommunication systems.

SJR 13 - Relating to the ratification of an amendment to the Constitution of the United States defining Congressional representation and voting rights for residents of the District of Columbia.

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:40 P.M. Committee members present were: Senators Rodey, Parr, and Ray. Senator Bennett was absent.

The first item brought before the committee was SB 167. Senator Rodey introduced the new amendment and gave an explanation of its intent.

Senator Parr introduced a second amendment to SB 167 and gave an explanation to the Committee.

Senator Ray suggests that the Committee put a definition section in giving a definition of "knowingly", and "reasonably complete report".

Shari Holmes, Alaska Public Offices Commission, testifies in favor of SB 167. In reference to Senator Rays suggestion of including a definition section, she stated that there should not be a definition section included so that the court could make its own determination.

Senator Parr expresses his objection to leaving the decisions to others, such as the court.

Senator Rodey offered language for "reasonably complete report" which is as follows: "reasonably complete report" means a report which accurately reflects the campaign contributions and expenditures of the candidate and which is free from significant omissions which are known to the candidate. There was no objection and the language was adopted.

Senator Ray moved that "knowingly" have the same definition as it does in the criminal code. There was no objection to its adoption.

Senator Ray moved that paragraph (a) and paragraph (b) of the committee substitute be reversed. There was no objection and the amendment was adopted.

Senator Ray moved that on page 11, line 14, "knowingly" be inserted between the words "or" and "falling".

Senator Parr suggested that after the word office, add "except State Legislature". The motion failed; Parr voted yea, Rodey and Ray voted nea.

Senator Ray moved that SB 167 be moved from committee. Senator Parr objected. As a result, Senator Rodey moved SB 167 on the table until Senator Bennett could be present for a majority vote.

Chairman Rodey next brought SCR 37 before the committee.

After a brief explanation of the bill by Senator Parr and a brief discussion, Senator Parr moved that the bill be passed from committee. There was no objection and the bill was passed with a unanimous do pass vote.

Chairman Rodey next brought SJR 13 before the committee.

Susan Clark, representing Alaska Association of University Women, testified in favor of SJR 13.

Paula Ziegler, League of Women Voters, came before the committee and testified in favor of SJR 13.

Senator Bennett entered the room for the vote of SB 167. Chairman Rodey excused Ms. Ziegler for the purpose of voting on SB 167.

Senator Ray again moved that SB 167 be passed from committee. Senators Rodey, Ray, and Bennett voted yea. Senator Parr voted nea. The bill was passed from committee with individual recommendations. Senator Parr signed do not pass, Senator Bennett signed no recommendation, Senators Ray and Rodey signed do pass.

Senator Bennett left to attend to his Finance Committee duties.

Chairman Rodey asked Ms. Ziegler to join the committee members and resume her testimony.

After brief discussion, Senator Rodey moved that SJR 13 be passed from committee. There was no objection. Senator Parr and Ray signed no recommendation, Senator Rodey signed do pass.

Chairman Rodey adjourned the meeting at 3:05 P.M.

SJR

2

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 18, 1981

SUBJECT: Limits on a federal constitutional convention

TO: Senator Charles H. Parr

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

There has been substantial scholarly discussion of the question of limitations which may be placed on a federal constitutional convention. There is no case law on the federal level since the 1787 convention, called to revise the Articles of Confederation in the trade area which proceeded to write our existing constitution, is the only one held on the federal level.

You were specifically concerned with what, if anything, the state could do to prevent a convention called for a particular purpose going beyond its mandate.

The state can limit its application for a convention and provide that its application is void if the call is for a broader convention.

There appears to be general agreement among the commentators that once a sufficient number of applications have been received Congress is required to call a convention and that convention procedure, costs and selection of delegates is a federal matter. While there are substantial questions concerning the right of a state to withdraw its application before a sufficient number of applications to require a convention has been made, there seems to be general agreement that after that stage applications may not be withdrawn. The positions appear well supported by logic.

It appears that no state action subsequent to a sufficient number of applications being made and before the result is

Senator Charles H. Parr
Page 2
February 18, 1981

placed before the state for ratification would be effective. This would, in my opinion, still be the result even if the action was from a self-executing clause included in the resolution applying for a convention.

BGB:ljb

SENATE JUDICIARY COMMITTEE

Bill Number SJR 2 Original Sponser(s) ZIEGLER

Title _____

Originally Recieved From SEN. KERTTULA

Contact _____ Date 1-13-81

Committee Recommendation (MAJORITY) _____

Report Attached yes no) Supporters _____

MINORITY _____

Report Attached yes no) Supporters _____

Object of Bill REQUIRING A BALANCED BUDGET FOR THE UNITED STATES EXCEPT IN NATIONAL EMERGENCIES. ALTERNATIVELY CALLS FOR CONSTITUTIONAL CONVENTION FOR THE SOLE PURPOSE OF PROPOSING STATE AMENDMENT.

Committee Amendments _____

Fiscal Impact
NONE ON STATE GOVERNMENT

LAA Legal/Research Contact _____ Research/Information
ON FILE

Concerned Parties:	
Supporting	Opposing
<u>ZIEGLER -- BACK UP RECEIVED FROM GUY VAN DOREN</u>	
<u>ED FOSTER - AMERICAN TAXPAYERS UNION</u>	

Supporting

Opposing

Additional Remarks:

1ST HEARING HELD 1-21-81 TAPE | SIDE |

Federal
Revenues
(const. amend-
ment, U.S.)

SENATE JOINT RESOLUTION NO. 2, by Senator Zielger. Resolves that the Congress of the U.S. is requested to propose and submit to the states an amendment to the U.S. Constitution which would require that within four years after its ratification by the various states, in the absence of a national emergency, the total of all appropriations made by Congress for a fiscal year shall not exceed the total of all estimated federal revenues for that fiscal year. Further resolves that the legislature makes application and requests that the U.S. Congress call a convention for the sole and exclusive purpose of an amendment to the U.S. Constitution which would require that, in the absence of a national emergency, the total of all appropriations made by Congress for a fiscal year shall not exceed the total of all estimated federal revenues for that fiscal year.

Introduced January 13 and referred to Judiciary.

THE FOLLOWING DOCUMENTS HAVE BEEN SUBMITTED FOR THE CONSIDERATION
OF SJR2, BY THE LISTED INDIVIDUALS:

"Why a Balanced Federal Budget Amendment is Needed" - Ed Foster

"The Balance the Budget Amendment and a Constitutional Convention"
Ed Foster

"Unconstitutional Convention" The New Republic - Sen. Parr

"The Dangerous Fallacies of a Balanced-Budget Convention" The AFL-CIO
American Federationist - Sen. Parr

The Controversy Over Proposed Constitutional Amendments To Require
Balanced Federal Budgets" Congressional Digest - Sen. Parr

"Congressional Research Service" Library of Congress - Sen. Parr

The Balance the Budget Amendment and a Constitutional Convention

If you listen to the opponents of a balanced federal budget amendment, you might think that the states were calling for a constitutional convention to repeal or rewrite the constitution. In fact, the states and the National Taxpayers Union are asking for a convention to propose a balanced federal budget amendment only -- and even at that, only if Congress fails to propose the amendment first. Every resolution passed by the 30 state legislatures has asked for such a limited convention.

James N. Stansy, a congressional staff expert on constitutional conventions, has said, "To those who fear a 'runaway convention' it need only be observed that the only group threatening to run away with it so far is Congress itself." Clearly, what Mr. Stansy means is that Congress will attempt to insure its own dominance over any convention. It will employ two tactics in doing so. First, when 34 states do apply for a convention, Congress will do its best to avoid calling it. Second, should Congress finally be compelled to call a convention, it will restrict the convention as much as possible. Mr. Stansy concludes that "there is little doubt that Congress would be the final master on convention actions."

On two previous occasions (1971 and 1973), the Senate has unanimously voted to approve legislation which would have tightly restricted any constitutional convention. This legislation has again been reintroduced in 1979 and currently has over 50 co-sponsors. With a history of such strong support, there can be little doubt that similar legislation would quickly pass into law as soon as 34 states apply for a balanced budget convention. The only reason that Congress has refused to approve the legislation is the widespread feeling in the Judiciary Committees that it would completely erase any fears of a runaway convention -- and, thus, eliminate an important weapon in the fight against the balanced budget amendment.

On a recent showing of the ABC Network's "Issues and Answers" program, U.S. Attorney General Griffin B. Bell said, "I think a convention can be limited . . . that fact is that the majority of the scholars in America share my view. The view that you can't do this among scholars is a minority view . . . You certainly would not call a general convention when the states only ask for a limited thing. That is all they have asked for so far."

The view that a convention can be limited is also the official position of the American Bar Association. On the unanimous recommendation of the nine constitutional scholars that served on the ABA's Special Constitutional Convention Study Committee, the ABA adopted a resolution stating that "Congress has the power to establish procedures limiting a convention to the subject matter which is stated in the applications received from the state legislatures."

While discussing the prospect of a runaway convention before members of the California legislature, former U.S. Senator and Constitutional Law Scholar Sam J. Ervin, Jr. concluded "these scare tactics are calling up non-existent constitutional and legal ghosts." What the spectre of a runaway convention does reveal is the elitist, anti-democratic attitudes of some opponents of the balanced budget amendment. They feel the American people are incapable of electing responsible delegates to consider the issue of a balanced budget amendment at a constitutional convention.

