

ALASKA LEGISLATIVE COMMITTEE FILES DOZ DOZ

1734 SJ - HB 848. - HJR 77

"(iv) SPECIFIC PORTION TREATED AS SEPARATE PROPERTY.—A specific portion of property shall be treated as separate property.

"(v) ELECTION.—An election under this paragraph with respect to any property shall be made by the executor on the return of tax imposed by section 2001. Such an election, once made, shall be irrevocable.

"(8) SPECIAL RULE FOR CHARITABLE REMAINDER TRUSTS.—

"(A) IN GENERAL.—If the surviving spouse of the decedent is the only noncharitable beneficiary of a qualified charitable remainder trust, paragraph (1) shall not apply to any interest in such trust which passes or has passed from the decedent to such surviving spouse.

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) NONCHARITABLE BENEFICIARY.—The term 'noncharitable beneficiary' means any beneficiary of the qualified charitable remainder trust other than an organization described in section 170(c).

"(ii) QUALIFIED CHARITABLE REMAINDER TRUST.—The term 'qualified charitable remainder trust' means a charitable remainder annuity trust or charitable remainder unitrust (described in section 664)."

(2) GIFT TAX.—Section 2523 is amended by adding at the end thereof the following new subsections:

"(f) ELECTION WITH RESPECT TO LIFE ESTATE FOR DONEE SPOUSE.—

"(1) IN GENERAL.—In the case of qualified terminable interest property—

"(A) for purposes of subsection (a), such property shall be treated as transferred to the donee spouse, and

"(B) for purposes of subsection (b)(1), no part of such property shall be considered as retained in the donor or transferred to any person other than the donee spouse.

"(2) QUALIFIED TERMINABLE INTEREST PROPERTY.—For purposes of this subsection, the term 'qualified terminable interest property' means any property—

"(A) which is transferred by the donor spouse,

"(B) in which the donee spouse has a qualifying income interest for life, and

"(C) to which an election under this subsection applies.

"(3) CERTAIN RULES MADE APPLICABLE.—For purposes of this subsection, the rules of clauses (ii), (iii), and (iv) of section 2056(b)(7)(B) shall apply.

"(4) ELECTION.—An election under this subsection with respect to any property shall be made on the return of the tax imposed by section 2501 for the calendar year in which the interest was transferred. Such an election, once made, shall be irrevocable.

"(g) SPECIAL RULE FOR CHARITABLE REMAINDER TRUSTS.—

"(1) IN GENERAL.—If, after the transfer, the donee spouse is the only noncharitable beneficiary (other than the donor) of a qualified remainder trust, subsection (b) shall not apply to the interest in such trust which is transferred to the donee spouse.

"(2) DEFINITIONS.—For purposes of paragraph (1), the term 'noncharitable beneficiary' and 'qualified charitable remainder trust' have the meanings given to such terms by section 2056(b)(8)(F)."

(3) TREATMENT OF SPOUSE.—

(A) INCLUSION IN GROSS ESTATE.—

(i) IN GENERAL.—Part III of subchapter A of chapter 11 is amended by redesignating sections 2044 and 2045 as sections 2045 and 2046, respectively, and by inserting after section 2043 the following new section:

"SEC. 2044. CERTAIN PROPERTY FOR WHICH MARITAL DEDUCTION WAS PREVIOUSLY ALLOWED.

"(a) GENERAL RULE.—The value of the gross estate shall include the value of any property to which this section applies in which the decedent had a qualifying income interest for life.

"(b) PROPERTY TO WHICH THIS SECTION APPLIES.—This section applies to any property if—

"(1) a deduction was allowed with respect to the transfer of such property to the decedent—

"(A) under section 2056 by reason of subsection (b)(7) thereof, or

"(B) under section 2523 by reason of subsection (f) thereof, and

"(2) section 2519 (relating to dispositions of certain life estates) did not apply with respect to a disposition by the decedent of part or all of such property."

(ii) The table of sections for part III of subchapter A of chapter 11 is amended by redesignating the items relating to sections 2044 and 2045 as sections 2045 and 2046, respectively, and by inserting after the item relating to section 2043 the following new item:

"Sec. 2044. Certain property for which marital deduction was previously allowed."

(B) GIFT TAX.—

(i) IN GENERAL.—Subchapter B of chapter 11 (relating to transfers) is amended by adding at the end thereof the following new section:

"SEC. 2519. DISPOSITIONS OF CERTAIN LIFE ESTATES.

"(a) GENERAL RULE.—Any disposition of all or part of a qualifying income interest for life in any property to which this section applies shall be treated as a transfer of such property.

"(b) PROPERTY TO WHICH THIS SUBSECTION APPLIES.—This section applies to any property if a deduction was allowed with respect to the transfer of such property to the donor—

"(1) under section 2056 by reason of subsection (b)(7) thereof, or

"(2) under section 2523 by reason of subsection (f) thereof."

(ii) The table of sections for subchapter B of chapter 11 is amended by adding at the end thereof the following new item:

"Sec. 2519. Dispositions of certain life estates."

(4)(A) Subchapter C of chapter 11 is amended by inserting after section 2207 the following new section:

"SEC. 2207A. RIGHT OF RECOVERY IN THE CASE OF CERTAIN MARITAL DEDUCTION PROPERTY.

"(a) RECOVERY WITH RESPECT TO ESTATE TAX.—

"(1) IN GENERAL.—If any part of the gross estate consists of property the value of which is includible in the gross estate by reason of section 2044 (relating to certain property for which marital deduction was previously allowed), the decedent's estate shall be entitled to recover from the person receiving the property the amount by which—

"(A) the total tax under this chapter which has been paid, exceeds

"(B) the total tax under this chapter which would have been payable if the value of such property had not been included in the gross estate.

"(2) DECEDENT MARITAL OTHERWISE DIRECT BY WILL.—Paragraph (1) shall not apply if the decedent otherwise directs by will.

"(b) RECOVERY WITH RESPECT TO GIFT TAX.—If for any calendar year tax is paid under chapter 12 with respect to any person by reason of property treated as transferred by such person under section 2519, such person shall be entitled to recover from the person receiving the property the amount by which—

"(1) the total tax for such year under chapter 12, exceeds

"(2) the total tax which would have been payable under such chapter for such year if the value of such property had not been taken into account for purposes of chapter 12.

"(c) MORE THAN ONE RECIPIENT OF PROPERTY.—For purposes of this section, if there is more than one person receiving the property, the right of recovery shall be against each such person.

"(d) TAXES AND INTEREST.—In the case of penalties and interest attributable to additional taxes described in subsections (a) and (b), rules similar to subsections (a), (b), and (c) shall apply."

(B) The table of sections for subchapter C of chapter 11 is amended by inserting after the item relating to section 2207 the following new item:

"Sec. 2207A. Right of recovery in the case of certain marital deduction property."

(e) EFFECTIVE DATES.—

(1) Except as otherwise provided in this subsection, the amendments made by this section shall apply to the estates of decedents dying after December 31, 1981.

(2) The amendments made by paragraphs (1), (2), and (3)(A) of subsection (b), subparagraphs (B) and (C) of subsection (c)(3), and paragraphs (2) and (3)(B) of subsection (d) shall apply to gifts made after December 31, 1981.

(3) If—

(A) the decedent dies after December 31, 1981,

(B) by reason of the death of the decedent property passes from the decedent or is acquired from the decedent under a will executed before the date which is 30 days after the date of the enactment of this Act, or a trust created before such date, which contains a formula expressly providing that the spouse is to receive the maximum amount of property qualifying for the marital deduction allowable by Federal law,

(C) the formula referred to in subparagraph (B) was not amended to refer specifically to an unlimited marital deduction at any time after the date which is 30 days after the date of enactment of this Act, and before the death of the decedent, and

(D) the State does not enact a statute applicable to such estate which construes this type of formula as referring to the marital deduction allowable by Federal law as amended by subsection (a),

then the amendment made by subsection (a) shall not apply to the estate of such decedent.

MALIVE

thion
in
E

... naval shipping of a country.
... navigation and commerce of the sea;
... ters. Member of U.S. Marine Corps.
... ne.

That portion of the main or open sea,
the shores of a given country, over which
action of its municipal laws and local au-
thority extends. Territorial waters, defined by in-
ternational law as extending out three miles from
the shore. See also Territorial waters.

... ne carrier. By statutes of several states this term
is applied to carriers plying upon the ocean, arms of
the sea, the Great Lakes, and other navigable waters
within the jurisdiction of the United States.

Marine contract. One relating to maritime affairs, ship-
ping, navigation, marine insurance, affreightment,
maritime loans, or other business to be done upon the
sea or in connection with navigation.

Marine court in the city of New York. Formerly, a local
court of New York City, originally created as a tribu-
nal for the settlement of causes between seamen. It
was the predecessor of the City Court of the city of
New York.

Marine insurance. See Insurance.

Marine interest. Interest, allowed to be stipulated for
at an extraordinary rate, for the use and risk of
money loaned on *respondentia* and bottomry bonds.

Marine league /məriyn liyg/. A measure of distance
commonly employed at sea, being equal to one-twenti-
eth part of a degree of latitude, or three geographi-
cal or nautical miles.

Mariner. A seaman or sailor; one engaged in navigat-
ing vessels upon the sea; persons employed aboard
ships or vessels.

Marine risk. The perils of the sea; the perils necessari-
ly incident to navigation.

Mariner's will. A nuncupative or oral will permitted in
some jurisdictions for the sailor who is actually at sea
at the time of making the will. Generally, such will
affects personal property only.

**Maris et feminae conjunctio est de jure naturae /mærs
èt fémanij kənjəŋksh(iy)ow ést dij jurij natchuriy/.
The connection of male and female is by the law of
nature.**

**Maritagio amisso per defaultam /mæratéj(iy)ow amisow
pær dæfóltəm/. An obsolete writ for the tenant in
frank-marriage to recover lands, etc., of which he was
deforced.**

**Maritagium /mæratéj(iy)əm/. The portion which is
given with a daughter in marriage. Also the power
which the lord or guardian in chivalry had of dispos-
ing of his infant ward in matrimony.**

**Maritagium est aut liberum aut servitio obligatum; libe-
rum maritagium dicitur ubi donator vult quod terra**

**Maritagium habere /mæratéj(iy)əm hæbiri/. To have
the free disposal of an heiress in marriage.**

**Marital /mæradəl/mæraydəi/. Relating to, or connected
with, the status of marriage; pertaining to a husband;
incident to a husband.**

Marital agreements. Contracts between parties who
are either on the threshold of marriage or on the
verge of separation, though, in general, the term
refers to all agreements between married people.
Such agreements are primarily concerned with the
division and ownership of marital property. In some
jurisdictions, the contract must be made through a
third person if the law does not permit the spouses to
contract directly with each other. See also **Antenu-
ptial settlements; Equitable distribution; Marriage set-
tlement; Postnuptial agreement.**

Marital communications privilege. In most jurisdic-
tions private communications between the spouses
during the marriage are privileged at the option of the
witness spouse and hence inadmissible in a trial. In
some jurisdictions the communications are disquali-
fied, and hence not admissible, even with the consent
of the witness spouse. This privilege is subject to
certain limitations; e.g. prosecutions for crimes com-
mitted by one spouse against the other or against the
children of either. See also **Husband-wife privilege.**

Marital deduction. A deduction allowed upon the
transfer of property from one spouse to another. The
deduction is allowed under the Federal gift tax for
lifetime (i.e., *inter vivos*) transfers and also under the
Federal estate tax for testamentary transfers. I.R.C.
§§ 2056, 2523. See also **Pecuniary formulas.**

Minimum deduction. Under the Tax Reform Act of
1976, a minimum marital deduction of \$250,000 is
allowed for death tax purposes if this amount of
qualifying property passes to the surviving spouse.
The previous limitation of 50% of the deceased
spouse's adjusted gross estate continues to be in
effect when the marital deduction exceeds \$250,000.
The minimum marital deduction for gift tax purposes
is the first \$100,000 passing from one spouse to the
other spouse. To the extent that the marital deduc-
tion allowed for gift tax purposes exceeds one-half of
the value of the property transferred, there is a dol-
lar-for-dollar offset to the estate's allowable minimum
marital deduction (or the marital deduction computed
in accordance with the 50% of the adjusted gross
estate rule).

Marital deduction trust. In estate planning, a device in
the form of a trust utilized to gain the maximum
benefit of the marital deduction by dividing the prop-
erty in half. Commonly, one half of the property is
transferred to the marital deduction trust and the
other half is disposed of in a trust or like arrangement
with a view towards having it escape taxation in the
estate of the surviving spouse.

Marital portion. In Louisiana, the name given to that
part of a deceased husband's estate to which the
widow is entitled.

Marital privileges. Those rights, immunities and ad-
vantages which attach to the state of marriage such

26 USC 2001
note.

(d) EFFECTIVE DATES.—

(1) The amendments made by subsections (a) and (c) (1) shall apply to the estates of decedents dying after December 31, 1976; except that the amendments made by subsection (a) (5) and subparagraphs (K) and (L) of subsection (c) (1) shall not apply to transfers made before January 1, 1977.

26 USC 2502
note.

(2) The amendments made by subsections (b) and (c) (2) shall apply to gifts made after December 31, 1976.

SEC. 2002. INCREASE IN LIMITATIONS ON MARITAL DEDUCTIONS;
FRACTIONAL INTERESTS OF SPOUSE.

26 USC 2056.

(a) INCREASE IN ESTATE TAX MARITAL DEDUCTION.—Paragraph (1) of section 2056(c) (relating to limitation on marital deduction) is amended to read as follows:

“(1) LIMITATION.—

“(A) IN GENERAL.—The aggregate amount of the deductions allowed under this section (computed without regard to this subsection) shall not exceed the greater of—

“(i) \$250,000, or

“(ii) 50 percent of the value of the adjusted gross estate (as defined in paragraph (2)).

“(B) ADJUSTMENT FOR CERTAIN GIFTS TO SPOUSE.—If a deduction is allowed to the decedent under section 2523 with respect to any gift made to his spouse after December 31, 1976, the limitation provided by subparagraph (A) (determined without regard to this subparagraph) shall be reduced (but not below zero) by the excess (if any) of—

“(i) the aggregate of the deductions allowed to the decedent under section 2523 with respect to gifts made after December 31, 1976, over

“(ii) the aggregate of the deductions which would have been allowable under section 2523 with respect to gifts made after December 31, 1976, if the amount deductible under such section with respect to any gift were 50 percent of its value.