It should also be noted that a constitutional convention cannot change the constitution by itself. Like the Congress, a convention can only propose amendments. These convention proposals are subject to two additional checks that Congressional proposals are not. If a constitutional convention proposes a different amendment, Congress could refuse to send it to the states for ratification. The extraneous amendment could also be subject to review by the Federal courts. Finally, as is the case with all proposed amendments, 38 states must ratify it before it becomes part of the Constitution. As the proponents of the Equal Rights Amendment have found, this is no easy task.

If Congress does not propose a balanced budget amendment, the convention method provides the American people with a viable and safe alternative method of obtaining the amendment.

BALANCE THE BUDGET AMENDMENT COMMITTEE

Why A Balanced Federal Budget Amendment Is Needed

A constitutional amendment is needed to curb federal spending, reduce inflation, and balance the federal budget on a regular basis. It is a needed check against the strong bias in our political system for higher spending. Many of our economic problems - inflation, unemployment, low productivity - can be traced to excessive spending by the Federal government.

The key factor in this bias for excessive spending is pressure group politics. Well organized special interest groups make strong demands for programs that benefit them greatly, but these demands are weakly opposed because costs are thinly spread over all taxpayers, each of whom stand to lose comparatively little. Deficit spending helps hide these costs in the form of borrowing, inflation, and reduced economic growth.

Because of these factors, the budget has been balanced just once in the last 20 years. Successive Congresses and Presidents have proven themselves unable to resist pressures to spend. Conventional legislative remedies and new approaches to budgeting have failed. Only a constitutional amendment will be strong enough to provide the necessary fiscal discipline.

Benefits of a Balanced Budget

A balanced budget will help reduce interest rates. When the government borrows money, it soaks up available capital, raising interest rates. Businessmen can't get needed funds for investment and consumers must pay high interest rates to finance the family home or car.

A balanced budget will reduce inflation. Deficits are financed by the hidden tax of inflation. When the government increases the money supply to pay for the deficit, each dollar becomes worth less. From 1950 to 1965 the average annual federal deficit was \$2.6 billion and the average inflation rate was under 2%. From 1965 to 1978 the average deficit was \$25.8 billion, and the average inflation rate was about 5.5%. With deficits averaging over \$50 billion in the last 3 years, the current inflation rate is over 10%. Chronic deficits also feed an inflationary psychology. In the long run, a balanced budget will reduce the rate of inflation substantially.

A balanced budget will help reduce unemployment. Deficits are being financed out of private savings, with the result that less money is available to finance private investment. This shift of resources causes a lower growth rate and an increase in unemployment.

A balanced budget will reduce wasteful spending. The costs of spending programs are not fully considered, since they are partly hidden by deficit financing. Without a check on federal spending, Congress has little incentive to stop waste.

A balanced budget will slow the growth of federal spending. Since all new programs will have to be paid for with new taxes, Congress would be far more reluctant to enact new programs, without cutting out old and unnecessary ones.

A balanced budget will increase government accountability. Chronic deficit spending is fundamentally dishonest. It's an attempt to treat spending programs as if they have no tax cost.

Public support for a balanced budget amendment is overwhelming. Gallup polls consistently find that about 75 percent of those polled favor an amendment. A 1979 Roper poll found a three to one margin in favor of a convention "called to consider an amendment to limit federal spending."

The Necessity For State Action

Congress is very reluctant to propose such an amendment which would restrain itself. Every proposed constitutional amendment to require a balanced budget has died in committee. Article V of the Constitution enables the states to amend the Constitution when Congress fails to do so. To date, 30 of the required 34 states have passed resolutions asking for a limited convention on a balanced budget amendment if Congress does not act.

As the drive for a convention nears success, Congress will probably propose the amendment on its own and no convention would be necessary. This has happened before. Congress proposed an amendment to provide for the direct election of U.S. Senators in 1912 but only after enough states had called for a convention. Congress will not propose a balanced budget amendment unless the states again call for a limited convention. Mere memorial resolutions cannot force Congressional action.

A convention would have one purpose only - to draft a balanced budget amendment. It would not have any other powers which Congress has. This convention can only propose an amendment which would become law only after it is ratified by 38 states.

The resolutions before the state legislatures plainly state that the resolution is void if a convention is not limited to this one exclusive purpose. There is strong legal authority that the States and Congress have the power to limit a convention to one subject. This is the official position of the American Bar Association. This is also the conclusion of former U.S. Attorney General Griffin B. Bell, former U.S. Senator Sam J. Ervin, Jr. the Deans of Harvard and University of Chicago Law Schools, and many others.

Besides the moral and legal safeguards which would assure a limited convention, there are three additional "checks" to limit a convention.

The mode of ratification of amendments (by either legislatures or conventions in three-fourths of the states) must be selected by Congress. By refusing to make the selection, Congress can block ratification of an amendment that went beyond the convention call. An extra-constitutional amendment could also be subject to disapproval by the Federal Courts. Finally, any proposed amendment must be ratified by at least three-fourths (38) of the states.

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IN RESPONSE TO YOUR INQUIRY, IT WOULD BE PREFERABLE TO PASS SJR2 IN
IT'S PRESENT FORM. HOWEVER, IF THE COMMITTEE DESIRES ADDITIONAL
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RESOLVED WHICH APPEARS IN COLORADO RESOLUTION, BE ADDED RESOLVED.
THAT THIS APPLICATION AND REQUEST BE DEEMED NULL AND VOID, RESCINDED,
AND OF NO EFFECT IN THE EVENT THAT SUCH CONVENTION NOT BE LIMITED TO
SUCH SPECIFIC AND EXCLUSIVE PURPOSE. IF I CAN BE OF FURTHER
ASSISTANCE, PLEASE DON'T HESITATE TO CONTACT ME

DAVID KEATING RESEARCH DIRECTOR BALANCE THE BUDGET AMENDMENT
COMMITTEE
711 MARYLAND AVE NORTHEAST
WASHINGTON DC 20002

1326 EST

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Federal amendment sought 1/22/81

Balanced budget urged

By The Associated Press

Lawmakers were urged Wednesday to add Alaska to the list of states calling for a constitutional convention to pass an amendment requiring the federal budget to be balanced each year.

The conservative voting trend that swept Alaska last fall is evidence that Alaskans would favor a balanced budget, said Ed Foster, a representative of the nationwide Balance the Budget Amendment Committee.

Foster told the Senate Judiciary Committee a balanced federal budget would lead to lower interest rates, inflation and unemployment.

Senators expressed concern, however, that a convention called to consider a balanced budget amendment might end up considering other issues.

The committee is considering a resolution (S-

JR2) introduced by Sen. Robert Ziegler, D-Ketchikan, which asks Congress to call a constitutional convention to deal only with a balanced budget amendment.

Sen. Charlie Parr, D-Fairbanks, suggested legislation be drafted that would revoke the credentials of the Alaska delegation if they tried to consider other matters during a constitutional convention.

The committee did not take any action on Ziegler's resolution, which states that "proper planning, fiscal prudence and plain good sense require" a balanced budget.

In testimony before the panel, Foster said inflation, unemployment and low productivity can be traced to excessive spending by the federal government. Only a constitutional amendment will provide the needed fiscal discipline, he said.

Done

Carter's Confidence Crisis

Osborne, TRB, The Editors

THE NEW REPUBLIC



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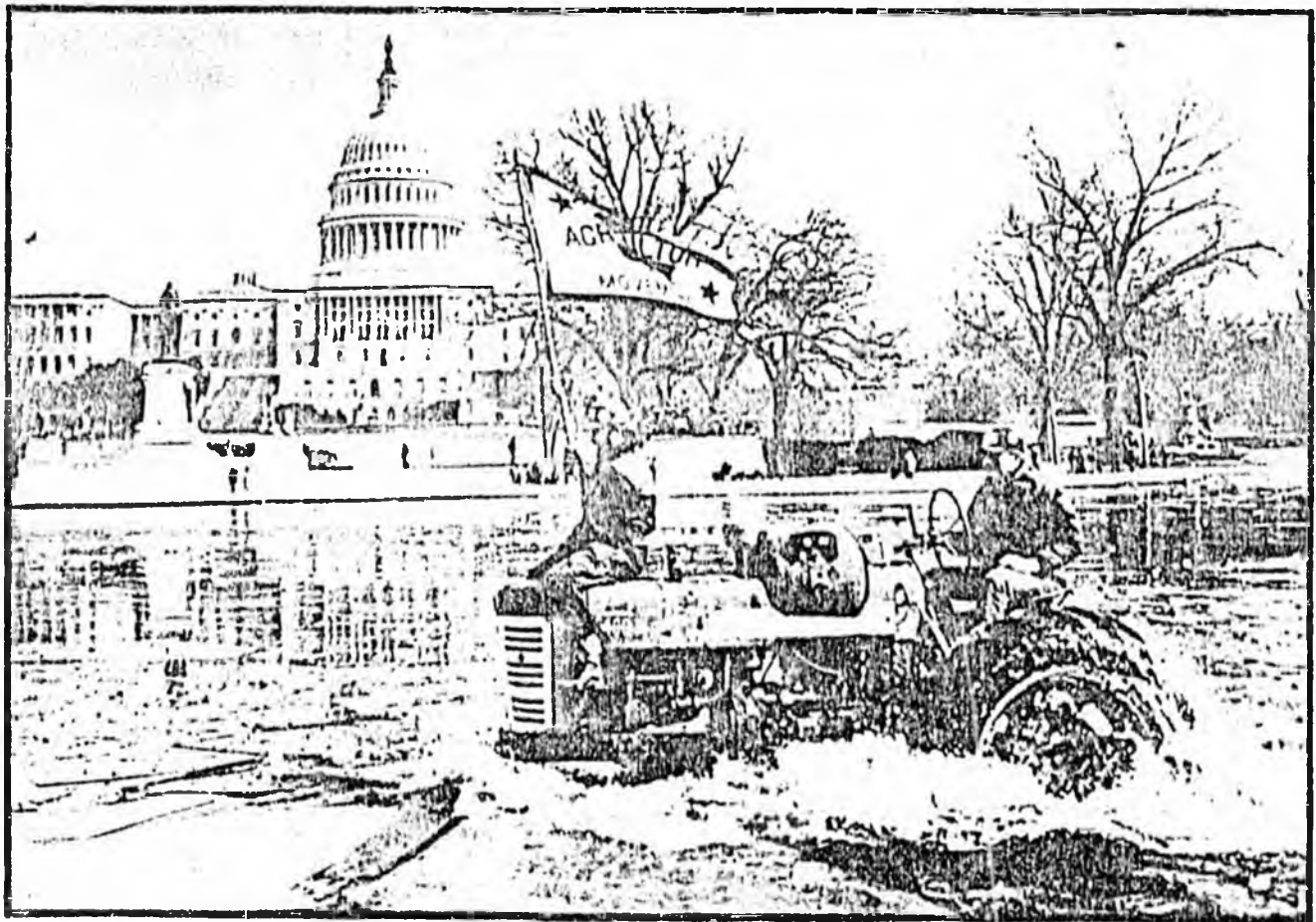
Walter Dean Burnham

John Canaday

War Memoirs

The Voter's Dilemma

Art and Circuses



Modern American Gothic

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operations. If the United States wants to protect and advance its interests, and does not want to do so with Marines, it needs spies as well as diplomats. Inevitably, diplomats work mostly with governments and in-groups. CIA agents are needed to insure that the US has contacts with out-groups, too. Having an effective CIA does not mean that the US inevitably will topple democratically elected governments. It could mean that a friendly government is saved, or that the US is well enough informed to distance itself from a local regime that's about to go under. It could provide the means to thwart a Soviet coup.

In his State of the Union address, President Carter noted with some pride that, again this year, no American soldiers were engaged in combat anywhere in the world. Maintaining the peace, however, means staying involved in the world's crisis areas, not withdrawing. And it means maintaining both US strength and the world's confidence in it.

State legislatures can't dictate
the terms of constitutional amendment.

Unconstitutional Convention

The states, or many of them, want a constitutional convention. But the one they seem to want is very different from the great Philadelphia meeting of 1787. Then the founders talked about the basis of legitimate government. Now the states are trying to limit the meeting to a single item: the issue of a balanced federal budget. But do the states have a right to restrict the meeting in this way and still call it a constitutional convention? Is such a single-issue body authorized to make fundamental changes in our basic law?

An answer must begin with the constitutional text. Article Five makes it plain that the states cannot dominate the amendment process. Even if every state legislature met today and unanimously endorsed a balanced budget amendment, this would not make it part of our supreme law. Instead, Article Five makes constitutional revision a two-stage affair. First an amendment must be *proposed* in a national forum—either the Congress or a constitutional convention. It is only then that the amendment can be *ratified* by the states—either through legislatures or state-level conventions, as Congress may direct. The states enter the first stage only in a subsidiary way: if two-thirds of them apply to Congress for one, Congress must “call a Convention for proposing Amendments.”

But it is just such a convention that the states do not want. Indeed, many state legislatures explicitly declare that they would prefer *no* convention to one that thought itself free to propose “Amendments.” The only meeting they are calling for is one that will rubber-stamp their particular proposal for a balanced federal budget. But state legislators do not have the right to dictate the terms of constitutional debate. On the contrary, they may be eliminated entirely if Congress decides that state conventions would be more appropriate vehicles for ratification. The states have the last say on amendments, but the Constitution permits them to consider only those proposals that emerge from a national institution free to consider all possible responses to an alleged constitutional deficiency.

The point goes deeper than the text of Article Five. When we confront the task of constitutional revision, our very notion of political community is at stake. Since Article Five was written, our sense of national identity has become stronger, not weaker. While we remain New Yorkers or Texans, we are more firmly Americans. If we ever required an extraordinary constitutional convention, it should not think of itself as a creature of the separate states. Instead, it must conceive of itself as a *national* institution free to consider the country's needs with as much wisdom and insight as it can muster. Anything else would distort the way Americans today understand their relationship to government. The idea that the states may predominate in our federal system did not survive the Civil War.

What should happen, then, if the budget balancers, or some other single issue groups, succeed in their lobbying campaigns among local legislators? Article Five does not permit the states to convene a “convention” on their own authority. It is up to Congress to decide whether the state applications amount to a legitimate call for a “Convention for proposing Amendments.” At this point Congress should see the call for a single issue “convention” for what it is—an effort by state legislators to usurp their rightful place in the constitutional scheme. It is not for the states to dominate both stages of the process of constitutional revision. They cannot force Congress to call a convention to consider only those issues that the states think worth discussing. The convention mechanism should be reserved for moments of real crisis—when the states are willing to assert the need for an unconditional reappraisal of constitutional foundations. If the states are dissatisfied with the constitutional diagnosis of a second Philadelphia-style convention, they may decline to ratify its proposals. It takes only 13 dissenters out of 50 to defeat a proposed amendment. But state legislatures may not use the “convention” provision as a gimmick to liberate a favored pressure group from the normal checks and balances of national politics.

Of course, if the state legislatures were convinced that they must apply for a full-fledged constitutional

convention or none at all, the present bubble would burst immediately. Nobody thinks we are now in the midst of constitutional crisis. Why, then, should we put the work of the first convention in jeopardy?

Bruce Ackerman

Bruce Ackerman is professor of law at Yale.

White House Watch Under Pressure

Near the end of this winter of discontent with Jimmy Carter, I offer an opinion, the stories of three White House meetings at which the President expressed his own frustrations and discontents, and an account of how his people handled a family problem that is painful and difficult for him.

The opinion is that the President is going to come out of the current slump in polls and commentaries and look better in a few weeks or at worst in a few months than he looks now. He will come out of it by going on being the Jimmy Carter who got himself elected in 1976, with allowances for what he's learned in the presidency. It is arguable that anybody who had to learn as much as he has had to learn about the presidency should not have been elected. He was elected; that's over. I agree with assistants and spokesmen who argue that what he's learned and acknowledges that he had to learn, especially about how to deal with Congress and get from it the essentials of what he wants, will produce an appearance of good performance and see him through to renomination and reelection in 1980. My reading of him is that he won't go for renomination and reelection unless he's sure that he can win. He has said that he has decided about 1980 but won't tell what he's decided for awhile. An assistant who is close to one of the assistants who is closest to Carter thinks that the President was kidding the press and that he has neither decided nor confided to anybody, possibly excepting Rosalynn Carter, how his thinking on 1980 goes. The same assistant admonishes his policy staff to stay in there to work for initiatives that will improve the chances of Carter's reelection in 1980, and to think about jumping ship and getting rich and famous on the strength of their White House connection only after November 1980.

The White House staff story is that Carter is concerned but not disturbed by the flood of commentary to the effect, as the Evans-Novak newspaper column put it in the context of his scheduled trip March 2 to California, that thereabouts he is among the

political "walking dead." Press Secretary Jody Powell warned Carter in a memorandum in early January that the failure to achieve the foreign policy successes expected last December—strategic arms agreement with the Soviet Union, an Israel-Egypt treaty after the Camp David summit—and the disintegration of the Shah's government and of our commitment to it in Iran, would bring on a flood of derogatory comment. So, the story goes, the President was prepared for it and is not seriously shaken by it. That is believable, considering his renowned capacity for kissing off adverse comment and for believing that his conception of what is right must eventually prevail. The following stories of what has happened recently at the White House bring some of the President's perceptions and judgments into question but do not invalidate the guess that he'll come out of it in better shape than most of us media harpies expect.

At his press briefing on February 8, Powell was asked whether the President had "chastised the State Department for leaking information" contrary to fact or to administration policy. Powell answered that "the President has met in the past several days with people from State, people from the NSC, and with our domestic policy people." The thrust then and at later discussions on and off the record was that the President's concern was that "those of us in responsible positions ought to be very careful about making public comments which could contribute to a misapprehension of what our policy was with regards to matters of importance." The first report of admonitions from Carter had dealt with a lecture he had given Department of State officials and Powell was suggesting that it was merely one of many such that the President had delivered. Powell's account amounts to a substantial abridgment of the facts.

January 17, two weeks before the sequence that Powell suggested, Carter had Stuart Eizenstat, the director of the domestic policy staff, assemble his principal assistants in the Roosevelt Room at the White House, mostly people whom Carter had never met or had never had extended conversation with. He had told Eizenstat that he was aware of the feeling among many of them that they needed a contact and a sense of identity with him that they had lacked. At the meeting Eizenstat mentioned the difficulty of maintaining a full discourse between White House and department officials without premature disclosures to the press of what was being proposed and considered. This led Carter into a discussion of his—any President's—problem of having full communication with federal departments and agencies without, as Carter regarded it, premature and damaging disclosure of policy options that were in discussion but not decided. It was a friendly conversation about a recognized problem and not a stern lecture of the kind that he gave 17 deliberately selected State Department officials on February 6.