“(C) COMMUNITY PROPERTY ADJUSTMENT.—The \$250,000 amount set forth in subparagraph (A) (i) shall be reduced by the excess (if any) of—

“(i) the amount of the subtraction determined under clauses (i), (ii), and (iii) of paragraph (2) (B), over

“(ii) the excess of the aggregate of the deductions allowed under sections 2053 and 2054 over the amount taken into account with respect to such deductions under clause (iv) of paragraph (2) (B).”

26 USC 2523.

(b) INCREASE IN GIFT TAX MARITAL DEDUCTION.—Subsection (a) of section 2523 (relating to deduction for gift to spouse) is amended to read as follows:

“(a) ALLOWANCE OF DEDUCTION.—

“(1) IN GENERAL.—Where a donor who is a citizen or resident transfers during the calendar quarter by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar quarter an amount with respect to such interest equal to its value.

“(2) LIMITATION.—The aggregate of the deductions allowed under paragraph (1) for any calendar quarter shall not exceed the sum of—

P.L. 94-455
Sec. 2002
26 USC 2040.

LAWS OF 94th CONG.—2nd SESS.

Oct. 4

26 USC 2056
note.

(3) CLERICAL AMENDMENT.—Section 2040 is amended by striking out “The value” and inserting in lieu thereof the following:
“(a) GENERAL RULE.—The value”.

(d) EFFECTIVE DATES.—

(1) (A) Except as provided in subparagraph (B), the amendment made by subsection (a) shall apply with respect to the estates of decedents dying after December 31, 1976.

(B) If—

(i) the decedent dies after December 31, 1976, and before January 1, 1979,

(ii) by reason of the death of the decedent property passes from the decedent or is acquired from the decedent under a will executed before January 1, 1977, or a trust created before such date, which contains a formula expressly providing that the spouse is to receive the maximum amount of property qualifying for the marital deduction allowable by Federal law,

(iii) the formula referred to in clause (ii) was not amended at any time after December 31, 1976, and before the death of the decedent, and

(iv) the State does not enact a statute applicable to such estate which construes this type of formula as referring to the marital deduction allowable by Federal law as amended by subsection (a),

then the amendment made by subsection (a) shall not apply to the estate of such decedent.

(2) The amendment made by subsection (b) shall apply to gifts made after December 31, 1976.

(3) The amendments made by subsection (c) shall apply to joint interests created after December 31, 1976.

26 USC 2523
note.

26 USC 2049
note.

SEC. 2003. VALUATION FOR PURPOSES OF THE FEDERAL ESTATE TAX OF CERTAIN REAL PROPERTY DEVOTED TO FARMING OR CLOSELY HELD BUSINESSES.

(a) GENERAL RULE.—Part III of subchapter A of chapter 11 (relating to gross estate) is amended by inserting after section 2032 the following new section:

26 USC 2032A.

“SEC. 2032A. VALUATION OF CERTAIN FARM, ETC., REAL PROPERTY.

“(a) VALUE BASED ON USE UNDER WHICH PROPERTY QUALIFIES.—

“(1) GENERAL RULE.—If—

“(A) the decedent was (at the time of his death) a citizen or resident of the United States, and

“(B) the executor elects the application of this section and files the agreement referred to in subsection (d) (2), then, for purposes of this chapter, the value of qualified real property shall be its value for the use under which it qualifies, under subsection (b), as qualified real property.

“(2) LIMITATION.—The aggregate decrease in the value of qualified real property taken into account for purposes of this chapter which results from the application of paragraph (1) with respect to any decedent shall not exceed \$500,000.

“(b) QUALIFIED REAL PROPERTY.—

“(1) IN GENERAL.—For purposes of this section, the term ‘qualified real property’ means real property located in the United States which, on the date of the decedent’s death, was being used for a qualified use, but only if—

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 15, 1982

The Honorable Joseph L. Hayes
Speaker
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: HB 848, Estate Tax Marital
Deductions

Dear Speaker Hayes:

Mr. Levi of your staff has asked this office to review the February 1, 1982 memorandum to you on this subject by legislative counsel Thomas Sofo. We have also reviewed HB 848, which you introduced in response to that memorandum.

As we have discussed with Mr. Levi by telephone several times, we agree generally with the conclusions drawn by Mr. Sofo. We agree that, to be conservative and to ensure that Alaskans can rely on the new "unlimited marital deduction" from estate taxes, AS 13.11.277 should be amended as § 403(e)(3)(D) of the Economic Recovery Act of 1981 apparently requires. We also agree that the only way to be sure that such an amendment is not necessary is to obtain a ruling from the Internal Revenue Service. It is very unlikely that such a ruling could be obtained in time to enact a bill this session if that were made clearly necessary by the ruling.

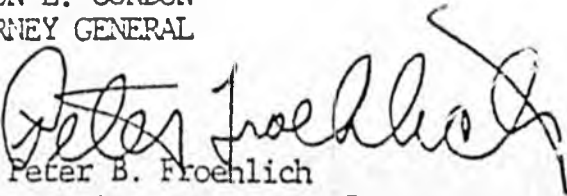
The approach chosen by the drafter of HB 848 appears to satisfy the language of § 403(e)(3)(D), even though it does not refer specifically to the amendments made by the 1981 Act. Regardless of whether the

Please let me know if I can provide further assistance on this matter.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By:


Peter B. Froehlich

Assistant Attorney General

H

B

8

4

9

Original sponsor: Bertisworth

THE HOUSE

BY THE JUDICIARY COMMITTEE

SENATE CS FOR HOUSE BILL NO. 849 (Judiciary)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE - SECOND SESSION

A BILL

An Act entitled: "An Act relating to electric and telephone co-operatives."

IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Handwritten notes:
APPROVED BY THE JUDICIARY COMMITTEE
APR 28 1982
JUDICIARY

* Section 1. AS 10.25.120 is amended to read:

Sec. 10.25.120. VOTING. Each member is entitled to one vote on each matter submitted to a vote at a meeting of the members. Each member of a district is entitled to one vote on each matter submitted to a vote at any district meeting. Voting shall be in person, but, if the bylaws so provide, may also be by mail.

* Sec. 2. AS 10.25.190 is amended to read:

Sec. 10.25.190. DISTRICTS. The bylaws may provide for the division of the territory served or to be served by a cooperative into two or more districts for any purpose, including, without limitation, the nomination and election of directors and the election and functioning of district delegates. These delegates, who shall be members, may nominate and elect directors. The bylaws shall prescribe the boundaries of the districts, or the manner of establishing the boundaries, and the manner of changing the boundaries, and the manner in which the districts function. No member at any district meeting and no district delegate at any meeting may vote by proxy or by mail. except that the election of directors may be by mail if provided in the bylaws.

* Sec. 3. AS 10.25 is amended by adding a new section to read:

Sec. 10.25.175. BOARD MEETINGS OPEN TO MEMBERS. (a) A meeting of the board of directors may be attended by members of the cooperative.

Except when voice votes are authorized, a vote shall be conducted in such a manner that the members may know the vote of each person entitled to vote.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a regular or special meeting and the question of holding an executive session to discuss matters that come within the exceptions contained within (c) of this section shall be determined by a majority vote of the board. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No formal action may be taken during the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters the immediate knowledge of which would clearly have an adverse effect on the finances of the cooperative;

(2) subjects that tend to prejudice the reputation and character of a person; however, the person may request a public discussion.

(d) ^{(IN) (3) MATTERS SUBJECT TO THE ATTORNEY GENERAL PRIVILEGE} Reasonable notice shall be given for all regular or special meetings ^{AS REQUIRED IN EACH BYLAWS. GO TO PARAGRAPH 5 IN THE BYLAWS.} required to be open under this section.

(e) Action taken contrary to this section is void.

* Sec. 4. AS 10.25 is amended by adding a new section to read:

Sec. 10.25.176. MEMBER'S RIGHT TO EXAMINE BOOKS AND RECORDS. A member of a cooperative may, at a reasonable time, examine and make copies of the books and records of the cooperative at the principal office of the cooperative. The cooperative may charge a member an amount equal to the actual cost of duplicating documents requested under this section.

Approved - N.D. Approved

COMMITTEE REPORT

SENATE

4/12/82

FURTHER: Finance

Date: April 30, 1982

Mr. President:

The Committee on JUDICIARY has had HE 849 am
electric and telephone cooperatives

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 AB849 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:

John D. Anderson, No Rec.

CHAIRMAN

SENATE AMENDMENT

By _____

To: _____ SENATE BILL No. _____

To: _____ HOUSE BILL No. _____

Page PAGE: *New Sec. 1* LINE:

Sec. 10.1~~3~~.005. Purposes for which cooperatives may be organized. A cooperative may be organized under this chapter for any lawful purpose, except for the purpose of [BANKING OR INSURANCE OR] the furnishing of electric or telephone service. (3 ch 107 S.A. 1959)

1 IN THE HOUSE

BY BETTISWORTH

2 HOUSE BILL NO. 849 am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to electric and telephone co-
7 operatives."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 10.25.120 is amended to read:

10 Sec. 10.25.120. VOTING. Each member is entitled to one vote on
11 each matter submitted to a vote at a meeting of the members. Each mem-
12 ber of a district is entitled to one vote on each matter submitted to
13 a vote at any district meeting. Voting shall be in person, but, if the
14 bylaws so provide, may also be by mail.

15 * Sec. 2. AS 10.25.190 is amended to read:

16 Sec. 10.25.190. DISTRICTS. The bylaws may provide for the
17 division of the territory served or to be served by a cooperative into
18 two or more districts for any purpose, including, without limitation,
19 the nomination and election of directors and the election and function-
20 ing of district delegates. These delegates, who shall be members, may
21 nominate and elect directors. The bylaws shall prescribe the boundaries
22 of the districts, or the manner of establishing the boundaries, and the
23 manner of changing the boundaries, and the manner in which the districts
24 function. No member at any district meeting and no district delegate at
25 any meeting may vote by proxy or by mail, except that the election of
26 directors may be by mail if provided by the bylaws.

27 * Sec. 3. AS 10.25 is amended by adding a new section to read:

28 Sec. 10.25.175. BOARD MEETINGS OPEN TO MEMBERS. (a) A meeting of
29 the board of directors may be attended by members of the cooperative.

RES = HUTCHINS

* = RAY

(1) = PARR

1 Except when voice votes are authorized, a vote shall be conducted in
2 such a manner that the members may know the vote of each person entitled
3 to vote.

4 (b) If excepted subjects are to be discussed at a meeting, the
5 meeting must first be convened as a regular ^{or special} meeting and the question of
6 holding an executive session to discuss matters that come within the
7 exceptions contained within (c) of this section shall be determined by a
8 majority vote of the board. No subjects may be considered at the
9 executive session except those mentioned in the motion calling for the
10 executive session unless auxiliary to the main question. ^{Journal} No action may
11 be taken ^{during} the executive session.

12 (c) The following excepted subjects may be discussed in an
13 executive session:

14 (1) matters the immediate knowledge of which would clearly
15 have an adverse effect on the finances of the cooperative;

16 (2) subjects that tend to prejudice the reputation and
17 character of a person; however, the person may request a public
18 discussion. ~~(3) ^{is an executive session}~~

19 DEFINE? (d) Reasonable notice shall be given for all ^{meetings required to}
20 ~~be open~~ under this section. ^{Electronic or by mail}

21 (e) Action taken ^{is an executive session} contrary to this section is void.

22 * Sec. 4. AS 10.25 is amended by adding a new section to read:

23 Sec. 10.25.176. MEMBER'S RIGHT TO EXAMINE BOOKS AND RECORDS.

24 A member of a cooperative may, at a reasonable time, ^{and for a valid corporate purpose} examine and make
25 ^(X) copies of the books and records of the cooperative. [except the names,
26 addresses and accounts of the members] at the principal office of the
27 cooperative. ²⁷ The cooperative may charge a member an amount equal to the
28 actual cost of duplicating documents requested under this section.

29 ~~REASONABLE NOTICE~~
~~NOTICE~~

AND

TO THE EXTENT POSSIBLE, SPECIAL MEETINGS

HB 849 am

shall be possible at least 3 working days in advance

IN A PERMANENT LOCATION AT ALL BUSINESS OFFICES OF A COOPERATIVE.



Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 26, 1981

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SJR 68 - Proposing an amendment to the Constitution of the State of Alaska providing that a legislator who is convicted of a felony forfeits legislative office.
- HB 678 - "An Act relating to membership in electric and telephone cooperatives."
- HB 849 - "An Act relating to electric and telephone cooperatives."
- HB 339 - "An Act relating to the judicial review of administrative regulations."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:05 P.M. Committee members present were: Senators Rodey, Parr, and Andersor. Senators Bennett and Ray were absent.

003 - Call to order.

010 - Chairman Rodey brought HB 678 before the committee.

025 - Mr. Hutchins testified in support of the bill.

135 - SENATOR RAY ENTERED THE MEETING.

147 - After brief discussion, Chairman Rodey laid HB 678 on the table.

157 - Chairman Rodey next brought HB 849 before the committee.

160 - Mr. Hutchins again testified in support of this legislation and offered the following amendments: On page 2, Line 5, add "or special" between "regular" and "meeting". On Page 2, Line 24, add "and for a valid corporate purpose" between "time" and ",". Mr. Hutchins also suggested adding a new subparagraph (3) under Sec. 10.25.175., Paragraph (c), to protect the attorney, client privilege.

166 - Senator Ray offered the following amendments: On Page 2, Line 10 add "formal" between the words "No" and "action". On Page 2, Line 11,

169 - Senator Parr offered the following amendment: On Page 2, Line 25 delete [except the names, addresses and accounts of the members].

771 - After discussion of the amendments, Chairman Rodey laid HB 849 on the table and directed staff to prepare a committee substitute.

779 - The next item on the calendar was HB 339.

780 - Representative Metcalfe testifies, giving the intent of his bill.

SIDE TWO

989 - Mr. Art Peterson, Assistant Attorney General, testified against HB 339, stating that this legislation would only give more power to the court system instead of the Legislature. Mr. Peterson offered a committee substitute for committee consideration.

244 - Chairman directed Senator Anderson to work as a subcommittee with Mr. Bruce to draft a committee substitute.

340 - Phil Holsforth, testified in favor of HB 339.

410 - Chairman Rodey put HB 339 in subcommittee.

412 - Next Chairman Rodey brought SJR 68 before committee.

518 - After brief discussion, Chairman Rodey laid SJR 68 on the table.

520 - The committee directed Chairman Rodey to return SB 861 and SB 175 to the State Affairs Committee for further work.

525 - Chairman Rodey adjourned the meeting at 2:45 P.M.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

FILE 18B097
POUCH Y - STATE CAPITOL
SUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

April 30, 1982

SUBJECT: Single subject rule in relation to
SCS HB 849 (Judiciary)

TO: Senator Patrick M. Rodey
Chairman, Senate Judiciary Committee

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

I have added the amendment to SCS HB 849 (Judiciary) as requested. In my opinion this addition creates a probable violation of the single subject rule.