Marvin Kalb, CBS's senior State Department

THE AFL-CIO AMERICAN

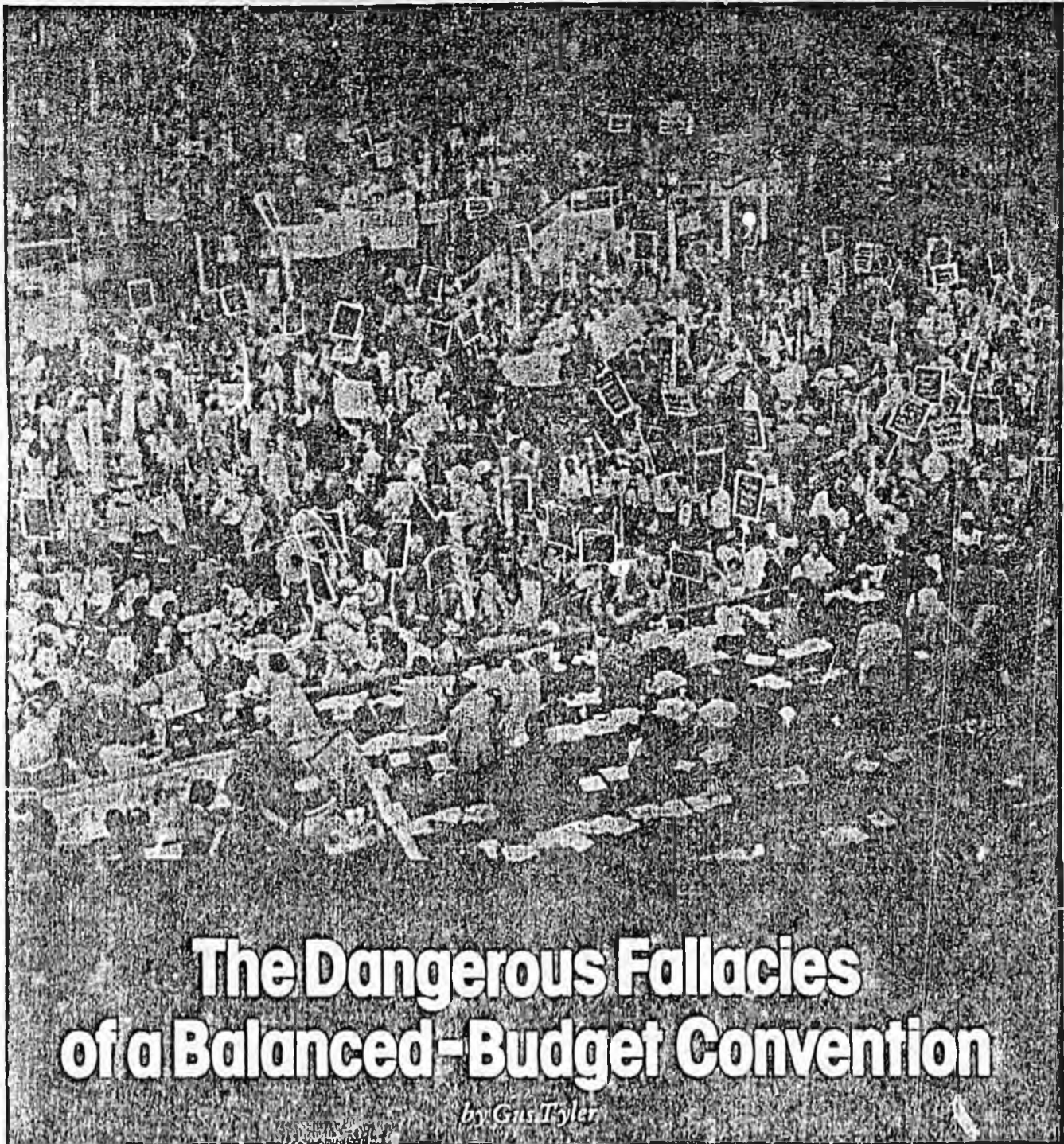
APRIL 1979

Federationist

FEAR



The Dangerous Fallacies of a Balanced-Budget Convention



The Dangerous Fallacies of a Balanced-Budget Convention

by Gus Tyler

The present push for a constitutional convention to balance the federal budget raises two questions: the desirability of constitutionally mandating a balanced budget and the desirability of convening a convention to enact such an amendment.

The mood of the country on reducing or holding down taxes is understandable. People who work for wages feel over-taxed—and they are. Those who live on "earned" income report virtually all of their earnings and pay on what they report because they don't

GUS TYLER is assistant president of the Ladies' Garment Workers, author of several books and writes a regular newspaper column.

have any loopholes. People who live on "unearned" income—stocks, bonds, properties—report about half their income and pay on only part of what they report because they enjoy many loopholes.

The problem is not that taxes are too high, but that they are too high for some because they are too low for others. A proper cure for this disorder would be tax reform that lifts some of the burden from America's middle class of wage and salaried people and imposes more of the burden on the rich who live on "unearned" income.

Fearing precisely such an eventuality, the wealthy have mounted a campaign to convince the nation that

taxes in general are too high for everyone. This myth was the basis for Proposition 13 in California and is the basis for the present proposal to have a constitutional convention for a balanced budget.

Although the emotional urge for a balanced budget is the desire to keep taxes down, the constitutional amendment will not guarantee that taxes will be reduced or kept at present levels. Indeed, the mandated balance may actually increase taxes.

A budget can be balanced in one of two ways: either by reduced spending or by increased taxes. If, at some future time, the President and Congress are not allowed to borrow they will have to raise taxes to make ends meet. Hence, a balanced budget can mean higher as well as lower taxes.

Although some favor the idea on the mistaken notion that it will automatically hold down taxes, others favor it as a way to check inflation. The logic is embedded in the argument that government deficits lead, in one way or another, to more dollars chasing too few goods, and thereby forcing up prices.

For such monetary theorists, the expanded money supply is offered as the sole reason for inflation. They do not blame high interest rates; they do not blame monopolies and oligopolies; they do not blame government fixing of prices, as in the case of numerous agricultural products; they don't even blame high wages. They are single-minded: the culprit is the government that tries to pay for deficits by "printing money."

Their statistical evidence is that in years when the federal deficit is high, inflation runs high. Actually, this seemingly irrefutable proof is no proof at all, because a tracing of U.S. budget deficits shows they are more likely the result of wars and recession. Inflation may cause a deficit, but not vice versa. In a period of inflation, the government must pay more for many things. Hence, a neatly balanced budget, drawn at the beginning of the year, may well end up as a deficit at the end of a year when prices rise either because of crop failures, an act of OPEC, monopoly action, or a jump in interest rates imposed by the Federal Reserve Board.

Most monetarists reveal their anti-government bias when they single out federal budget deficits as the sole or the primary source of an expanded money supply. There are many, many other factors at work expanding the money supply, traditionally defined as the total of all currency plus all demand deposits. Effective money supply is determined by at least two other factors: the amount of credit and the velocity with which money circulates. At present the "supply" of money generated by credit is staggering, with multi-billions of dollars outstanding on any one day on credit cards alone—just to cite one small instance. Likewise, the velocity with which money moves is decisive: one dollar spent 10 times in one day has the same impact as 10 dollars spent once. And neither the amount of credit outstanding nor the velocity with

which money moves can be traced solely or mainly to government deficits.

In sum, although the monetarist theories about how deficits make for inflation are encased in seemingly sophisticated research and reason, the arguments are shockingly unsophisticated.

Equally fallacious is the argument that the national debt is growing at a dangerous rate and that, unless we stop this piling of debt on debt, the unbearable burden will break the government's back. William Simon, Secretary of the Treasury under President Ford, sounds the alarm: "Total federal debt has increased from \$329.5 billion at the end of fiscal year 1966 to an estimated \$633.9 billion at the end of fiscal year 1976—a rise of 92 percent in only 10 years' time." Simon says, "unless the lethal pattern is changed, this nation will be destroyed."

But why should the nation be wrecked by this debt? In 1966, when the Gross National Product (the sum of all goods and services produced here in one year) was \$753 billion, the debt was 43.6 percent of the GNP. But in 1976, when the GNP was at \$1,706 billion (rushing toward the \$2 trillion mark) the debt had fallen to 37 percent of the GNP. In 10 years our debt shrunk as a portion of our total output.

This "shrinking" of the national debt is not some freakish occurrence peculiar to the years from 1966 to 1976. There has been a downward trend ever since the end of World War II: in 1946, the debt was 132.8 percent of GNP; by 1962, it was 55 percent; by 1965, 48 percent; by 1976, it was down to 37 percent; and by 1979, the debt is a mere 28.4 percent of GNP. Judged by ability to carry the burden, the debt is getting steadily lighter.