The single subject rule is contained in Section 13, Article II, Constitution of the State of Alaska which provides:

SECTION 13. Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

The primary aim of the rule has been stated by our court to be restraint of the log-rolling process in the legislature and describes log-rolling as deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure. Suber v. Alaska State Bond Committee, 414 P.2d 546 (1966).

The test which broadly stated:

"Ultimately the decision in cases of this kind must be made on a basis of practicality and reasonableness. In determining whether a bill is confined to one subject we agree with the statement:

'All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.'"

was adopted in Gellert v. State, 522 P.2d 1120 (Alaska 1974), and has been quoted in each subsequent case in point in Alaska with approval. It is therefore well settled that this broad language is the standard against which compliance with the single subject rule is to be tested.

I can see no relationship between allowing banking and insurance cooperatives to be formed and meetings of electric and telephone cooperatives which are logically or in popular understanding so connected or related to each other as to be part of one general subject.

BGB:ljb

Enclosure

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION

6000 "C" STREET, SUITE C

ANCHORAGE, ALASKA 99502

April 29, 1982

Honorable Patrick Rodey
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

After reviewing the proposed CS for HB 849 which you showed me this morning, I find two serious problems remaining.

If no modification is to be made to subsection 175(e), then there certainly needs to be some clarification as to what is meant by "reasonable notice" in subsection (d).

Section 176 as presently drafted would make the records of a cooperative more completely open than any other entity in the State of Alaska, either public or corporate. The records which this language would open for inspection which should not be opened include the following:

1. Personnel, payroll, medical or other files which reveal the financial or medical status of any specific individual, or the release of which would constitute an unwarranted invasion of privacy.
2. Records pertaining to any customer or subscriber, the release of which would constitute an unwarranted invasion of the privacy of that customer.
3. Records of engineering or other technical data which, if released, would provide a competitive advantage to any other person or corporation engaged in similar or related activities.
4. Proprietary information which a manufacturer, consultant or provider reasonably requires to be kept privileged or confidential to protect the property interests of persons providing the information or data.
5. Information which the Association, as respects collective bargaining, regularly considers to be privileged or confidential for purposes of successful collective bargaining.

6. Communications between the Association and its attorney which contain legal questions concerning pending or actual litigation.
7. Information obtained by and in the custody of insurance carriers insuring the Association and its attorneys and agents regarding possible and pending claims against the Association.
8. Personal information other than name and address given to the Association with the legitimate expectation of privacy in conjunction with requests for service or membership.

These problems and others we may not have yet considered would be appropriately addressed by amending the section to read:

* Section 10.25.176. MEMBER'S RIGHT TO EXAMINE BOOKS AND RECORDS. A member of a cooperative may, at a reasonable time and for a proper purpose, examine and make copies of the books and records of the cooperative at the principal office of the cooperative. The cooperative may charge a member an amount equal to the actual cost of duplicating documents requested under this section.

Sincerely,

Dave

David Hutchens

AS PROVIDED FOR
~~BY THE BYLAWS~~ *BY THE BYLAWS*

Quoted in *Ketchikan Retail Liquor Dealers Ass'n v. State, ABC Bd.*, Sup. Ct. Op. No. 1963 (File No. 36971, 602 P.2d 434 (1979)).

Stated in *Kingery v. Chapple*, Sup. Ct. Op. No. 258 (File No. 15541, 504 P.2d 831 (1972)).

Cited in *Boehl v. Sabre Jet Room*, Sup. Ct. Op. No. 3 (File No. 171, 349 P.2d 585 (1960)).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, *Public Administrative Law*, §§ 553-775.

Article 6. Agency Meetings Public.

Section

- 310. Agency meetings public
- 312. State policy regarding meetings

Sec. 44.62.310. Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

- (1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;
- (2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
- (3) matters which by law, municipal charter, or ordinance are required to be confidential.
- (d) This section does not apply to
 - (1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

- (2) juries;
- (3) parole or pardon
- (4) meetings of a host
- (5) meetings of the government when holding a meeting
- (e) Reasonable public qualifications, privilege to be open under this section
- (f) Action taken contrary to 143 SLA 1959; am § 1 ch 7 SLA 1969; am §§ 1 ch 189 SLA 19

Effect of amendment. Amendment added the second sentences of subsection (a). A meeting of the board of the Alaska Bar Association in Hawaii in 1978 was not

Sec. 44.62.312. State policy of the state that

- (1) the governmental is the conduct of the people
- (2) it is the intent of the people openly and that their
- (3) the people of the agencies which serve
- (4) the people, in order servants the right to do what is not good for the
- (5) the people's right they may retain control
- (b) AS 44.62.310(c) effectuate the policy of executive sessions. (§

Revisor's note. — AS based on Cal. Gov't C.A., s Cross reference. See § 44.62.310.

Article

- Section
- 327. Legislative annulment and review

le of pardon boards;
 ings of a hospital medical staff; or
 ings of the governing body or any committee of a hospital
 ing a meeting solely to act upon matters of professional
 ons, privileges or discipline.
 onable public notice shall be given for all meetings required
 under this section.
 on taken contrary to this section is void. (§ 1 art VI (ch 1) ch
 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1
 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972;
 189 SLA 1976)

amendment. — The 1976
 ended the second and third
 subsection (a).
 of the board of governors
 Alaska Bar Association in
 1978 was not subject to the
 requirements of this section. *Horowitz v.*
Alaska Bar Ass'n, Sup. Ct. Op. No. 2059
 (File Nos. 4310, 4311). P.2d (1980).
 Am. Jur. 2d reference. — 2 Am. Jur.
 2d. Administrative Law, §§ 281, 282.

44.62.312. State policy regarding meetings. (a) It is the pol-
 icy of this state that
 governmental units mentioned in AS 44.32.310(a) exist to aid
 the conduct of the people's business;
 it is the intent of the law that actions of those units be taken
 and that their deliberations be conducted openly;
 the people of this state do not yield their sovereignty to the
 agencies which serve them;
 the people, in delegating authority, do not give their public
 servants the right to decide what is good for the people to know and
 what is not good for them to know;
 the people's right to remain informed shall be protected so that
 they retain control over the instruments they have created.
 AS 44.62.310(c)(1) shall be construed narrowly in order to
 effect the policy stated in (a) of this section and avoid unnecessary
 public sessions. (§ 3 ch 98 SLA 1972)

note. — AS 44.62.312(a) is
 Alaska Gov't C.A., sec. 54950.
 Reference. See note under AS
 Legislative history report. — For
 report on ch. 98, SLA 1972 (SB 253), see
 1972 House Journal, p. 156.

Article 7. Legislative Review of Rules.

Legislative annulment of regulations
 and review

HOGUE AND LEKISCH

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

437 "E" STREET, SUITE 500 • ANCHORAGE, ALASKA 99501

(907) 276-1726

ANDREW E. HOGUE
PETER A. LEKISCH
WARREN G. KELLCUT
CALVIN R. JONES
ANN W. RESCH
RICHARD F. DEUSER

April 19, 1982

Dave Hutchens

Alaska Rural Electric Cooperative
Association, Inc.

6000 C Street, Suite C
Anchorage, Alaska 99502

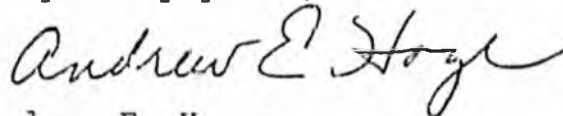
(Sent to Baranof in Juneau)

Re: HB 849 am

Dear Dave:

I received a copy of House Bill No. 849 am (copy enclosed). I believe you received my previous letter on this bill. I think the excepted subjects [see Sec. 3, A.S. 10.25.175(c)(1) and (2)] are acceptable. However, I think there is a clear need for items protected by the attorney/client privilege to be discussed in executive session. Generally, litigation would come under items 1 and 2. However, there may be occasions when litigation might not affect the finances and might not defect the character of a person but would be important and the formulation of the policy for that litigation should be something that counsel for the cooperative and the cooperative board should discuss in executive session. The attorney/client privilege is a privilege that has been long recognized in law, is recognized by the Rules of Evidence of the State of Alaska, and an appropriate exception should be made in the statute for that kind of discussion.

Very truly yours,



Andrew E. Hoge

AEH/pfm

Enclosure

cc: Copper Valley Telephone Cooperative w/ encl.
Copper Valley Electric Association w/ encl.
Matanuska Telephone Association w/ encl.

Kempel, Huffman & Ginder

255 E. Fireweed Lane, Suite 200

Anchorage, Alaska 99503

Roger R. Kempel
Richard R. Huffman
Peter C. Ginder
Ronald L. Baird

Telephone
(907) 277-1604
(907) 276-1605

April 22, 1982

Mr. Dave Hutchens, Director
Alaska Rural Electric Cooperative Assn.
6000 C Street
Anchorage, AK 99503

Dear Dave:

I have reviewed Committee Substitute for House Bill 670, introduced by Representative Brian Rogers in the Alaska State House of Representatives which provides for the right of a member of an electric or telephone cooperative to inspect the books and records of the cooperative.

The provision, in essence, states that a member of a cooperative may, at a reasonable time, examine and make copies of the books and records of the cooperative.

The bill, as it is presently written, however, lacks a common law provision which qualifies the right to inspect records. Traditionally, a shareholder of a corporation (or a member of a cooperative as in this case) has the right to inspect the entity's records, but the right is not an absolute right. Rather, it is a qualified right, in that the inspection can only be made for a proper purpose. There is no language in the bill which calls for the inspection to be for a proper purpose.

In existing common law, the right of shareholders to inspect the books and records of the corporation is a fundamental one. Despite the fundamental nature of this right, it exists in common law not as an absolute right, but as a qualified one. In order to strike a proper balance the common law shareholders' right of inspection is qualified to permit inspection of the various books and records of the corporation only if the demand is made in good faith at reasonable times and places and if the inspection is for a proper purpose. A proper purpose would be a purpose which protects the interest of the member of the cooperative and which protects the interest of the cooperative and other cooperative members. Any purpose inimical or detrimental to the accomplishment of the purpose for which the corporation was organized would be improper.

1. Alaska Statutes: The Alaska Business Corporations Act (AS 10.05) which is the comparable statute to the Electric & Telephone Cooperative Act (AS 10.25) also calls for the right of inspection of shareholders of the books and records of a corporation. This particular statute (AS 10.05.240) qualifies this right by requiring that the inspection be for a proper purpose. Furthermore, under AS 10.05.246, if the corporation refuses to allow a shareholder to inspect its records, a shareholder may go to court to compel inspection if the shareholder proves that he is exercising his right for a proper purpose.

Therefore, in a very similar situation, that is, where a shareholder is seeking to inspect the records of the corporation, as opposed to a member of a cooperative seeking to inspect the records of a cooperative, a proper purpose is required.

2. Alaska Common Law: The only case which mentions the concept of "proper purpose" in the exercise of a shareholders right to inspect corporation books and records, is Wolff.v. Arctic Bowl, Inc. 560 F.2d 758 (1977).

Under the facts and circumstances of the case, the court held that the record demonstrated a "proper purpose" for exercise of plaintiff's right as a shareholder to inspect the corporation's books and records. That is, where the minority shareholder suspected fraudulent misconduct by the directors and officers of the corporation, this was a "proper purpose" to justify the court in compelling the corporation to produce for the shareholder's examination the corporation records attainable under AS 10.05.246.

This case demonstrates that "proper purpose" is a determining factor in a court's order to compel production of the records for the shareholder.

b. General Rule-Common Law:

1. Proper purpose-Good faith: In order to exercise the common law right of inspection, the demand of the shareholder must be made in good faith and for the purpose of protecting his investment and ascertaining whether the corporation is being properly managed. John Bondi v. Business Education Forum, Inc. 384 N.Y.S.2d 291 (1976).

At common law, the right of a stockholder to inspect and examine books of a corporation was recognized

Mr. Dave Hutchens, Director
April 22, 1982
Page 3

but was not granted to gratify mere idle curiosity. It was necessary to show some specific interest or some beneficial purpose. Crouse v. Rogers Park Apartments, 99 N.E.2d 404 (1951).

The common law restricts the inspection of corporate records for "speculative purposes". The definition of proper purpose is one in which a stockholder is seeking information bearing upon the protection of his interest and that of other stockholders. Crouse v. Rogers Park Apartments, Supra p.406.

In Mayer v. Cincinnati Economy Drug Co., 103 N.E.2d 1 (1951), it states that the test by which to determine whether the shareholder's purpose is unreasonable or improper is whether it would be inimical or detrimental to the accomplishment of the purpose for which the corporation was organized.

The following purposes are generally held to be "proper" if the shareholder's demand is made in good faith. These purposes are in terms of a private corporation but some can easily be applied in concept to cooperatives.

1. To protect his own interest.
2. To advance the interest of the corporation.
3. To determine the value of his stock.
4. For the purpose of soliciting proxies from other shareholders.
5. Solicitation of shareholders to join in a derivative suit.
6. Dissemination of information concerning a proposed corporate merger.
7. Efforts to form a protective committee of preferred shareholders.
8. For the purpose of buying stock from other shareholders.
9. To ascertain possible mismanagement.
10. To determine the cause of substantial corporate losses.

11. To obtain justification for non-payment of dividends.

The following have been held to be improper purposes for inspection of corporate books and records:

1. Mere curiosity.
2. Where employee of corporation was guilty of fraud and sought information to help him prepare defense to action by the corporation.
3. Where petitioner was in the business of selling and procuring shareholder lists.
4. Where petitioner was employed by business rival to gain access to the records for purposes of unfair competition.
5. Where purpose was to injure business of corporation for the benefit of a competition.
6. To further social and political beliefs, without concern for the economic welfare of the corporation or petitioner himself.

Cavitch on Business Organizations, Section 116.02(2).

c. Statutory Right of Inspection:

1. In general: Many jurisdictions have adopted a statute, in one form or another, granting the right to inspect corporate books and records to certain specified parties. (In Alaska-AS 10.05.237, AS 10.05.240 and 10.05.249). These statutory sections were meant to supplement common law and not replace it. The statutes have generally retained the qualifications of good faith and proper purpose upon the right to inspect corporate records. Some states have generally eased the shareholder's task by placing the burden of proving an improper purpose on the corporation, instead of the shareholder. And in statutes where there are no purpose requirements, courts have implied them, or in their discretion, denied mandamus to the shareholder to compel inspection if there was no proper purpose shown. Cavitch on Business Organizations, Section 116.031.