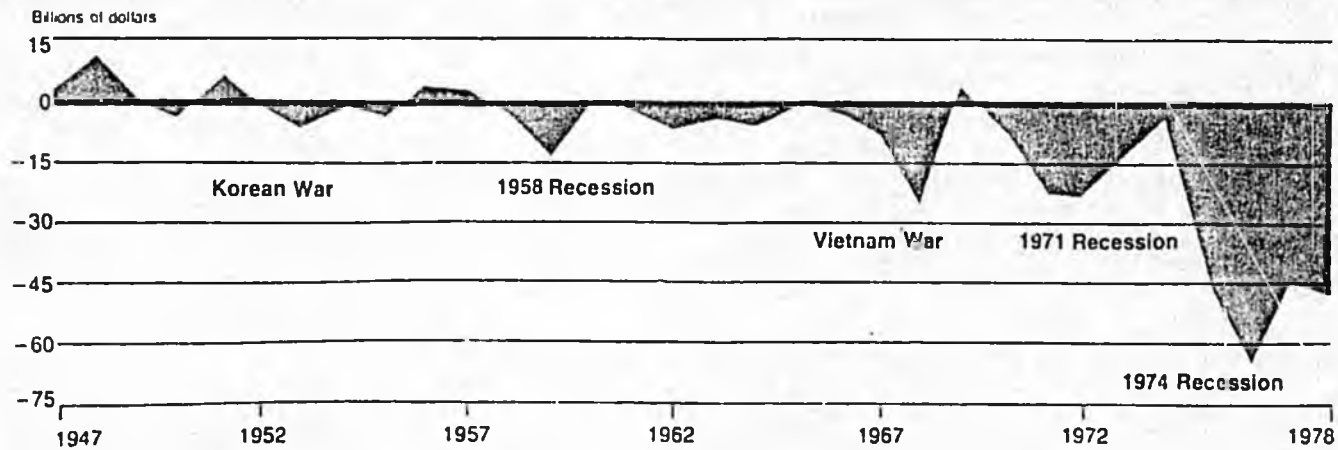
Debt—like weight—is only meaningful when measured against something. A 16-month-old infant would be crushed under a pack of 60 pounds; a 16-year-old lad would carry the load with ease. An America with a GNP of only \$100 billion would stagger under a debt load of \$100 billion; but an America with an output of \$2 trillion can carry a \$100 billion debt on its pinkie. A person with an income of \$5,000 a year would find it hard to repay a debt of \$100,000; but one with an income of \$1 million a year would find it easy to borrow the money and easy to repay.

An irksome irony about the call for budget balancing is that those who cry loudest and longest about debt are the worst offenders: the states, the corporations and the individual consumers. They are all in debt and more deeply in debt than the government that, at the end of 1978, was only responsible for 19 percent of total indebtedness in America. From 1940 to 1976, the federal debt grew at a slower pace than all other kinds of debt. State and local, corporate and private consumer debt grew far more rapidly.

In 1940, the federal debt was \$44.8 billion; by 1976, it stood at \$515 billion—a twelvefold increase in 36 years. State and local debt for the same years rose from \$16 billion to \$236 billion—a fifteenfold increase.

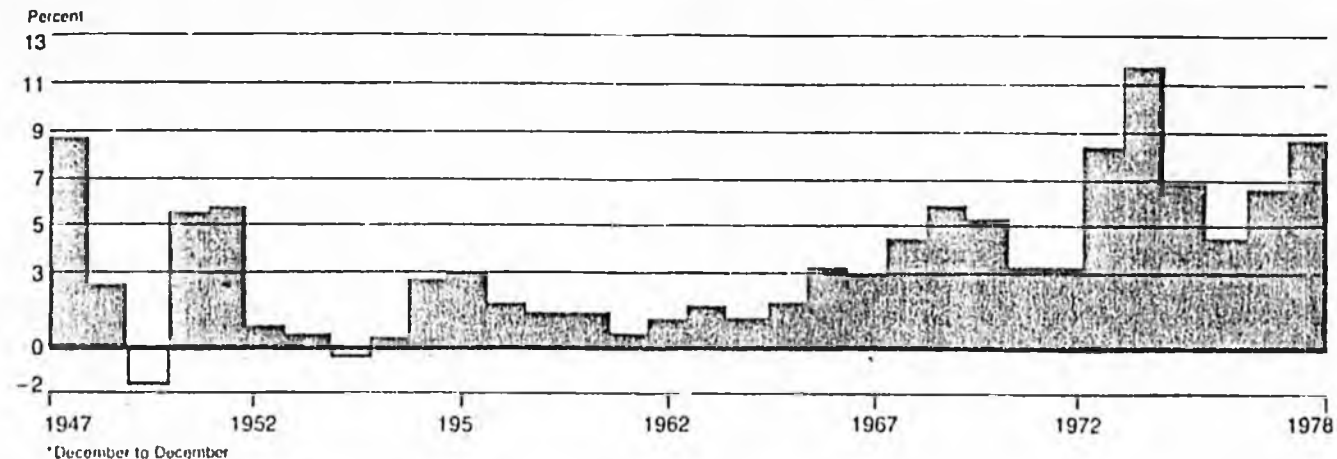
Wars and Recessions Are Major Causes of Budget Deficits

(Federal Budget Surplus or Deficit, 1947-1978)



But Deficits Are Not the Cause of Inflation

(Annual Change* in CPI, 1947-1978)



Corporate debt rose (same years) from \$75 billion to \$1,414 billion—a nineteenfold increase. And, says Simon, "At the end of World War II, corporate liquidity—a measure of cash, cash equivalents, and assets that could readily be converted into cash—stood at just under 50 percent of total liabilities. By 1960, the ratio was down to almost 30 percent. And at the end of 1970 it was on the order of 19 percent."

The biggest sinners of all—if debt is considered a sin—are Richard Roe and Jane Doe. The debt incurred by consumers rose (same years) from \$8 billion to \$217 billion—a twenty-sevenfold increase.

The truth of the matter is that debt is a way of life not only in America but in every free enterprise (capitalist) country in the world. The reasons are pragmatically obvious and theoretically understandable.

Most homeowners in America would own no home if they had to pay in cash for the purchase. A mortgage is a loan that incurs a debt. Mortgage indebtedness rose (same years) 24 times over, which is about twice as fast as the federal debt.

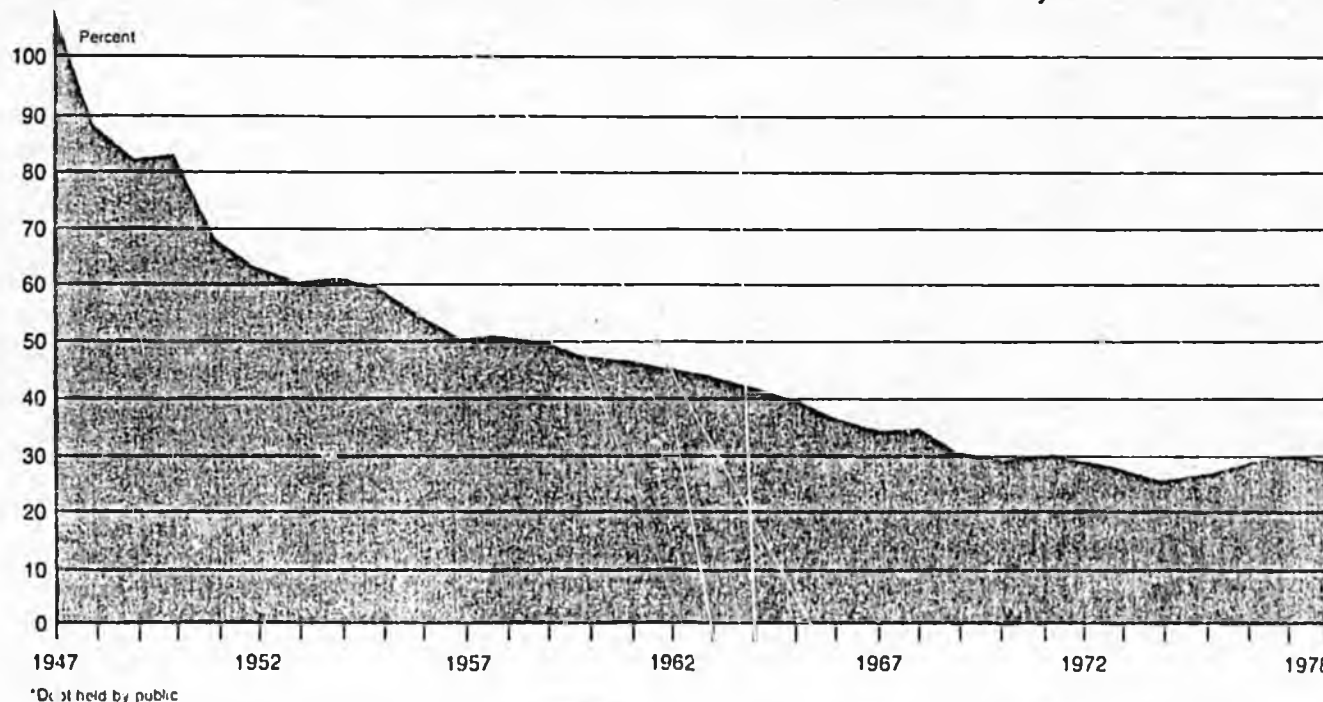
It would be useless to put money in a bank, unless it is done purely for safekeeping. The bank could pay no interest—unless there were borrowers, ready to incur debt, who would pay interest to the bank so the bank could pay interest to the depositor.

No corporation of any size could operate without going deeply into debt—as they do. They float bonds and borrow directly and invent a variety of debt instruments to finance their undertakings. Debt is the lubricant for the business machine without which the gears would grind to a halt.

You add to the debt when you take out a small loan, when you buy something on the installment plan, when you make a purchase on a credit card, when you ask your local retail store to charge it, when you borrow against your insurance policy, when you work out a financing arrangement for your car. In the one month of January 1979, installment indebtedness rose by more than \$3.5 billion.

Viewed in an overall theoretical way, debt is the foundation of a "free enterprise," modern capitalist society. The capitalist lives by providing finance to

Decline in Federal Debt as Percent of GNP, 1947-1976*



corporations, to governments, and to individuals. He lives by renting out his money and charging for it. If no one borrowed—no government, no business, no person—the finance capitalist would be finished. Although this eventuality might indeed be ethically justified, for the moment our system still depends on capital to function—and capital, like that fabled lunch, does not come free: to get it you must incur debt.

There is a strong temptation to conclude that the states, corporations and private borrowers are hypocrites about budget balancing. But that would be unfair because they know not what they say. They are repeating a common cliché. An individual gathering debt is like a camel under a growing burden threatened by the straw that breaks the back. This fearsome image has caused fools and learned men to denounce deficit financing for many centuries.

For those who think that deficit financing began with President Franklin D. Roosevelt, Senator Edward S. Muskie (D-Maine) advises in a recent speech that the "distinction belongs to General Washington—first in war, first in peace, and first in federal deficit." Actually, Washington was following a pattern set on Dec. 15, 1692, in the British House of Commons, when the Committee on Ways and Means proposed to raise \$1 million by way of a loan, at the rate of 10 percent up to year 1700 and 7 percent thereafter.

From that point on, the debt began to grow. "At every state in the growth," records Thomas Macauley in *The History of England*, "it has been seriously asserted by wise men that bankruptcy and ruin were at hand. Yet still the debt went on growing; and still bankruptcy was as remote as ever."

Several wars later, the debt multiplied several times over. The celebrated philosopher, David Hume, concluded that Britain had gone mad, the kingdom was in debt beyond its ability to raise money. "And yet," notes Macauley, "this great philosopher had only to open his eyes, and to see improvement all around him, cities increasing, cultivation extending, marts too small for the crowd of buyers and sellers. . . . His prediction remains to posterity, a memorable instance of the weakness from which the strongest minds are not exempt."

After the war with the American colonies, the debt grew again. "Again England was given over," continues Macauley, "and again the strange patient persisted in becoming stronger and more blooming in spite of all the diagnostics and prognostics of state physicians. As she had been visibly more prosperous with a debt of \$140 million, so she was visibly more prosperous with a debt of \$240 million than with a debt of \$140 million."

Concluded Macauley some 100 years ago in an analysis that is equally valid for today: "It can hardly be doubted that there must have been some great fallacy in the notions of those who uttered and of those who believed that long succession of confident predictions, so significantly falsified by a long succession of indisputable facts. . . . The prophets of evil were under a double delusion. They erroneously imagined that there was an exact analogy between the case of an individual who is in debt to another individual and the case of a society which is in debt to a part of itself; and this analogy led them into endless mistakes about the effect of the system of funding. They were under an error not less serious

touching the resources of the country. They made no allowance for the effect produced by the incessant progress of every experimental science, and by the incessant effort of every man to get on in life. They saw that the debt grew; and they forget that other things grew as well as the debt."

For centuries nations had been using debt as a way to pay the way for governments. It was not until the first quarter of the present century, however, that government indebtedness was seen not simply as a way for the state to meet its bills but as a way to guide the total economy. This concept—the use of public debt to regulate economic growth—was the brain child of John Maynard Keynes and, unbeknownst to most Americans, became the theoretical base for the anti-recession policies of the New Deal and of every Administration that followed.

As a practical man, FDR had to resolve a practical, yet seemingly nonsensical puzzle: why wasn't the American economy running during the 1930s when all the factors for a viable economy were present—in super-abundance? There was plenty of capital, labor, raw material and entrepreneurial know-how. But they were all idle, rotting, festering. Why?

What was lacking in our market economy was the market which, in plain language, is buying power. Buying power was lacking because the big buyers—working people—were out of work. So long as they did not earn, the market would sag and sag and sag.

The private economy would not put these people to work because it could not. No business pays people to make things for which there is no market. So, to prime the pump, the government had to put people to work, so they would have buying power to put others to work.

The government could get the necessary funds to do so either by taxation or by borrowing. Taxation would not have yielded much in those depressed days; moreover, whatever taxation would yield had to come out of consumers or investors, thereby undercutting the primary purpose of increasing employment. So, the government borrowed.

In a pragmatic way, the United States had backed into its own brand of Keynesian economics. When the private economy failed to generate the necessary market—buying power to sustain the economy, the government stepped in by deficit financing, by—as the monetarists would have it—expanding the money supply. And the formula worked.

Prior to 1929, the history of the American economy was a history of economic crises: they called them business cycles and they accepted those painful and convulsive ups and downs as the natural way of things. Since the New Deal, there have been recessions, but we have not had a single major depression in this country. Crises have been warded off with the weapon of deficit financing.

The big deficits of the Roosevelt period were not rolled up during the peacetime years but in wartime.

In 1940, the deficit was only \$5 billion. In the war years of 1943-45, the deficits ran between \$47 and \$50 billion a year. But whether it was to combat recession or to combat a foreign enemy, the money borrowed was used to serve national purpose and, in no case, did the deficit impoverish the people.

If a constitutional amendment had prohibited deficit spending in the Great Depression or during World War II, where would the money have come from? In 1933, Roosevelt would have had to raise taxes to get the funds to "prime the pump." Such taxation would have worsened the crisis by further depleting buying power and capital sources. Where would the government have gotten the funds to fight World War II? Between 1941 and 1942, federal expenditures doubled, from \$35 billion to \$70 billion. It would have been necessary to double taxes—an intolerable, undesirable and unnecessary move.

What happens in the future—assuming a budget-balancing amendment is on the books—if we are hit by some new crisis: another depression, another war, an internal insurrection, a massive earthquake from the Appalachians to the Rockies? Neither the President nor Congress could act swiftly because the funds would not be there and no new funds could be appropriated without going through the protracted process of once more amending the Constitution.

Should a constitutional convention be held, despite the undesirability of such a conclave, the hottest discussion should revolve around a point that probably won't ever be raised at the gathering; namely, what should the penalty be for the President and Congress if they should ever violate the amendment? This is no idle query—for the amendment will be violated, because there just is no way in which it can be obeyed.

A mandated balance of the budget assumes that the budget makers know, at the beginning of the year, what their income and their expenditures will be. But they have no way of knowing; they can only guess.

They do not know what their expenditures are for three simple reasons: First, they do not know what crises will arise. Second, they do not know what inflation will do to their costs in the course of the 12 months. Third, they do not know what they will have to pay out under a variety of government "entitlement" programs. Under the last, for instance, the government has an obligation under law to someone who is disabled, or is the head of a family under aid for dependent children, or is newly retired, or is eligible for a veteran benefit. Whoever meets certain criteria set down by law is "entitled" to certain government funds—and there just is no way that the government can know in advance just how big these payments will be.

The government knows even less about what its income will be. How much comes in depends on how much people earn, how corporate profits run, how sales stack up. Income through taxes is a mathematical function of the Gross National Product whose

size nobody knows when the year begins or even when the year has passed its halfway mark. For 1980, the President forecasts a growth rate in the GNP of 3.2 percent; the Congressional Budget Office sets it at a 3.9 percent; Wharton Econometrics sets it at a low 1.3 percent; and Chase Econometrics sets it at an optimistic 4.1 percent. The difference between the low and high estimate makes a difference of about \$10 billion in taxes to the government.

Being less than omniscient then, Congress and the President would unwittingly and unwillingly find themselves in violation of the amendment. Who will prosecute, try and sentence them for their transgressions?

One way for the President and Congress to obey the law—more or less—would be to allow for a margin of error, like an arbitrary \$10 billion. (Between September 1978 and January 1979, the estimated deficit rose by an unanticipated \$5 billion.) By planning for a surplus of several billion, the lawmakers might be able to stay within the law. But to do so, they would either have to cut expenditures or raise taxes or do both.

The easiest way to cut federal taxes would be to stop federal aid to the states, which currently runs about \$80 billion per year. If an Administration chose to cut grants to the states, you would hear a different tune from state politicians now so eagerly calling for a constitutional convention to balance the federal budget.

But this reduction in the federal budget would not necessarily mean a reduction in taxes for the taxpayer. Even if the government reduces taxes by virtue of the savings in grants to the states, and it is doubtful such a cut would be possible, the states would have to increase their taxes to make up for the funds they no longer get from the federal government. The end result would be higher taxes for the taxpayer.

The other alternative for the federal government would be to raise taxes to cover present and future costs. And it would have to raise taxes beyond a reasonable level because it would have to allow for that margin of safety so as to live within the mandate of the amendment.

There is a sneaky way in which the President and Congress could comply with the budget-balancing amendment without really changing anything; namely, by redefining the budget. At present, nobody really knows what "the budget" is. Many billions of dollars spent by the federal government through a variety of agencies are "off the budget." The number of agencies afforded such treatment and the sum they are allocated could be increased at will so the books will balance so far as the officially designated "budget" goes.

Barring such sneaky gimmicks, an amendment to balance the budget is a straitjacket that would paralyze the nation in time of emergency. That would raise taxes, and that would make the Constitution look as foolish as it did when the nation lifted its spirited

The Convention Method Raises Many Questions

The U.S. Constitution provides for its own amendment through two distinct and separate methods. One is for the Congress to pass an amendment and send it to the states for ratification. That method requires the ratification votes of three-fourths, or 38 state legislatures, and has been used 26 times. Two more are still pending—Equal Rights Amendment and D.C. Voting Rights, as Nos. 27 and 28.

The other method, a convention assembled on the call of two-thirds, or 34 of the 50 states, has never been used, unless you count the convention that wrote the existing U.S. Constitution. That convention was assembled in 1787 with Congress directing it to amend the Articles of Confederation. Instead the convention junked the Articles and wrote a new Constitution. Article V of that Constitution provides the two methods of amendment.