2. Model Business Corporation Act: The Model Business Corporation Act 552 (2d Edition 1971), requires that proper purpose be shown. Many state jurisdictions have substantially adopted this act.

Dave Hutchens, Director

11 22, 1982

5

If you have any further questions, please feel
to contact me.

Sincerely yours,

KEMPEL, HUFFMAN & GINDER

Roger R. Kempel

Roger R. Kempel
General Counsel
ARECA

/ks

H C R

3 6

COMMITTEE REPORT
SENATE

FURTHER: None

5/26/81

Date: _____

Mr. President:

The Committee on JUDICIARY has had HCR 36

Requesting the governor to grant a pardon to Daniel Boone Reed

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

MEMBER SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 13, 1981

MEMORANDUM

TO: Representative Sally Smith

ATTN: Gwen Byington

FROM: Peter B. Froehlich *PBF*
Research Staff

RE: Daniel Boone Reed Pardon (HJR 29)
Research Request 81-115 Additional Information

Since our April 22, 1981 memorandum to you on this subject, we have discussed the issue of whether Daniel Boone Reid should most appropriately be pardoned by the Governor or the President with several people. These include Ms. Byington, Assistant Attorney General Dean Guaneli, U.S. Attorney Jim Schwartz and 3rd Judicial District Clerk of Trial Courts Goldeen Goodfellow. We have also reviewed copies of the "verdict" and the "Judgment Roll" in U.S.A vs. Daniel Boone Reed, District Court for the Territory of Alaska Third Division, Criminal Case No. 1576, 1941.

We received copies of these two court documents from the Federal Archives and Record Center in Seattle and provided your office with copies. Finally, we have reviewed the May 8, 1981 memorandum from Alaska District Judge Gerald O. Williams to Ms. Byington.

Based on these discussions and on our review of the memorandum from Judge Williams, we have concluded that, in all likelihood, Mr. Reid was convicted of violating a territorial, not a federal arson statute. ~~Therefore, we have also concluded that in all likelihood both the Governor of Alaska, and the President of the United States are empowered to pardon Mr. Reed.~~

The first conclusion is supported by a statement by Assistant U.S. Attorney Schwartz that there is not, and was not in 1941, (to his knowledge) any federal statute passed by Congress establishing the crime of arson. According to Mr. Schwartz, definition and establishment of this type of crime has traditionally been left to the states and territories.¹

¹The recent conviction of Anchorage stockbroker Frank Reed was of a crime involving possession of an incendiary or explosive device, not arson.

Representative Smith
May 14, 1981
Page 2

The territorial statute was probably CLA 1933 Sec. 4790 quoted by Judge Williams. However, we cannot be absolutely positive of the criminal statute involved without a citation to it on a court record. As we mentioned in our previous memorandum, the case file in the Archives and Record Center does not include such a citation. The actual judgment entered in the court journal, docket, or journal book mentioned by Judge Williams may or may not include the citation. According to Ms. Goodfellow, who has conducted a search in Anchorage, all such books have been sent to the Archives and Records Center in Seattle. We have not tried to find them there, but will if you wish.

~~Our present conclusion is that both the Governor and the President have the power to pardon. However, we are not certain that they were both intended to have this power. It is possible that they were both intended to have this power, but that the President also has the same power.~~

In conclusion, it appears that HJR 29 could correctly ask for a pardon of Mr. Reed from the Governor, the President, or both.

We hope this memorandum helps to eliminate the lingering doubts and confusion over this matter. However, please contact us if we can provide any further information and assistance.

PF/dp

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811

April 13, 1981

The Honorable Eric Sutcliffe
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Sutcliffe:

We were informed by a member of your staff that a question has arisen regarding the effect on a person's civil rights of felony conviction under the territorial law of Alaska. This letter will attempt to set out our position in the matter.

As we understand the problem, Daniel Boone Reed, one of your constituents, who was convicted of a felony in Alaska in 1941, was recently told by the Alaska court system that he could not serve on a jury unless his civil rights had been restored. That incident generated a number of letters to various elected officials and resulted in efforts being undertaken to obtain either a presidential or gubernatorial pardon for the person.

This department initially communicated with Mr. Reed over a month ago by way of a letter from Assistant Attorney General Barry Stern, a copy of which is attached. Mr. Stern concluded that once a convicted person had been released from custody, including any period of probation or parole, his civil rights are automatically restored, except, of course, the right to carry concealable weapons. See, A.S. 11.61.200. That conclusion was based on Alaska statutory law and is consistent with written advice rendered by this department on several previous occasions over the years.

My comments relate solely to state law and I express no opinion regarding any possible disabilities under federal law (see, e.g., 18 U.S.C. § 922(h)) or what effect a presidential pardon might have in this case, if that remedy is even available. Our office has been informed by Mr. Reed that he has contacted the United States Department of Justice in order to get information about a presidential pardon. However, since he still may desire to pursue available state procedures for executive clemency under ~~AS 33.20.070-080~~, I have also attached an application form for that purpose that you may send him.

It appears that the issue of automatic restoration of civil rights for purposes of jury service could be a recurring problem. Therefore by way of a copy of this letter I am requesting the administrative director of the court system to review the matter as he deems appropriate.

If I can be of further assistance please contact me.

Very truly yours,

WILSON L. CONDON
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: Dean J. Guaneli
Dean J. Guaneli
Assistant Attorney General

DJG:s1

Attachment

cc: Arthur Snowden
Administrative Director
Alaska Court System

Carole Burger
Special Assistant
to the Governor



KONIAG, INC.

HARBOR VIEW COMPLEX

P.O. Box 746

(907) 486-4147

KODIAK, ALASKA 99615

February 10, 1981

Honorable Ted Stevens
United States Senate
260 Russell Building
Washington, D.C. 20510

Dear Senator Stevens:

Mr. Daniel Boone Reed, a longtime resident of Uganik Bay on Kodiak Island - and a Koniag shareholder, has requested our assistance in getting a Presidential Pardon.

When incarcerated at a federal jail in Valdez (all Alaskan jails were federal in those days) nearly fifty years ago, back in Territorial days, he somehow set fire to the building and it burned down. He subsequently was convicted of arson and sentenced to serve time in another (apparently fireproof) federal jail.

Now in his seventies, Mr. Reed, who has been a personal friend of mine for nearly three decades, has been an exemplary, law abiding citizen and is respected throughout Kodiak Island. He is a leader among Koniag's senior citizens whom he serves well. He is an outstanding honorable citizen.

I strongly urge that you help in this effort to restore Mr. Reed's civil rights. This will require a Presidential Pardon. Please advise what needs to be done.

Respectfully yours,

KONIAG, INC.

Karl Armstrong
Executive Vice President

KA/rjm

Attached/Judge Madsen Letter
Byerly Letter

XXXXXXX

P.O. Box 665

TELE: (907) 486-5785

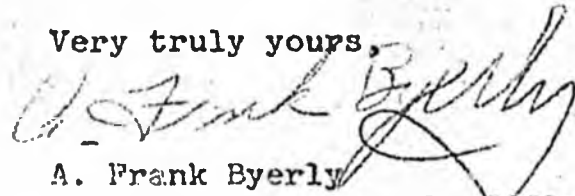
February 6, 1981

Honorable Don Young
Representative for Alaska
1210 Longworth Building
Washington, D.C. 20510

Dear Representative Young:

It is my understanding that Daniel Boone Reed has requested your assistance in securing a Presidential Pardon. Mr. Reed is well known on Kodiak Island, having lived here for a number of years. Mr. Reed is in excess of seventy years of age, and he has remained free from criminal law violations since his conviction in 1941. I would certainly support any help that you might be able to render on his behalf, and if I might be of any assistance, please feel free to contact me.

Very truly yours,



A. Frank Byerly
Adult Probation-Parole Officer
Kodiak District Probation Office

- - - - - C O P Y - - - - -

Box 25
Kodiak, Alaska 99615
February 17, 1981

The Honorable Ronald Reagan
President of the United States
The White House
Washington D. C. 20510

Dear Mr. President:

Mr. Daniel Boone Reed, whom I have known for 30 years, wishes to have his civil rights restored which he lost while serving an 8-year prison term from 1941-1949 while Alaska was still a U. S. Territory.

Mr. Reed has proven himself to be a good citizen of the State of Alaska. He has participated in the welfare of the livestock industry on Kodiak Island, the fishing industry, Senior Citizens, and certification of the Uganik Native Corporation.

He has been called for Grand Jury duty, and singled out for special honors by the Native people. He is unable to enjoy and accept these privileges until his civil rights are restored.

He is an Eskimo 72 years of age, and for the last 31 years living on Kodiak Island he has been a law-abiding citizen without reproach. He is a man who loves his country, has a lot of dignity, and would like to become a first class citizen.

His address is: Daniel Boone Reed
West Point 99697
Via Kodiak, Alaska 99615

On his behalf, I am thanking you for any consideration you can give to this matter.

Yours truly,

/s/ DeWitt Fields

De Witt Fields

c.c. Sen. Ted Stevens
Sen. Frank Murkowski
Rep. Don Young
Mr. Daniel Boone Reed

Senior Citizens
of
Kodiak

Box 315
Kodiak, Alaska
99615
Dennis Murray
Project Director
Tel.486-6181

February 23, 1981

The Honorable Ted Stevens
United States Senator
260 Russell Building
Washington, D.C. 20510

Re: Legal Rights for Daniel Boone Reed

Dear Senator Stevens:

Mr. Daniel Boone Reed was recently in my office, and shared with me his particular situation. At the present Mr. Reed does not have his civil rights. Several years ago he spent time in prison as a result of a fire in the Valdez jail. His civil rights were terminated, and apparently not restored upon his release.

Mr. Jerome Selby of Kodiak Area Native Association asked me to write a letter to you concerning my knowledge of Mr. Reed's character. It is my understanding that such information will be helpful in your efforts to restore Mr. Reed's rights.

I have known Daniel Boone Reed for the past 5 to 6 years. Although he lives with his wife, Nan, at West Point, he is a frequent visitor to town. During those years I have found him to be honest and forthright. He is also generous with his time and skills. He has contributed cribbage boards made of deer horns to the Senior Center for sale at our Christmas Bazaar. Further, he has served as a volunteer on several committees of Kodiak Area Native Association. He is particularly concerned about the health and well-being of the elderly.

I would certainly endorse and support any efforts on your part to restore his civil rights.

Thank you for the opportunity to provide input.

Sincerely,

/s/ Dennis Murray

Dennis Murray
Project Director

cc: Mr. Jerome Selby, KANA
Senator Frank Murkowski
Representative Don Young
Daniel Boone Reed

Alaska State Legislature

SENATOR ALFRED OWEN
WEST POINT VIA
KODIAK, ALASKA



COMMITTEES
STATE AFFAIRS
LABOR AND MANAGEMENT

Senate
3/7/10

Representative Eric Sutcliffe
Alaska House of Representatives
Pouch V
Juneau Alaska 99811

Dear Sir:

I am writing in behalf of Daniel Boone Reel,
in support of your efforts to obtain the
restoration of his civil rights.

Mr. Reel has been my nearest neighbor
for the last 26 years. He has been a good
neighbor in the best sense of that word, law
abiding and helpful in time of need. He is
active in behalf of the Senior Citizens, and the
Kodiak Island Native Association.

The restoration of his civil rights is long
overdue. Thank you for your efforts in his behalf.

Sincerely,
Alfred H. Owen

HJR

32

COMMITTEE REPORT
SENATE

4/27/81

FURTHER: None

Date: June 10, 1981

Mr. President:

The Committee on JUDICIARY has had GSHJR 32 (Judiciary) am

Proposing an amendment to the Constitution of the State of Alaska relating to membership of Commission on Judicial Qualifications

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) same title
- replace with CS for _____ 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:

[Signature]

CHAIRMAN

SENATE AMENDMENT

By Judiciary Committee

To: Senate Secretary SENATE BILL No. _____

~~To:~~ Committee Substitute for HOUSE BILL No. HJR 32 (Jud) am

PAGE: 1 LINE:

Title: Strike the words "Membership of"

Line 12: Strike the word "qualifications" and insert "conduct"
in its place.

Line 13: Strike the word "qualifications" and insert "conduct"
in its place.

STATE OF ALASKA
COMMISSION ON JUDICIAL QUALIFICATIONS
303 "K" Street
Anchorage, Alaska 99501
Area Code 907/264-0598

April 10, 1981

Senator Patrick Rodey
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska, 99811

Dear Senator Rodey:

The Commission on Judicial Qualifications would recommend changing the title of the commission to Commission on Judicial Conduct.

The present title, or the Commission on Judicial Qualifications, is confusing to the public and leads people to believe that the commission performs the Judicial Council's function of evaluation of judges for retention and recommendations of candidates for a judgeship position.

The recommended title of Commission on Judicial Conduct describes more accurately the actual function of the Commission on Judicial Qualifications.

Sincerely,



Bert Campbell, Chairman

BC:jrm

cc: Commission members



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

A G E N D A

Wednesday, June 10, 1981 - 1:30 p.m.
Butrovich Committee Room

CALL TO ORDER

LEGISLATION BEFORE COMMITTEE:

- HB 356 "An Act relating to unlawful practices in the sale or rental of real property."
- HJR 32 Proposing an amendment to the Constitution of the State of Alaska relating to membership of the Commission on Judicial Qualifications.
- SB 399 "An Act relating to adoption; and providing for an effective date."

WORK SESSION

ADJOURN

HJR

41

COMMITTEE REPORT
SENATE

4/22/82

FURTHER: Finance

Date: May 18, 1982

Mr. President:

The Committee on JUDICIARY has had CSHJR 41 (Jud)

Proposing an amendment to the Constitution of the State of Alaska defining the term "appropriation"

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)
- replac 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:

W. C. G. Anderson, No Rec

CHAIRMAN



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MAY 17, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

CSHB 726 - "An Act providing an exemption from the Alaska Employment Security Act for certain employees of certain corporations."

HJR 41 - Proposing an amendment to the Constitution of the State of Alaska defining the term "appropriation".

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:30 P.M. Committee members present were: Senators Rodey, Parr, Ray, and Anderson. Senator Bennett was absent.

002 - Call to order.

008 - Chairman Poday brought CSHB 726 before the committee.

012 - Judy Knight, Department of Labor, testified stating the Department did not have a problem with the bill as written.

019 - Senator Ray states his opposition to the bill.

442 - Bill Cook, of Representative Barnes' office, testified in favor of CSHB 726.

495 - Judy Knight suggested adding "executive officer" on Page 1, Line 18, instead of "the employee".

518 - Senator Ray moved to adopt this amendment. There was no objection.