The convention method has been tried several times, but serious questions about how it would work were not answered in those episodes. Among the attempts, these got the farthest:

- In 1899, the move for direct election of senators got the support of 31 states. But the Senate, which had been fighting the idea, relented, passed an amendment, and sent it to the states. In less than a year, the 17th Amendment was ratified.

- In the early 1950s, about half the states supported a call for a convention to impose a 25 percent ceiling on the federal income tax rate. Opposed by President Eisenhower and others, this effort collapsed with several states voting to rescind their previous endorsement.

- In 1967, 33 states called for convention to overturn the Supreme Court's one-man, one-vote ruling, but this petered out in 1969 with the death of its principal promoter, Sen. Everett M. Dirksen (R-Ill.).

Congress has made some attempts to write rules for a constitutional convention. Under the guidance of Sen. Sam Ervin (D-N.C.), this measure passed the Senate in 1971 and 1973, but died in the House.

What history provides, then, is more questions than answers: For example: What constitutes a valid state petition for a convention? Is there a time limit on such petitions? Could a state rescind its convention call? Is Congress obligated to call a convention after 34 states request it? If so, what are the congressional legislative procedures for dealing with a convention? How would the convention be apportioned, delegates chosen and what rules would govern its deliberations? Who would pay its costs? Unfortunately, no one is certain.

glasses to drink a cynical toast to the Prohibition Amendment.

The mischief that such an amendment would work is compounded by the method through which it is proposed to enact the change in the Constitution; namely, by calling a constitutional convention. If this comes to pass, this will be the first time since the Constitution was enacted that this method will be used.

The Constitution provides two ways to amend the Constitution: the traditional way has been through congressional action requiring two-thirds of both houses and ratification by three-fourths of the states; the unused way is through a constitutional convention to be assembled on the call of the legislatures of two-thirds of the states with ratification still requiring three-fourths of the states.

There is no precedent, since 1789, for initiation of an amendment through a convention. The only precedent—if one may call it that—was the convention of 1787 that gathered to "amend" the Articles of Confederation and ended by writing an entirely new Constitution.

Because there has been some fear in the Congress that a constitutional convention could turn into a runaway body, similar to that of 1787, several efforts have been made in recent years to write legislation to define what a constitutional convention may or may not do and how it may do it. But no bill has yet passed both houses. So, if a convention is called, nobody really knows who shall convene the convention, what shall be the scope of its agenda (one issue or the whole works), how delegates shall be apportioned among the states, who would elect the delegates. Even if Congress should address itself to these questions, there is only questionable authority for the federal legislature to curb or contour or control a convention that was convened precisely because Congress did not wish to initiate the disputed amendment.

The constitutional route to amendment has been used by both progressive and conservative forces. In the early 1900s, progressives had state legislatures calling for direct election of senators and later for federal power to impose an income tax. For about a decade (1906-1916) there were efforts to amend the constitution to forbid polygamous marriage. In more recent decades, however, the push has come from the right: to limit federal taxes, to undo one-man, one-vote, to set up a special court to overrule the Supreme Court, to prohibit "forced busing," to disallow abortions. None of these movements ever resulted in a convention, although a couple of them came very close.

Should a constitutional convention be held it is likely that the several ideas held by conservatives will find expression at the gathering. The delegates may convene to discuss budgets but are likely to end by proposing a variety of pet proposals presently circulating among those who are unhappy with the behavior of Congress and who would like to bypass the legis-

lature. In effect, the constitutional convention route would mean that the states with their state-minded concentration would replace the Congress of the United States with its prime focus on national goals.

The final irony of the balanced budget amendment is that its greatest support comes from those politicians who have, for the last couple of decades, been presenting themselves as the true defenders of the Constitution. Should they ever add their amendment to the Constitution, they will have violated the basic spirit of our supreme law.

The Founding Fathers had three great purposes in composing the Constitution. They wanted a government that was strong, flexible and respectful of the rights of the individual.

Because they wanted a state that was strong they set up a central government to replace the feeble Articles of Confederation. Because they wanted a flexible government they wrote a brief declaration that distributed powers without prescribing what those powers should do in dealing with the special and specific problems of the changing times. To show their regard for the individual, they added the first 10 amendments—the Bill of Rights—to the Constitution as an integral part of the document at the time of original ratification.

In the subsequent amendments, of which there are 16, the prime purpose has been to expand the power of the individual citizen to influence public policy. There have been amendments for the direct election of senators, to repeal the poll tax, to allow residents of Washington, D.C., to vote in a presidential election, to extend the vote to women and to 18-year-olds. There were three amendments that liberated our black citizens and gave them the right to vote. There were four amendments that updated the manner of electing the President. There was only one restrictive amendment, the prohibition of alcohol, and that was repealed by another amendment. In short, the thrust of the amendments has been to give the citizen a greater voice in government.

A balanced budget amendment would run contrary to this spirit of the Founding Fathers in all three respects. First, the amendment would narrow the scope of government, a purpose that is the underlying motive of most of the proponents. Second, the amendment would impose a straitjacket on government, turning fitting flexibility into brittle rigidity. Third, the amendment would deprive the individual citizen of a regular say over government in the most decisive area of legislation; namely, the budget.

Although a constitutional convention would not violate the letter of the law, its predictable actions in the present moment and mood, with present motivation and movers, are likely to be in stark violation of the spirit of the U.S. Constitution over the last two centuries. Should this come to pass in 1987 the bicentennial of the Constitution might well be the burial of that revered document.

Congressional Digest



May, 1979

FOR PARR

See p. 134 ff

The Controversy Over Proposed Constitutional Amendments To Require Balanced Federal Budgets

Pro & Con

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Washington D.C.



Debt Ceiling Bill And Budget-Balancing Efforts

April 15, 1979

A BILL TO RAISE the debt ceiling, H.R. 2534, became the vehicle for major debate in both the House and Senate over attempts to mandate a balanced Federal budget. On March 15, 1979, an amendment to the debt ceiling bill, sponsored by Representatives Phil Gramm, Tex., Dem. Trent Lott, Miss., Rep., and James R. Jones, Okla., Dem., became the focus of controversy in the House.

The amendment provided:

1. that for fiscal 1979, the total debt limit would be \$830 billion (the amount provided for in H.R. 2534),

2. that for fiscal 1980, the total debt limit would be \$897 billion (the amount Treasury projects is necessary to cover a \$29 billion deficit that year), and

3. that beginning in fiscal 1981, it would not be in order in either the House or Senate to consider any legislation to increase the public debt limit

A. until the second concurrent resolution on the budget for that year has been agreed to, and

B. unless

1. the second budget resolution provides for outlays equal to or less than revenues, or

2. more than two-thirds of the members voting in both the House and Senate agree to a second concurrent resolution which provides for a deficit.

This proposed budget-balancing amendment to the debt ceiling bill prompted the comment on the floor by Rep. Barber B. Conable, Jr., N.Y., Rep., that "It is no secret that the debate today is not really about the debt limit bill. This debate is being used, appropriately, to force the Congress to agree to balance the Federal budget by 1981."

After considerable debate over the question of mandating a balanced budget, the amendment was defeated on the key vote, by the narrow margin of 201-199. By a vote of 212-195, H.R. 2534, the debt ceiling bill, was passed by the House and sent to the Senate.

Senate Action

An equally intense debate took place in the Senate

over measures to compel a balanced budget, with various amendments to the debt ceiling vehicle discussed. The Senate amended the bill and it was returned to the House. Rep. Al Ullman, Ore., Dem., Chairman of the House Committee on Ways and Means, in an address to the House on April 2, summarized the complex action in the Senate, and where the matter, in his view, stood in the House, in light of the impending debt limit crisis:

"On the Senate floor, no question was raised about the provisions of the House-passed bill which dealt with the increase in the public debt limit and the two debt management changes. Instead, Senators Armstrong and Dole sought to add their version of the Gramm-Lott-Jones amendment to this bill, and this effort and the attempts by other Senators to modify that amendment was the major focus of the Senate debate. The Senate resolved the debate by accepting the Long and Packwood amendments instead of the Armstrong-Dole amendment.

"The Packwood amendment requires the President to submit alternative balanced budget proposals for fiscal years 1981 and 1982, if his budgets call for deficits.

"The Long amendment applies to the congressional budget process and requires the Budget Committees to report by April 15, 1979, budgets for fiscal years 1981 and 1982 that shall be in balance. In each of these 2 years, the Budget Committees shall also report balanced budgets for the same two fiscal years; a balanced budget for fiscal year 1981 by April 15, 1980, and a balanced budget for fiscal year 1982 by April 15, 1981.

House Action

"Since the provisions of the bill passed by the House were accepted by the Senate without question, the debate in the House today should focus on the Packwood and Long amendments to the bill and on today's financial outlook for the Government.

"The Packwood amendment instructs the President to submit alternative budget balancing proposals in his next two budgets; the administration has agreed to this amendment after recommending modifications which were accepted by Senator Packwood. Under the

Packwood amendment, for fiscal years 1981 and 1982 the President would have to submit alternative budget proposals to indicate how he would balance the budget, if his regular budget submission calls for a budget deficit. These alternative budget proposals would not have to be in the same detail as the regular budget, but they would have to be accompanied by a clear explanation of the specific differences between the President's regular budget and the alternative balanced budget.

"Under the Long amendment, the Budget Committees of both Houses would have some additional obligations, although there would be no changes to the congressional budget process itself.