584 - Senator Ray moved to pass CSHB 726 with individual recommendations. There was no objection.

590 - Chairman Rodey brought HJR 41 before the committee.

594 - Representative Beirne testified in favor of this bill.

696 - After brief discussion, Senator Parr moved to pass HJR 41 with individual recommendations. There was no objection.

700 - Senator Rodey brought the Comparative Fault Act before the committee for possible introduction.

710 - Senator Ray moved to introduce the Comparative Fault Act and to put it into subcommittee. There was no objection.

725 - Chairman Rodey adjourned the meeting at 2:20 P.M.

Lowell THOMAS, Jr., Lieutenant Governor of the State of Alaska, Appellant,

Michael F. Beirne and the New Homesteaders, Intervenor-Appellants,

v.

Edgar BAILEY, Wesley M. Howe, Patrick L. Dobey, James L. Pitts, Gerald Ganopole, Molly Crenshaw, Eric Olson, Justine Beryl Johnson, Trustees for Alaska, Appellees.

Lowell THOMAS, Jr., Lieutenant Governor of the State of Alaska, Appellant,

Michael F. Beirne and the New Homesteaders, Intervenor-Appellants,

v.

Clifford E. WARREN, Appellee.

Nos. 4204, 4220.

Supreme Court of Alaska.

April 10, 1979.

Action was brought challenging constitutionality of initiative enacted by state voters. The Superior Court, Third Judicial District, Mark C. Rowland and Victor D. Carlson, JJ., held that the initiative was invalid, and appeals were taken. The Supreme Court, Boochever, C. J., held that section of Constitution providing that the power of initiative shall not be used to make or repeal appropriations prohibits an initiative whose primary object is to require the outflow of state assets in the form of land as well as money; therefore, statute proposed by initiative which gave away to state residents public assets in the form of state land was a law making an appropriation and, therefore, an illegitimate subject for initiative.

1. In July of 1977, Representative Michael F. Beirne, Senator Jalmar Kerttula and Representative Don Bennett, along with other sponsors, presented to Lowell Thomas, Jr., Lieutenant Governor of Alaska, a copy of an application for an initiative for an Act entitled "The Alaska Homestead Act." The lieutenant governor certified the application as being in proper form under the requirements of the applicable stat-

Affirmed.

Rabinowitz, J., concurred specially and filed opinion.

Connor, J., dissented and filed opinion.

Statutes \Rightarrow 303

Section of Constitution providing that the power of initiative shall not be used to make or repeal appropriations prohibits an initiative whose primary object is to require the outflow of state assets in the form of land as well as money; therefore, statute proposed by initiative which gave away to state residents public assets in the form of state land was a law making an appropriation and, therefore, an illegitimate subject for initiative. Const. art. 11, §§ 4, 7.

G. Thomas Koester, Asst. Atty. Gen. and Avrum M. Gross, Atty. Gen., Juneau, for appellant.

John K. Norman, J. Michael Robbins, Cole, Hartig, Rhodes, Norman & Mahoney, Anchorage, for appellant-intervenors.

Wilson A. Rice and John B. Gaguine, Anchorage, for appellees.

Clifford E. Warren, in pro per.

OPINION

Before BOOCHEVER, C. J., RABINOWITZ, CONNOR and BURKE, JJ., and DIMOND, Senior Justice.

BOOCHEVER, Chief Justice.

This consolidated appeal concerns the constitutional validity of an initiative which was enacted by the voters as "The Alaska Homestead Act."

utes. AS 15.45.030-15.45.080. Thereafter, initiative petition booklets were prepared for circulation by the sponsors to obtain the necessary signatures to place the initiative on the ballot. In January of 1978, the petition was returned, with a sufficient number of signatures. In February of 1978, the lieutenant governor reviewed the petition and determined that it would be placed upon the ballot.

In two different court actions, the initiative was attacked as unconstitutional. After the superior court ruled in both cases that the initiative was invalid,² the cases came before us on an expedited basis, before the general election at which the initiative could be considered. After hearing argument, we determined that the difficult constitutional questions presented in these cases could not be decided properly within the short time remaining before the election. We ordered that the initiative should be submitted to the electorate, reserving our determination on the merits for later decision. At the election, the initiative was approved, thus requiring that we decide the constitutional challenges.³

Four main issues have been presented to us:⁴

1. Does the initiative make an appropriation, which is prohibited by the state constitution?
2. Does the initiative amount to special legislation which is prohibited by the Alaska Constitution?
3. Does the initiative amount to a denial of equal protection of the laws under the state and federal constitutions?
4. Was ch. 181, SLA 1978 substantially the same measure as the initiative, thus voiding the initiative?

We have determined that the first issue is dispositive, and thus we do not consider the rest.

2. In the action filed by appellee Warren, Judge Carlson held that the initiative was displaced by an act of the legislature, ch. 181, SLA 1978, and thus voided the initiative under article XI, section 4 of the Alaska Constitution. See *Warren v. Boucher*, 543 P.2d 731 (Alaska 1975). In the action filed by Bailey, et al., and Trustees for Alaska, Judge Rowland held that the initiative amounted to special legislation, which is exempted from the initiative process by article XI, section 7 of the Alaska Constitution, and that it effected an appropriation, which, according to article XI, section 7, cannot be enacted by initiative.
3. The case was reassigned to the author of this opinion on March 9, 1979.
4. Other issues were raised but were inadequately briefed. In view of our decision, we

According to Alaska's Constitution, the power of initiative "shall not be used to make or repeal appropriations."⁵

The superior court found that the initiative for an act entitled "The Alaska Homestead Act," popularly known as the Beirne Initiative,⁶ constituted an appropriation. For reasons that follow, we affirm that decision.

The Beirne Initiative makes available 30 million acres of state land to residents of Alaska.⁷ Under the terms of the proposed statute certain Alaska residents are eligible to receive specified amounts of land, the exact amount of land being determined by the person's length of residency: a resident of three years may receive up to 40 acres, a resident of five years up to 80 acres, and a resident of ten years up to 160 acres.⁸ Section 2 of the Initiative contains a part, Eligibility and Application,⁹ which indicates what a person must do to receive a grant:

A person . . . shall receive a homestead grant upon

(1) recording a written application in the form prescribed by AS 38.05.415 in the recording district in which the land is located; and

(2) filing with the director the following materials:

- (A) a copy of the recorded application,
- (B) proof of residency,
- (C) a \$100 filing fee, unless the applicant submits a title search as provided in

(b) of this section, in which case the filing fee is \$75.

have not specified those additional challenges to the initiative.

5. Alaska Const., art. XI, § 7.
6. The Beirne Initiative is divided into two sections. The first section makes certain findings of fact and declarations with respect to land ownership in Alaska. The second section amends Title 38, Chapter 5 of the Alaska Statutes by adding new provisions designed to implement transfer of state lands to private ownership. We shall cite particular provisions of the Initiative by reference to the section number designated for Alaska Statutes.

7. AS 38.05.410(a).
8. AS 38.05.420(c).
9. AS 38.05.420.

The applicant must also publish notice containing a description of the parcel and stating that application has been made under the Alaska Homestead Act to obtain title to the parcel.¹⁰ Finally, a survey of the land must be provided within five years after the grant is received or it is forfeited.¹¹

The people when approving Alaska's Constitution, retained in article XI, section 1, power to "propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum."¹² The right of initiative and referendum, sometimes referred to as direct legislation, should be liberally construed to permit exercise of that right.¹³ The reason given by the Supreme Court of Arizona for this rule of interpretation applies to Alaska:

10. AS 38.05.420(f).

11. AS 38.05.440.

12. Alaska's Constitutional Convention witnessed a far-ranging and spirited debate over the wisdom of initiative and referendum provisions. 2 Proceedings of the Alaska Constitutional Convention 528-73 (1955) (hereinafter PACC). Victor Fischer, a participant in the Convention, writes of the opposing views:

Those supporting inclusion of direct legislative authority cited: (1) successful use of the initiative in other states to enact laws upon which the legislature refused to act, (2) the value of additional checks and balances, and (3) the importance of the legislature's awareness that such power exists with the people. They argued that the initiative and referendum represent progressive government, that the ultimate trust should be with the people, not the legislature; and that the provision constituted a means of proving to Alaskans that their rights would be enhanced under statehood.

Opponents of direct legislation provisions argued that the two systems are cumbersome, costly, and totally unnecessary when the legislature is truly representative of the people as under the Alaska constitution, and that the powers of initiative and referendum are outmoded systems instituted fifty years before when legislatures functioned differently. . . . Some also viewed these measures more as tools of organized special interests than as a democratic device of the people.

After three hours of debate on the concepts underlying the initiative and referendum, delegates voted forty-three (sic: thirty-four) to sixteen to include the initiative in the constitution. The decision to retain the referendum won by a tally of forty to eight.

It is, of course, a mere platitude to say that the people are the supreme power in our system of government. The history of our constitution and its adoption . . . shows beyond the possibility of contradiction that the people themselves deliberately and intentionally announced that, by its adoption, they meant to exercise their supreme sovereign power directly to a far greater extent than had been done in the past

Whitman v. Moore, 59 Ariz. 211, 125 P.2d 445, 450-51 (1942), overruled on other grounds, *Renck v. Superior Court*, 66 Ariz. 320, 187 P.2d 656, 660-61 (1947).¹⁴

The people did not, however, choose to retain unlimited power of initiative. Rath-

V. Fischer, Alaska's Constitutional Convention 79-80 (1975) (forthcoming). The Convention Proceedings indicate the initiative provision passed thirty-four to sixteen. 2 PACC 972 (1955).

In light of the political climate in Alaska, it is not surprising that the constitutional provisions retaining direct popular control won approval:

One of the basic arguments for statehood was (the) lack of self determination and self governance under the federal administration [of Alaska]. Statehood proponents saw the constitution as a means to define the powers that would be accrued to the people under statehood as well as the limits that would be placed on the powers of government. In this context, convention delegates were conscious of public interest in constitutional provisions dealing with basic rights and controls, including suffrage, direct legislation, and constitutional revision.

V. Fischer, *Alaska's Constitutional Convention* 69 (1975).

13. *Municipality of Anchorage v. Frohne*, 568 P.2d 3, 8 (Alaska 1977); *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974); *Epperson v. Jordan*, 12 Cal.2d 61, 82 P.2d 445, 448 (1938) (per curiam); *Laam v. McLaren*, 28 Cal.App. 632, 153 P. 985, 987-88 (1915); *Brownlow v. Wunsch*, 103 Colo. 120, 83 P.2d 775, 777 (1938) (en banc); *State ex rel. McPherson v. Snell*, 168 Or. 153, 121 P.2d 930, 934 (1942); *Othus v. Kozier*, 119 Or. 101, 248 P. 146, 149 (1926) (en banc); *Sudduth v. Chapman*, 88 Wash.2d 247, 558 P.2d 806, 808-09 (1977) (en banc).

14. In note 12, *supra*, we describe the background of the initiative and referendum provisions in Alaska's Constitution.

er, in section 7 of article XI, they declared that certain types of laws could not be enacted by initiative:

Restrictions. The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation.

The issue before us is whether the law proposed by the Beirne Initiative is, for purposes of section 7 of article XI, a law making an appropriation and, therefore, an illegitimate subject for initiative.

The basic principles for interpreting statutes apply to constitutions,¹⁵ and thus, to resolve this question, we shall turn to the language of section 7 construed in light of the purpose of the provision.¹⁶ We are especially sensitive to the policy concerns embodied in constitutional provisions because a constitution is a document "unchangeable by ordinary means," *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60, 73 (1803), which "must be considered as a living document adaptable to changing conditions and circumstances unanticipated at the time it was written." *Warwick v. State*

ex rel. Chance, 548 P.2d 384, 391 (Alaska 1976) (footnote omitted).¹⁷

Appellants argue that "appropriations" refers only to statutes setting aside a specific amount of money and designating it for a particular use. Appellees argue that "appropriations" includes statutes that set aside a specific amount of lands and direct it be given away in the manner required by the Beirne Initiative. The statute proposed by the Initiative gives away—to any resident of three or more years who will conduct a survey, file two papers, and pay a nominal filing fee—public assets in the form of state land. The proposed statute imposes no obligations on the applicant after he or she receives the land—the applicant need not homestead the land or live on it at all. The applicant may sell the land after one year and during that one-year period, the applicant incurs no tax liability.

The language of section 7 prohibits initiatives for the purpose of making appropriations. Though most state constitutions with referendum and initiative provisions have some limitation relating to appropriations, Alaska's appropriation limitation is worded more generally than that of most other states.¹⁸ We found no decisions ex-

15. *Hammond v. McDonald*, 49 Cal.App.2d 671, 122 P.2d 332, 338 (1942); *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662, 670 (1948); *Higer v. Hansen*, 67 Idaho 45, 170 P.2d 411, 414-15 (1946); *In re McCabe*, 168 Mont. 334, 54 P.2d 825, 828 (1975); *Postal Fin. Co. v. Sisneros*, 84 N.M. 724, 507 P.2d 785, 786 (1973). In construing a constitutional provision which has been ratified by the voters, the court also can look to evidence on the meaning the voters probably placed on the provision, *State v. Lewis*, 559 P.2d 630, 637-38 (Alaska), cert. denied, 432 U.S. 901, 97 S.Ct. 2943, 53 L.Ed.2d 1073-74 (1977).

16. *Hotel Employees Local 879 v. Thomas*, 551 P.2d 942, 944 (Alaska 1976); *Warren v. Boucher*, 543 P.2d 731, 735 (Alaska 1975); *State v. City of Anchorage*, 513 P.2d 1104, 1110 (Alaska 1975); *State v. American Can Co.*, 362 P.2d 291, 296 (Alaska 1961). We also look to provisions from other jurisdictions that are similar to the Alaska statutory or constitutional provision at issue. *Hewing v. Alaska Workmen's Comp. Bd.*, 512 P.2d 896, 899 (Alaska 1973); *2A C. Sands, Sutherland Statutory Construction* §§ 52.01-52.05 (4th ed. 1973).

17. *Accord, Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 326-27, 4 L.Ed. 97, 103 (1816);

People v. Western Air Lines, Inc., 42 Cal.2d 621, 268 P.2d 723, 731, appeal dismissed, 348 U.S. 859, 75 S.Ct. 87, 99 L.Ed. 677 (1954); *State ex rel. Linn v. Superior Court*, 146 Wash.2d 138, 146 P.2d 543, 547 (1944) (en banc).

18. Cal.Const. art. II, § 9(a) (exempts from referendum "statutes providing for tax levies or appropriations for usual current expenses of the State"); Md.Const. art. XVI, § 2 (exempts from referendum any "law making any appropriation for maintaining the State Government, or for maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose"); Mass.Const. art. XI, VIII, Init., pt. II, § 2 (exempts from initiative any measure "that makes a specific appropriation of money from the treasury of the commonwealth") and art. XLVIII, Ref., pt. III, § 2 (exempts from referendum any law "that appropriates money for the current or ordinary expenses of the commonwealth or for any of its departments, boards, commissions or institutions"); Mich.Const. art. 2, § 9 (exempts from referendum "acts making appropriations for state institutions or to meet deficiencies in state funds"); Mo.Const. art. III, § 51 (exempts from initiative laws "for the appropriation of money other than of new revenues created and

Cite as, Alaska, 595 P.2d 1

examining whether the term "appropriations" in the context of limiting the subject of initiatives prevents initiatives from appropriating land, or applies only to money.¹⁹ The term "appropriations" is sometimes

used in the context of selecting land and designating its use,²⁰ though appellants are correct that the usual context of appropriations is setting aside an amount of money and designating it for a particular use.²¹

provided for thereby") and art. III, § 52(a) (exempts from referendum "laws making appropriations for the maintenance of state institutions and for the support of public schools"); Mont.Const. art. III, § 4 (exempts from initiative "appropriations of money") and art. III, § 5 (exempts from referendum laws making "an appropriation of money"); Neb.Const. art. III, § 3 (exempts from referendum acts "making appropriations for the expense of the state government or a state institution existing at the time of the passage of such act"); N.M.Const. art. IV, § 1 (exempts from referendum "general appropriation laws; laws providing . . . for the payment of the public debt or interest thereon, or the creation or funding of the same . . . ; for the maintenance of the public schools or state institutions"); Wash.Const. art. IV, § 1 (enacted by amend. 7 (1912) exempts from referendum "such laws as may be necessary for the . . . support of the state government and its existing institutions").

19. Most decisions dealing with the appropriation restriction involve a factual pattern in which one group wants a referendum on a statute increasing or enacting a tax, and another group claims it is an appropriation for current state expenses or for state institutions and, therefore, immune from referendum. See *Michigan Good Roads Fed'n v. Alger*, 333 Mich. 352, 53 N.W.2d 481, 486-87 (1952) (statutes which required an increase in gas tax to be credited to the motor vehicle highway fund not subject to referendum under constitutional provision exempting from referendum "acts making appropriation for state institutions"); *Heinkel v. Toberman*, 360 Mo. 58, 226 S.W.2d 1012, 1016 (1950) (en banc) (statute levying gas tax for construction and maintenance of highways is not an appropriation law and, therefore, is subject to referendum); *State ex rel. Hoppe v. Meyers*, 58 Wash.2d 320, 363 P.2d 121, 125-26 (1961) (en banc) (statute increasing fuel tax and requiring proceeds to go to toll bridge authority not subject to referendum under constitutional provision exempting from referendum laws for the "support of the state government and its existing institutions"); cf. *Dorsey v. Petrott*, 178 Md. 230, 13 A.2d 630, 639 (1940) (statute abolishing Conservation Commission and creating a new Commission of Fisheries with expanded duties is not an "appropriation for maintaining the State Government" and is therefore subject to referendum); *Murray v. Secretary of the Commonwealth*, 345 Mass. 23, 184 N.E.2d 336, 339 (1962) (statute increasing salaries of members of state supreme court and legislature is not an appropri-

ation and hence is subject to referendum); *State ex rel. Bonner v. Dixon*, 59 Mont. 58, 195 P. 841, 845-46 (1921) (initiative authorizing issuance and sale of bonds for schools is not an appropriation and hence is a proper initiative), as modified by *Board of Regents v. Judge*, 168 Mont. 433, 543 P.2d 1323, 1330-31 (1975). See also *State ex rel. Linn v. Romero*, 53 N.M. 402, 209 P.2d 179, 185 (1949) (statute increasing gas tax to meet highway department's bond obligation is a law providing "for the payment of the public debt" and therefore not subject to referendum). Other cases dealing with similar, but distinguishable, constitutional language are helpful to an understanding of the complex issues involved in this area. See *Geiger v. Board of Supervisors*, 48 Cal.2d 832, 313 P.2d 545, 546-49 (1957) (tax on sales and use of property adopted by county board of supervisors pursuant to state legislation authorizing such a tax is not subject to referendum under constitutional provision exempting "tax levies" from referendum); *Greenberg v. Lee*, 196 Or. 157, 248 P.2d 324, 336 (1952) (en banc) (city ordinance prohibiting "punchboards" was an "emergency ordinance" within meaning of city charter provision exempting such ordinances from power of referendum).

20. *Black's Law Dictionary* 121 (4th ed. 1951) defines "appropriation of land" as "the act of selecting, devoting, or setting apart land for a particular use or purpose." In fact, the Belme Initiative itself refers to "vacant, unappropriated and unreserved" land as the pool of land from which an applicant may choose. AS 38-05.410(a); 38-05.530(6). For other references to appropriations in the context of lands, see ch. 213, § 1, SLA 1970 (formerly codified at AS 07.10.150, repealed by ch. 118, SLA 1972); Alaska Statehood Act, Pub.L. 85-508, § 6(a) and (b), 72 Stat. 339 (1958) (codified at 48 U.S.C.A. Prec. § 21, § 6(a) and (b) (Supp.1978)); 1964 Op. Att'y Gen. No. 7 at 2 (Alaska, Sept. 14, 1964).

21. In *Municipality of Anchorage v. Frohne*, 568 P.2d 3, 5-6 (Alaska 1977), we considered whether the Municipality of Anchorage had to make appropriations by ordinance or whether it could proceed by City Council memorandum. We concluded that either method was permissible and noted in the Anchorage Municipal Charter a definition of appropriations as "a unit of funding provided for by the Assembly in the municipal budget." *Id.* at 5, quoting Anchorage Municipal Charter art. XVII, § 17-13(a). In *Thomas v. Rosen*, 569 P.2d 793 (Alaska 1977), we found that the governor possessed

Appellants by defining appropriations as exclusively referring to money, implicitly agree that if the Beirne Initiative granted each Alaskan resident, depending on the length of residence, a sum of money, it would be an appropriations initiative and hence illegitimate. Does the fact that the proposed statute gives away and rather than money, permit it to be enacted by initiative?

Appellants emphasize a change that occurred in the writing of the section restricting the subject of the initiative and referendum.²² The version proposed by the Committee on Direct Legislation stated:

Section 5. Neither the initiative nor referendum may be used as a means of

no power to item-veto a bond authorization that the legislature had submitted to the voters. Since the governor could strike or reduce items on appropriations bills. Alaska Const. art. II, § 15, the question before the court was whether the voter-approved bonding proposition was an appropriation bill within the meaning of the constitutional provision. In concluding that it was not, we adopted the following definition of appropriation:

"The setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other."

Id. at 196, quoting *State ex rel Finnegan v. Dammann*, 220 Wis. 143, 264 N.W. 622, 624 (1936). These cases indicate that the term "appropriations" frequently refers to money. In *Frohne*, however, the case turned on the court's analysis of the legal change effected by adoption of the Anchorage Municipal Charter, while in *Thomas*, the court rested its decision on the constitution's policy on state debt. Thus, *Frohne* and *Thomas* defined appropriations according to the terms and purpose of the specific provisions they were interpreting. Neither decision purported to offer a general definition of appropriations.

22. For an explanation of the process of writing Alaska's Constitution, including the role of different committees at the Convention, see V. Fischer, *Alaska's Constitution: Convention 45-68* (1975).

23. 6 PACC app. V at 19-20 (1955). The revised section 5 became art. XI, § 7.

24. Statement of Delegate Sundborg, 4 PACC 2969 (1956). Delegate Sundborg was the member of the Committee on Style and Drafting who explained the Committee's change in the

making or defeating appropriations of public funds or earmarking of revenues nor for local or special legislation. Emergency acts are not subject to referendum.²³

The Committee on Style and Drafting eliminated the phrase "of public funds" because:

We felt "of public funds" was not necessary because the only appropriations with which the state could deal are public funds anyway"²⁴

The words "of public funds," like the word "appropriations," may convey different meanings. In one sense, funds may refer to money, while, in another sense, it refers to assets generally.²⁵ Even if the

provisions relating to direct legislation. See 4 PACC 2947-77 (1956).

We believe the brief Convention discussion referring to the elimination of the phrase "of public funds" basically points to the rather commonsense notion that the subject of an appropriations act could never be something that the state did not own. The term "appropriations" certainly would include acts directing the outflow of money and in that sense, the phrase "appropriations of public funds" would be unnecessary. But the fact that all acts appropriating money are appropriations of public funds does not imply that only acts appropriating money constitute appropriations of public funds.

25. We note some of the definitions of "funds" in Black's Law Dictionary (4th ed. 1951):

FUND, n. A generic term and all-embracing as compared with term "money," etc., which is specific.

A sum of money set apart for a specific purpose, or available for the payment of debts or claims.

In the plural, this word has a variety of slightly different meanings, as follows:

Moneys and much more, such as notes, bills, checks, drafts, stocks and bonds, and in broader meaning may include property of every kind.

Money in hand; assets; cash; money available for the payment of a debt, legacy, etc.

The proceeds of sales of real and personal estate, or the proceeds of any other assets converted into money.

Corporate stocks or government securities; in this sense usually spoken of as the "funds."

Assets, securities, bonds, or revenue of a state or government appropriate for the discharge of its debts.

initiative provision referred to appropriations "of public funds," the issue would still be whether public funds refers generically to the state's assets or only those assets in the form of money.²⁶ We have concluded that by the term "appropriations," article XI, section 7 prohibits an initiative whose primary object is to require the outflow of state assets in the form of land as well as money.

Victor Fischer writes of the complex of concerns that produced the various limitations on the subject matter of an initiative:

Further restrictions on direct legislation were added after expressions of concern about its potential use affecting fiscal legislation, local laws, the judicial system, and other "critical" areas. The convention reduced from three to two years the time limits during which an initiative could not be repealed by the legislature, and it provided that the initiative could be amended by the legislature at any time. These moves were considered necessary to assure consistency of initiative enactments with other laws of the state and with the general public interest as seen by the state legislature. *The limitations upon direct popular legislative authority were a compromise designed to reserve basic authorities to the people while protecting the state against rash, discriminatory, and irresponsible acts.*

No funds. This term denotes a lack of assets or money for specific use. It is the return made by a bank to a check drawn upon it by a person who has no deposit to his credit there; also by an executor, trustee, etc., who has no assets for the specific purpose.

Black's Law Dictionary 802-03 (4th ed. 1951) (citations omitted, emphasis added).

The word "fund" comes originally from the Latin word "fundus," which meant a piece of land or a farm. see IV The Oxford English Dictionary 603 (1933), or landed property in general, see the American Heritage Dictionary of the English Language 533 (1970). Black's defines "fundus" as follows:

FUNDUS. In the civil and old English law, land; land or ground generally; land, without considering its specific use; land, including buildings, generally; a farm.

V. Fischer, Alaska's Constitutional Convention 80-81 (1975) (emphasis added).

Initiatives for the purpose of requiring appropriations were thought to pose a special danger of "rash, discriminatory, and irresponsible acts." The delegates were influenced by the experience of other states whose constitutions placed no restrictions on the subject matter of initiatives. They adopted the appropriations restriction to avoid the bad experiences of those states.²⁷

The delegates wanted to prohibit the initiative process from being used to enact give-away programs, which have an inherent popular appeal, that would endanger the state treasury. A rather lengthy statement by Delegate Taylor²⁸ explains the delegates' concerns:

Now in practically all the states that have initiative and referendum there are certain limitations put upon the matters that can be acted upon by those measures. Now appropriations are not subject to the initiative or the referendum. Some states made a great mistake by not restricting the initiative measures and allowed pressure groups to gather great numbers of signatures to a petition and that petition would require the expenditure of large amounts of money, perhaps a great deal more than the state could possibly afford and sometimes they would also initiate some legislation to raise money, a revenue measure and then directed

Black's Law Dictionary 803 (4th ed. 1951). Black's defines the phrase "fundi publici" as public lands. *Id.*

26. In this case, the superior court found:

"Public funds" are the capital assets of the public body and here of necessity includes the real property capital assets of the State governmental entity.

Memorandum Decision at 12.

27. The commentary by the Committee on Direct Legislation states:

The restrictions in Section 5 will prevent the abuses and problems that have sometimes arisen in the states permitting initiative and referendum.

6 PACC app. V at 23-24 (1955).

28. Warren Taylor was the member of the Committee on Direct Legislation who made most of the comments on the Committee's proposed referendum and initiative provision.

that the proceeds of that measure would be utilized for a particular purpose. In other words, it took the making of revenue measures and expenditure of the funds away from the legislature and in some instances the governmental functions and governmental institutions suffered a great deal. And it was necessary within as short a time as possible to undo the damage that has been done.

Of course, if the proper safeguards are not put around the type of legislation that can be initiated by the people, as I said before, they can do a lot of harm. There was one in California that within a year they found out it was bankrupting the state, and they had to get out another initiative and do away with the first one. Colorado had the same experience, and the State of Washington, because they were levying taxes under those bills and directing where these taxes were going, and the State of Washington in a period of about eighteen months found themselves with not only losing a 60,000,000 dollar surplus that it had in the treasury but also 120,000,000 dollars in the hole. Colorado was about the same way.²⁹

In Alaska, land is a primary asset of the state treasury. No other state government owns as much land.³⁰ We cannot imagine the delegates' concern over initiatives which depleted, for example, the Colorado treasury of its prime asset, public monies, coexisting with approval of an initiative which depletes Alaska's treasury of its prime asset, public land.

The outflow of dollars from the state treasury is significant, not in and of itself, but because it represents an expenditure of

the state's assets. We see no rational set of policy concerns that would prohibit an initiative from giving away \$9,000,000,000 but would permit it to give away 30 million acres, valued at that sum.³¹

Appellants attempt to distinguish this grant of land from a grant of money in two ways. (First, they argue that private land ownership is a desirable policy goal from which the state will reap benefits, especially in the form of future tax revenues.

Second, they argue that the cost of surveying the land may be substantial.