"By April 15, 1979, the Budget Committee would have to make projections of how Congress could achieve a balanced budget in fiscal year 1981 and fiscal year 1982. These projections could be part of the Budget Committee's report accompanying the first budget resolution for fiscal year 1980, or they could be in a separate document. Possibly, the committee could conclude that the best way to balance the budget in 1981 or 1982 would be to require some changes in outlays or receipts in fiscal year 1980. If so, the committee would indicate these changes as part of its projections. Even though they would not be part of the Budget Committee's recommendation, as expressed in its report first budget resolution, Members could offer them as amendments to the first resolution on the House or Senate floor.

"This process should provide a better mechanism for achieving a balanced budget in 1981 and 1982 by helping Congress to make the decisions needed this year to balance the budget in the future.

"By April 15, 1980, if the Budget Committee recommends a first budget resolution for fiscal year 1981 that is not in balance, it will also be required to state, either in the report accompanying the first resolution or in some other document, how it thinks the budget might best be balanced in fiscal year 1981; that is, how the Budget Committee would go about balancing the budget if it were required to do so. These budget balancing proposals would be available to be offered as amendments to the Committee's recommended first budget resolution on the House or Senate floors. Thus, by knowing not only the Budget Committee's recommended budget resolution but also its judgment of how the budget might best be balanced, Congress would be able to make an intelligent decision about whether to balance the budget in 1981 because it would know precisely what would be involved in achieving a balanced budget.

"The budget process for the fiscal year 1982 budget would be the same as for fiscal year 1981.

"In each case in which the Budget Committees are

required to show how they would balance the budget, they would also be required to explain the effects of their balanced budget, compared to those of the reported budget which they recommend, on revenues, Federal spending, employment, inflation and national security.

"It should be emphasized that these amendments in no way change the basic congressional budget process except to require additional information from the Budget Committees. There is no change in the relationship between the Budget Committees and the authorizing committees, the appropriations committees or the tax-writing committees.

"The temporary debt limit which expired at midnight on Saturday, March 31, was not sufficient during the second half of March to permit Treasury to carry out financing programs to meet current needs. As a result, five public debt issues were postponed, and today's regular weekly auction of Treasury bills will be delayed unless this bill is passed promptly and early today.

"The Treasury Department probably can meet the Federal Government's cash obligations today.

"It will not be able to meet the demands for cash on Tuesday, even under the most favorable assumptions about payments and receipts.

"In other words, for the first time in the history of the United States of America, it will default on its obligations unless the bill with its provisions to increase the public debt limit is passed by the House today and is sent to the President for his signature.

"The Members of the House must be warned that the public debt limit issue now is more important than the sincere concerns about balancing the budget in the next fiscal year.

"Those Members who believe that action on a balanced budget is overdue must understand that we cannot make that adjustment retroactively. It must be made prospectively. And the time and place for those legislative matters is the House floor after April 15, 1979, when the first budget resolution for fiscal year 1980 will be taken up and will be followed by the appropriations bills for next year.

"I urge the House to act favorably on this public debt limit bill now."

Final Passage

On April 2, by a vote of 209-165, the House agreed to concur on the Senate amendments, not adopting stronger budget-balancing proposals sought by some House Members, and H.R. 2534 as amended, was sent to the President, who signed it that day.



Proposed Constitutional Amendments To Require Balanced Budgets

He Who Decides a Case Without Hearing the Other Side . . . Tho He Decide Justly, Cannot Be Considered Just—SENECA

FOREWORD=

THE CONTROVERSY OVER proposals to amend the U.S. Constitution to balance the Federal Budget involves a number of separate but related questions.

One is the desirability of a balanced budget itself. Another is whether a Constitutional amendment is the correct approach. If so, which proposal? In addition there is the question of a Constitutional Convention.

Fundamental to the controversy over balanced budgets is the nature and purpose of Federal financial operations. Since the 1930's Federal financial policy has been seen as a principal weapon for influencing the state of the nation's economy and for achieving certain public policies.

Federal financial policy is the product of the interaction of the President and the Congress on fiscal policy, the term generally associated with the annual budget and with the impact of the semi-independent Federal Reserve System on monetary policy. (For a brief description of how Federal financial policy is made, the operation of the Federal Reserve System, and some of the political and economic theories involved, see the background articles in "President Carter's 'Real Wage Insurance' Anti-inflation Proposal, Pro & Con, the April, 1979 issue of the *Congressional Digest*.)

Budget-balancing is seen by some to involve the fundamental role of the Federal government in two major ways. One is the relationship of government spending to the level of employment, the other is the objective of re-directing money toward certain people and programs, which is deemed to be in the national interest. The economic and political controversies involved have been central to the domestic political issues of the past half-century.

In recent years, however, there has been a shift by proponents as well as opponents of government spending programs toward an emphasis on more efficiency in government operations with the concurrent objective of reducing inflation, which in itself is now generally rec-

ognized to be a hidden tax damaging to the wage-earner and others, such programs are designed to help.

The balanced-budget issue now centers on such questions as when to balance it, and where to make the cuts. As will be seen in the article on page 129, efforts to compel a balanced budget through the Federal budget process were the subject of intense floor debate in the Senate and the House, with the votes taken carrying by thin margins. (The operation of the basic budget process itself is described in the article on page 132.)

Of the 34 required to compel a Constitutional Convention, the legislatures of 28 states have petitioned Congress concerning a balanced-budget amendment to the U.S. Constitution. This in turn has prompted a controversy as to whether a Constitutional Convention can be limited to the subject of the budget or could, if it voted to do so, propose for ratification by the states a number of amendments on various subjects. Some supporters of a budget-balancing Constitutional amendment have expressed opposition to a Constitutional Convention on the grounds of the uncertainty of its powers.

In addition to the state petitions and the legislative efforts in the Congress there are those proposing budget-balancing amendments, which if adopted by a two-thirds vote of both houses of the Congress would be sent directly to the state legislatures for ratification. Their large number and variety precluding individual summaries, the article on page 136 groups them in categories and briefly summarizes representative proposals.

The Pro & Con discussion features proponents of different proposals, all in favor of amending the Constitution relative to the Federal budget, and those with views opposing any amendment.

Action by one branch or the other of individual state legislatures on calling a Constitutional Convention, some favorable, some not, has recently been taken. The final results are expected to influence the rate of action taken on the amendment proposals initiated in the Congress, as are legislative efforts in the Congress pertaining to current budgetary matters.

The Federal Budget Process

Balanced
Budget
Amendments

THE FINANCIAL OPERATIONS of the Federal government involve the programs in the familiar annual fiscal budget, and also such multi-billion dollar activities as "government sponsored enterprises" and "off-budget Federal entities."

Government sponsored enterprises are those with completely private ownership, such as Federal land banks and Federal home loans banks, established and chartered by the Federal Government to perform specialized functions. These enterprises are not included in the budget totals, but financial information on their operations is published in a separate part of the appendix to the President's budget.

Off-budget Federal entities are organization entities, federally owned in whole or in part, whose transactions belong in the budget under current budget accounting concepts but which have been excluded from the budget totals under provisions of law. While these transactions are not included in the budget totals, information on these entities is presented in various places in the budget documents.

Although these various programs operate under laws enacted by the Congress, the budget for the fiscal year (October 1-September 30 and designated by the year it ends) is the principal subject of annual attention.

Following are excerpts from a description of the annual budget process published by the Office of Management and Budget. (See also p. 129.)

The Budget Process

The budget sets forth the President's proposed financial plan of operation for the Federal Government for the upcoming fiscal year and planning ceilings for the two subsequent fiscal years. In raising and spending tax revenues, the Federal Government allocates resources between the private and public sectors of the economy. Within the public sector, the allocation of budget resources among individual programs reflects the priorities that are determined through the interaction of the President, the executive branch agencies, and the Congress. The budget process is thus a crucial focus for the determination of national priorities. This section describes that process, and its four interrelated phases: (1) executive formulation and transmittal, (2) congressional ac-

tion, (3) budget execution and control, and (4) review and audit.

Executive formulation and transmittal.—The President's transmittal of his budget proposals to the Congress is the result of many months of planning and analysis throughout the executive branch. Formulation of this budget, transmitted to the Congress in January 1979, began in the spring of 1978. Each spring, policy issues are identified, budget projections are made, and preliminary program plans are presented to the President. In preparing for the 1980 Budget, a zero-based review (ZBB) of the entire budget was conducted.

The President reviews the budget projections in the light of the economic outlook and establishes general budget and fiscal policy guidelines for the fiscal year, that begins over a year later, and, under the new multi-year budget planning system, for the two fiscal years beyond. Tentative policy determinations for the budget year and multi-year planning ceilings for the following two years are then given to the agencies as guidelines for the preparation of their budgets.

In the summer, agencies formulate their zero-based budget requests which are reviewed in detail in the fall by the Office of Management and Budget and presented to the President in the context of overall fiscal policy issues. The budget transmitted to Congress thus reflects the President's recommendations for existing and proposed programs, as well as total outlay and receipt levels appropriate to the state of the economy. Supplemental budget requests and amendments may be submitted later to cover unanticipated needs.

As a result of the Congressional Budget Act of 1974, the President must update this budget on or before April 10 and July 15, taking into account newly enacted legislation, new executive branch recommendations, and new economic assumptions. The act also requires him to transmit current services estimates for the upcoming fiscal year. These estimates represent the budget authority and outlays required to continue existing programs in the upcoming fiscal year without any policy changes, thereby providing a base to compare program initiatives against current spending levels. Current services estimates for fiscal year 1980 are transmitted with the President's budget.

Congressional action.—The Congress begins its formal