The benefits or lack thereof from a policy of private land ownership misconceives the issue. The question is whether this policy may be implemented through initiative, rather than through legislative action.³² The restrictions on permissible subjects for direct legislation represent "a recognition . . . that certain particularly sensitive or sophisticated areas of legislation should not be exposed to emotional electoral dialogue and impulsive enactment by the general public." Stewart, *The Law of Initiative Referendum in Massachusetts*, 12 N.Engd.L.Rev. 455, 461 (1977) (footnote omitted). The danger with direct legislation relating to appropriations is that it "tempt[s] the voter to [prefer] . . . his immediate financial welfare at the expense of vital government activities." Note, *Referendum: The Appropriations Exception in Nebraska*, 54 Neb.L.Rev. 393, 394 (1975). Cf. *Brown v. Ward*, 593 P.2d 247 (Alaska 1979). The lure of an immediate grant of land poses the same temptation as an immediate grant of money. Both decisions are the kind that require the reasoned deliberation characteristic of legislative actions.

more money to private citizens, thereby increasing the discretionary income available for spending in the private sector, is a policy which is economically and philosophically superior to government expenditures of equivalent sums. Some believe this would increase tax revenues. Although the legislature could appropriate grants of money to citizens, appellants admit that an initiative could not require appropriations for that purpose.

29. 2 PACC 931-33 (1955).

30. At statehood the people of Alaska were given an "unprecedentedly large grant of 104 million acres of land." H.R. Rep. No. 95-1045, Pt. 1, 95th Cong., 2d Sess. 65 (1978).

31. This assumes that the average value per acre is \$300.

32. The very same arguments could be made for an initiative that required a grant of money to Alaska residents. Many believe that granting

The fact that a survey may be costly does not change the essential nature of the Alaska Homestead Act as an appropriations initiative. The applicant pays the surveyor;³³ no compensation or service is rendered to the state.³⁴ The stated purpose and effect of the Initiative on the state treasury is still an expenditure of state assets in the form of public lands.

Thus, the Alaska Homestead Act would substantially deplete the state government of valuable assets just as surely as an initiative allotting to residents of specified years large sums of money. In the same manner, it constitutes an appropriation and hence may not be enacted by initiative.

AFFIRMED.

MATTHEWS, J., not participating.

RABINOWITZ, Justice, concurring.

Though I am in accord with the majority's views regarding the nature of the Alaska Homestead Act¹ as an appropriation which may not be enacted by the voters through the initiative process, I wish to add

33. We note that the applicant need not bear the cost of the survey. A survey must be made within five years of receiving the land, AS 38.05.440, yet the applicant may sell the land after one year.

34. If state-owned land were surveyed by private individuals, that would be valuable to the state. The value to the state is certainly insignificant, however, when the surveyed lands are in private ownership.

1. The Alaska Homestead Act, AS 38.05.410-540, created a new Article 13 of the Alaska Land Act, AS 38.05, entitled Homestead Grants of State Land.

2. AS 38.05.410 provides that "[a]ll vacant, unappropriated, and unreserved general grant land" is to remain classified and available as homestead entry land until thirty percent or 30,000,000 acres (whichever comes first) of the state general grant land (excluding trust land) has passed into private ownership under the terms of the Homestead Act.

3. A resident is defined by AS 38.05.530(4) as a person who is at least eighteen years of age and

(A) except for brief intervals, military service, attendance at an educational or training institution, or for absences for good cause, is physically present in the state for the required period;

my separate views concerning appellees' equal protection arguments.

The Alaska Homestead Act, popularly known as the Beirne Initiative, provides grants of forty acres of state land² to Alaska residents³ who have resided continuously in the state for three years preceding application for land. Residents of five years duration are eligible to receive two forty-acre grants, and a person who has resided continuously within the state for ten years is entitled to four forty-acre parcels. Regardless of the length of time of residency, the Homestead Act provides that an individual is entitled to not more than one grant of forty acres per year, and no person may accumulate more than 160 acres combined total under the act.

I have concluded that these durational residency provisions violate the equal protection clause of the Alaska Constitution⁴ by infringing on the right to travel to this state and make one's home here.⁵ A review of the case law illustrates the important nature of the right to travel protected by the state constitution.

(B) maintains a place of residence in the state;

(C) has established residence for voting purposes in the state and is a registered voter;

(D) has not, within the period of required residency, claimed residency in another state; and

(E) shows by all attending circumstances that his intent is to make Alaska his permanent residence.

4. Art. 1, § 1, of the Alaska Constitution states:

Inherent Rights. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

Additionally, art. VIII, § 17 provides specifically with regard to disposition of the state's natural resources:

Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

The protection extended by the Alaska Constitution to new residents of Alaska differs markedly from the level of protection afforded by the United States Constitution to new residents of a state against discriminatory treatment based solely on the duration of residency.⁵ In the past, this court consistently has subjected durational residency restrictions to strict scrutiny under the equal protection clause of the Alaska Constitution. This intensified review was premised on our conclusion that "the right to interstate travel is itself a fundamental right and any classification which serves to penalize the exercise of that right must be subjected to strict judicial scrutiny."⁶

State v. Van Dort, 502 P.2d 453 (Alaska 1972), was the first case to challenge a durational residency requirement under Alaska law. In *Van Dort* we considered a seventy-five-day residency requirement for voting in state elections and found it to be unconstitutional. We stated there:

It is our reading of [*Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972),] that all durational residency requirements are prima facie invalid as in contravention of the equal protection

5. Under the United States Supreme Court's interpretation, the federal constitutional right to travel is not by itself a fundamental right which triggers application of the strict scrutiny tier of equal protection analysis. The rational basis standard applies to review of durational residency requirements unless, in addition, the discriminatory treatment of new residents either deters or penalizes the federal right of interstate migration. *Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974). See also *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975); *Starns v. Mallerson*, 326 F.Supp. 234 (D.Minn.1970), *aff'd*, 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed.2d 527 (1971). Deterrence of the right of interstate migration apparently never has been used by the Supreme Court as a ground for applying strict scrutiny (see *Shapiro v. Thompson*, 394 U.S. 618, 655, 89 S.Ct. 1322, 1342, 22 L.Ed.2d 600, 626 (1969) (Harlan, J., dissenting)), and the existence of a penalty on the exercise of the right requires a showing of the denial of a basic necessity of life or the denial of a separately protected fundamental right other than the right to travel. *Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974).

clause because they penalize the right to travel and the right to vote in elections on an equal basis with other citizens in the jurisdiction.

Id. at 454. The state's argument that a seventy-five-day residency requirement for voting was justified by the compelling interest in guaranteeing that only bona fide residents participated in the election was rejected. Even recognizing Alaska's uniqueness in size, population and geography, its special economic, cultural and social problems, and the communication deficiencies between different parts of the state, we found that a less restrictive alternative was available to accomplish the state's objectives in administering proper elections. Thus, a thirty-day residency requirement expressly was approved in *Van Dort*; however, the seventy-five-day period challenged in the case was struck down since that particular classification served no compelling state interest.

In *State v. Wylie*, 516 P.2d 142 (Alaska 1973), we struck down certain state personnel regulations which gave an absolute hiring preference for state employment to per-

6. *State v. Wylie*, 516 P.2d 142, 147 (Alaska 1973). The constitutional right to travel interstate has not been identified with any particular textual source in the Alaska Constitution. Rather, the Alaska Supreme Court appears to be in agreement with Mr. Justice Stewart's discussion of the federal right to travel in *United States v. Guest*, 383 U.S. 745, 757-58, 86 S.Ct. 1170, 1178, 16 L.Ed.2d 239, 249 (1966) (footnote omitted):

The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.

[The] right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.

Id. quoted in *State v. Wylie*, 516 P.2d 142, 145 n.5 (Alaska 1973). See also *Hicklin v. Orbeck*, 565 P.2d 159, 163 n.5 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978).

sons who had resided in Alaska for at least one year.⁷ We held in *Wylie* that the right of interstate travel is itself a fundamental right under the state constitution and that any classification which serves to penalize the exercise of that right must be subjected to strict scrutiny. At the time, this holding was based in part on our reading of the United States Supreme Court's opinion in *Dunn v. Blumstein*, 405 U.S. 330, 338, 92 S.Ct. 995, 1001, 31 L.Ed.2d 274, 282 (1972), in which the Court had expressed its similar view that the right to travel was a "fundamental personal right." However, *Wylie* established that aside from its status under the federal Constitution, the Alaska Constitution unambiguously protects the right of interstate migration as a fundamental interest such that strict judicial scrutiny must be applied to any burden on the exercise of that right.

Wylie significantly expanded the United States Supreme Court's prior applications of the "penalty" concept to measures interfering with the fundamental right of interstate migration by holding that any differential treatment based on length of residency would be viewed as a penalty in light of the fundamental nature of the right of mi-

gration guaranteed by the Alaska Constitution. In *Wylie*, we held that state personnel rules which granted hiring preferences to persons who have satisfied the durational residency requirement penalized interstate travel. In contrast, though the precise limits of penalty analysis under the United States Constitution had not been explored fully at the time this court decided *Wylie*, the United States Supreme Court subsequently declined to classify as a penalty on the right to travel any burden other than the denial of basic necessities of life. See *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974).⁸

In *State v. Adams*, 522 P.2d 1125 (Alaska 1974), we again differed from the United States Supreme Court's analysis of penalties on the right of interstate migration in holding that Alaska's one-year durational residency requirement for the initiation of divorce proceedings in state courts violated the equal protection clause of the Alaska Constitution. We reiterated in *Adams*:

All durational residency requirements inherently infringe upon the fundamental constitutional right of interstate travel.

7. At the time *State v. Wylie*, 516 P.2d 142 (Alaska 1973), was decided, the United States Supreme Court had decided two durational residency cases utilizing strict scrutiny review: *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969), which invalidated a one-year durational residency requirement of the State of Connecticut for eligibility for aid to families with dependent children welfare assistance; and *Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), which struck down Tennessee's one-year durational residency requirement for eligibility to vote in state elections. See also *Starns v. Malkerson*, 326 F.Supp. 234 (D.Minn.1970), *aff'd*, 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed.2d 527 (1971) (upholding on rational basis grounds Minnesota's one-year durational residency requirement for reduced tuition at the state university).

8. When we applied the strict scrutiny tier of equal protection judicial review in *State v. Wylie*, 516 P.2d 142 (Alaska 1973), the state's interests in upgrading Alaska's human resources in reducing the level of unemployment within the state and in relieving the burden imposed by unemployment on the public purse were found not to be related sufficiently to the means selected for accomplishing the objec-

tives (i. e., discrimination against new residents in hiring) to satisfy the compelling state interest standard of review. We concluded that: "[t]here are certainly available to the state other means for lowering unemployment which impose a lesser burden on the constitutionally protected right to interstate travel." *Id.* at 149 (footnote omitted). We also held that the state's interest in preferring bona fide residents over non-residents in selecting public employees in order to improve the efficiency of state government by reducing personnel turnover was not substantial enough to warrant burdening the fundamental right of interstate travel.

It should be noted that in *Wylie*, as in the present case involving the Beirne Initiative, the state's interest in preferring bona fide residents over non-residents was not challenged. Thus, the court made no determination as to the permissibility of such a classification; it ruled only on the constitutionality of discriminating between classes of actual residents based on an irrebuttable presumption that those who had lived in Alaska for less than one year should not be treated as permanent residents regardless of other indicia of intent to establish permanent residence in the state.

Hence, all such requirements are prima facie invalid and will be countenanced only when they serve a compelling state interest. There need be no actual deterrence to interstate migration to actuate strict scrutiny under the compelling state interest test. In our view, the nature of the benefit withheld by the state is relevant only to judging the relative importance of the competing state interest, not to determining the applicable standard of judicial review.

Applying strict scrutiny to the state's asserted public goals justifying the classification based on duration of residency, we found that the relationship between the goals and the means selected for furthering the objectives (the durational residency requirement) was substantially lacking. We held that the state's important interest in protecting the integrity of the basic family unit simply was not furthered by the differential treatment of new residents since it did nothing to preserve marriages of persons who had been in the state for more than one year. The state's interest in assuring the validity of its divorce decrees against collateral attacks on due process grounds, while substantial, could be satisfied by insuring that the domicile of the divorce-complainant was in this state. This reasonable, less restrictive alternative to the absolute requirement of residence of one year in the challenged divorce statute rendered the more restrictive standard less than compelling. The durational residency requirement thus failed to withstand strict scrutiny and was struck down.⁹

Following *Adams*, we decided the only Alaska right to travel case which has up-

held a durational residency requirement in the face of strict judicial scrutiny of equal protection claims. *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974), involved a challenge to the state constitutional requirement, article II, § 2, of three-year residency in the state and one-year residency in the election district for eligibility to seek legislative office. The residency requirement was analyzed only under the equal protection clause of the federal Constitution since a provision of the Alaska Constitution was directly attacked by the appellant in the case. Nevertheless, we determined to apply the strict scrutiny tier of review based in part on our own prior cases relating to durational residency requirements. Two of the state's asserted justifications for the restrictions on candidacy for public office were found to be compelling: the interest of the state in assuring that those who govern it are acquainted with the diverse conditions, problems, and needs of those who are to be governed, and the interest of the electors in exposure of the potential candidate to the people during a period of time sufficient for the voters to become familiar with the candidate's knowledge, character, and reputation. In upholding the classification, we found that no viable less restrictive alternatives to the durational residency requirements imposed by the state constitution existed to fulfill the compelling state interests.

This court's most recent statement of the law relating to durational residency requirements was in *Hicklin v. Orbeck*, 565 P.2d 159 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978). *Hicklin* involved an

9. Subsequent to our invalidation of the one-year residency requirement in the challenged divorce statute, the United States Supreme Court addressed the identical issue in a case involving the State of Iowa's statutory requirement that a petitioner in a divorce action must be a resident of the state for one year preceding the filing of the petition. *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975). The Supreme Court came to the opposite conclusion from our court in *Sosna*, however. Although the Court did not specifically identify the standard of review it was applying in upholding the durational residency requirement,

its analysis was couched in language suggesting application of the rational basis test. It found that the statute in question reasonably furthered three basic public purposes: protection of the rights of the defendant spouse in the divorce proceeding, avoidance of interference in matters in which another state has a paramount interest, and assurance that the state's own divorce decrees will be afforded full faith and credit by other states. It should be noted that the third of these rationales is identical to the state interest this court had found unpersuasive in *State v. Adams*, 522 P.2d 1125 (Alaska 1974).

equal protection challenge to the so-called "Alaska Hire" law which limited eligibility for petroleum and pipeline related jobs to residents of the state who had been physically present in Alaska, with certain exceptions, for one year.¹⁰ In holding that the proper standard for review of the durational residency preference in hiring was the strict scrutiny tier of equal protection analysis which applies to such residency requirements "because they penalize those who have exercised their fundamental right of interstate migration,"¹¹ we expressly considered and rejected the "basic necessities" reasoning of *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974). As already noted, *Memorial Hospital* had addressed a challenge under the federal Constitution and had limited application of strict scrutiny to durational residency cases in which the residency requirement penalized the right to travel by depriving the recent migrant of a basic necessity of life.¹² We noted that "[w]e have never used this 'basic necessity' reasoning,"¹³ and proceeded to subject the Alaska Hire law to strict scrutiny. The interests which the state sought to further through the hiring preference for one-year residents of the state in *Hicklin* were the

reduction of the unemployment rate for bona fide Alaska residents and the cultivation of Alaska's human resources through extraction of the state's natural resources. We invalidated the durational residency requirements because the correlation between the classification based on length of residence and the goals of the challenged statute was tenuous and, in any case, the durational residency requirement was not the least drastic means available for accomplishing the public goals of reduced unemployment and stabilization of the economy.¹⁴

In my view, under the test applied in *Hicklin v. Orbeck*, 565 P.2d 159 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978), the three-year durational residency requirement imposed by the Beirne Initiative to qualify for land grants would fail. The general standard for judicial review of equal protection challenges arising under the state constitution was modified subsequent to the *Hicklin* decision, however. In *State v. Erickson*, 574 P.2d 1 (Alaska 1978), we abandoned the traditional two-tier approach to equal protection analysis which

10. The durational residency statute at issue in *Hicklin v. Orbeck*, 565 P.2d 159 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978), was nearly identical to the Beirne Initiative's residency requirements. AS 38.41.090(1) provided:

- 'resident' means a person who
- (A) except for brief intervals, military service, attendance at an educational or training institution, or for absences for good cause, is physically present in the state for a period of one year immediately before the time his status is determined;
 - (B) maintains a place of residence in the state;
 - (C) has established residency for voting purposes in the state;
 - (D) has not, within the period of required residency, claimed residency in another state; and
 - (E) shows by all attending circumstances that his intent is to make Alaska his permanent residence.

The only differences between the statutory definition of an Alaska resident which was considered in the *Hicklin* case and the definition of resident in the Beirne Initiative are found in the duration of the residency required (one year in

the *Hicklin* case and a minimum of three years in the present case) and in the addition of registered voter status and the attainment of eighteen years of age as requirements for eligibility for land grants under the Beirne Initiative. See note 3 *supra*.

11. *Hicklin v. Orbeck*, 565 P.2d 159, 162 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978) (footnote omitted).

12. In *Hicklin id.* we also rejected the rational basis test as applied in *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975). See discussion of *Sosna* in note 9, *supra*.

13. *Hicklin v. Orbeck*, 565 P.2d 159, 163 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978).

14. It was pointed out in *Hicklin, id.* at 165, that "the least drastic, and also the most effective, means to help the unemployed and recent trainees to find jobs is to give an employment preference over the unemployed and recent trainees."

had been followed in all our prior cases¹⁵ and adopted a new single test for evaluating equal protection claims under the Alaska Constitution. The new standard of review was explained in *Erickson* as follows:

Such a test will be flexible and dependent upon the importance of the rights involved. Based on the nature of the right, a greater or lesser burden will be placed on the state to show that the classification has a fair and substantial relation to a legitimate governmental objective. Where fundamental rights or suspect categories are involved, the results of this test will be essentially the same as requiring a 'compelling state interest'; but, by avoiding outright categorization of fundamental and non-fundamental rights, a more flexible, less result-oriented analysis may be made.

Id. at 12. Our task in applying the equal protection test adopted in *Erickson* has three steps: first, we must ascertain what the purposes of the challenged legislation are and whether they are within the legitimate police power of the state; second, we must examine the means used to accomplish

the legislative objectives and establish whether the means substantially further the legislative goals; and third, we must balance the importance of the state's interest in the means actually chosen to accomplish the legislative purpose against the nature of the constitutional right which has been infringed.¹⁶

The *Erickson* analysis begins by considering the purposes of the challenged act, viewing the Beirne Initiative as a whole as well as the circumstances which surrounded its enactment. Since the act was passed as an initiative by the people rather than by the legislature there is no relevant legislative history of its passage to resort to. However, the Beirne Initiative makes its objectives clear in the statement of purpose which constitutes section 1 of the Homestead Act.¹⁷ The purpose of the act, quite simply is to accomplish the transfer of thirty percent or 30,000,000 acres of the state's vacant, unappropriated, and unreserved general grant lands into private ownership.

The initiative finds that "individual land ownership is integral to the material well-being of the people and encourages more citizen awareness and involvement in the

15. We had previously expressed our increasing dissatisfaction with traditional equal protection analysis, however, in *Isakson v. Rick*, 550 P.2d 359, 362-63 (Alaska 1976); *Lynden Transport, Inc. v. State*, 532 P.2d 700, 706-07 (Alaska 1975); *State v. Adams*, 522 P.2d 1125, 1127 n.12 (Alaska 1974); *State v. Wylie*, 516 P.2d 42, 145 n.4 (Alaska 1973). See generally T. Yarbrough, *The Burger Court and Unspecified Rights: On Protecting Fundamental and Not-So-Fundamental "Rights" or "Interests" Through a Flexible Conception of Equal Protection*, Duke L.J. 143 (1977); G. Gunther, *Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 Harv.L.Rev. 1 (1972).

16. See *Erickson v. State*, 574 P.2d 1, 12 (Alaska 1978). See also *Dandridge v. Williams*, 397 U.S. 471, 508, 90 S.Ct. 1153, 1173, 25 L.Ed.2d 491, 515 (1970) (Marshall, J., dissenting).

17. Section 1 of the Beirne Initiative provides: The people find that only approximately one million acres of the 363 million total land acreage of Alaska is in private ownership on the effective date of this Act. The people further find that individual land ownership is integral to the material well-being of the people and encourages more citizen awareness and involvement in the affairs of the state.

Further, the people are cognizant that all land was privately owned at the time of the nation's founding and [believe] that private land ownership is integral to the American system. In addition, the people are aware that the Constitution of the State of Alaska declares that it is the policy of the state to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest (art. VIII, sec. 1), and further that the constitution permits the people to implement this policy by providing for the grant of state land (art. VIII, sec. 9). The people find that of the approximately 104 million acres to which the state is entitled under the Statehood Act, less than 75,000 acres have been made available by the state to citizens for settlement and development purposes, and that the failure to make more land available is a failure [to] implement the policy of art. VIII, sec. 1 of the Alaska Constitution. The people declare their purpose to make available to its citizens at least 30 percent or 30,000,000 acres of state land for settlement and development, and further [declare] that a policy of private land ownership is in the best interest of the people of the state.

affairs of the state." It further finds that the state unduly has delayed making public land available for private settlement and development purposes and enacts the grant program to facilitate the distribution of state land into private ownership.

The mechanism chosen for the transfer of land is a land grant initiated by filing an application which must have been recorded previously in the recording district where the land is located, together with proof of residency as required by the act and a \$100 filing fee. The applicant is required to publish notice of his application and to provide a land survey within five years after the right to possession attaches. The grantee is required only to hold the land grant for one year before he "may extract timber or materials on a commercial basis, sell, subdivide, or otherwise dispose of the land" There is no requirement that the grantee actually enter upon the land and make improvements.¹⁸

Only persons who meet the minimum residency requirements of the Beirne Initiative may apply for grants of state land. A three-year resident is eligible for one forty-acre grant, a five-year resident may apply for two such grants, and a ten-year resident is eligible for a maximum of four forty-acre grants of state land under the act.¹⁹ The justifications advanced by the state in support of this differential treatment based on duration of residency are basically twofold. First, it is asserted that the durational residency requirements insure that the recipients of benefits under the Beirne Initiative have earned the right to grants of state

land based on their contribution to the overall state welfare by voting and paying taxes for the required periods of time. Second, it is claimed that the durational residency requirements insure that the recipients of land grants are genuinely attached to the state since they already have demonstrated their willingness to remain in Alaska for a substantial period of time.

Judicial scrutiny of the closeness of fit between the means and permissible legislative objectives, and scrutiny of the relative necessity for utilizing the particular means selected as opposed to other means less restrictive of constitutional rights, vary in intensity with the character of the classification in question under *State v. Erickson*, 574 P.2d 1 (Alaska 1978). At the upper end of this flexible equal protection formula, where fundamental rights or suspect categories are involved, *Erickson* indicates that the results of this new test will be essentially the same as under the traditional strict scrutiny tier of equal protection doctrine which requires a "compelling state interest" in the means chosen. At the lower end of the scale, the intensity of scrutiny applied will be governed by the new, more demanding "rational basis" test articulated in *Isakson v. Rickey*, 550 P.2d 359 (Alaska 1976). In *Isakson* we held:

Under the rational basis test, in order for a classification to survive judicial scrutiny, the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons simi-

18. The Beirne Initiative has been titled the "Alaska Homestead Act" and the state land made available under the act is referred to as "homestead entry land," but this description of the act's purposes is somewhat inaccurate. Although the act does open up state land for transfer to private ownership and, presumably, at least some of that land will actually be settled, the Beirne Initiative contains no requirement that the grantee enter upon the land and live there in the traditional mode of homestead acts. See generally 43 U.S.C. §§ 161-302 (repealed by Pub.L. 94-579, 90 Stat. 2787, effective October 21, 1976). In fact, the initiative

explicitly provides that "no improvements may be required or restrictions imposed on homestead entry land, except as required by general law or home rule municipalities." See AS 38.08.060.

19. It should be noted that the act limits the size of the yearly grant to forty acres regardless of the duration of residency; thus, five-year and ten-year state residents may accumulate their total grant land only at the rate of forty acres a year until their respective maximums are reached.

larly circumstanced shall be treated alike."²⁰

Isakson also concluded that "we will no longer hypothesize facts which would sustain otherwise questionable legislation as was the case under the traditional rational basis standard."²¹

The present challenge to the constitutionality of the durational residency requirements in the Beirne Initiative is the first post-*Erickson* case to come before this court on right-to-travel grounds. Thus, an important inquiry in this case is the determination of what standard of review should be applied. Our cases on this subject uniformly have expressed our opinion that the right of interstate migration is a fundamental constitutional guarantee which may not be infringed without showing a compelling state interest in retaining any durational residency requirement and the absence of less restrictive alternative means of accomplishing the state's legislative objectives. The uniquely important status of right-to-travel protection in the Alaska Constitution reflects, in part, an awareness of the distinctive character of this state in attracting many new residents to participate in Alaska's growth and expansion.²² The risk that longer-term Alaska residents would seek to insulate themselves from sharing the public

benefits of development of the state with the influx of relative newcomers already has been confronted directly in *Hicklin v. Orbeck*, 565 P.2d 159 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978). Significantly, this court in *Hicklin* stood fast in expressly repudiating the United States Supreme Court's "basic necessities" limitation on applying strict scrutiny to right-to-travel cases and clearly stated that "it can no longer be disputed that [the right to travel into a different state and make one's home there] is a fundamental right calling for strict scrutiny."²³ In light of the consistent pronouncements by this court concerning the fundamental nature of the right to travel under our state constitution in prior cases, I believe there is a strong case presented in favor of continuing to apply the most stringent standard of review to durational residency classifications under the new, flexible equal protection test adopted in *State v. Erickson*, 574 P.2d 1 (Alaska 1978). However, even starting from the premise that the least intensive scrutiny available under *Erickson* applies, I do not think that the classification of Alaska residents into four groups of dissimilarly treated individuals based on duration of residency²⁴ for purposes of disbursing

20. *Isakson v. Rickey*, 550 P.2d 359, 362 (Alaska 1976), quoting *State v. Wylie*, 516 P.2d 142, 145 (Alaska 1973) (footnote omitted).

21. *Id.* Isakson continued, quoting G. Gunther, *Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 Harv.L.Rev. at 20 (1972):

Judicial deference to a broad range of conceivable legislative purposes and to imaginable facts that might justify classifications is strikingly diminished. Judicial tolerance of overinclusive and underinclusive classifications is notably reduced. Legislative leeway for unexplained pragmatic experimentation is substantially narrowed.

See also *State v. Lewis*, 559 P.2d 630, 643 (Alaska 1977), *cert. denied*, 432 U.S. 901, 97 S.Ct. 2943, 53 L.Ed.2d 1073, which applies the Isakson "rational basis" standard of review.

22. See Note, *Durational Residency Requirements: The Alaskan Experience*, 6 U.C.L.A.—Alaska L.Rev. 50 (1976).

23. *Hicklin v. Orbeck*, 565 P.2d 159, 163 n.5 (Alaska 1977), *rev'd on other grounds*, 437 U.S.

518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978) (citations omitted).

In *Hicklin*, we also quoted art. VIII, § 2 of the Alaska Constitution which reads:

The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters for the maximum benefit of its people. [emphasis added]

We concluded that "[this] section is not limited to those of Alaska's people who have been here for at least twelve months." *Id.* at 164 n.8.

24. The four classes of residents created by the Beirne Initiative are (1) those persons who have lived in Alaska for less than three years and who qualify for no state land; (2) those persons who have lived in Alaska for more than three years but less than five years and thereby qualify for one grant of forty acres of land; (3) persons who have resided in the state for more than five years but less than ten years, thus qualifying for two forty-acre grants of state land totalling eighty acres altogether; and (4) residents of ten years or longer who are

grant
trary
diffe
lation
that
[are]

Th
ing t
of th
tute
the b
sons
tribut
welfa
son,
401 U
(1971
point
Minn
table
reside
was
for a
state
Starn
for r
achie
thove
tribut
plym
withi
explai

We
has
den
trib
the

eligi
each

25. Is
1976
(Ala:
gene
§ 1
cons
ble li
cons
tains

La
dis
eqi
ref
to

grants of state land is "reasonable, not arbitrary" and "'rest[s] upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced [are] treated alike.'" 25

The first rationale advanced for upholding the durational residency requirements of the Beirne Initiative is that they constitute a reasonable device for excluding from the benefits of the land grants those persons who have not made a substantial contribution to the state's economy and general welfare. The state cites *Starns v. Malkerson*, 326 F.Supp. 234 (D.Minn.1970), *aff'd*, 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed.2d 527 (1971), in support of its argument on this point. *Starns* upheld the University of Minnesota's regulation creating an irrebuttable presumption that any person who had resided in the state for less than one year was a non-resident and could not qualify for a reduced resident tuition rate at the state university. The rationale advanced in *Starns* was that the one-year waiting period for reduced tuition was an attempt to achieve partial cost equalization between those who had and those who had not contributed to the state's economy through employment, tax payments and expenditures within the state. The federal district court explained its holding as follows:

We believe that the State of Minnesota has the right to say that those new residents of the State shall make some contribution, tangible or intangible, towards the State's welfare for a period of twelve

eligible to receive four grants of forty acres each, or a total of 160 acres of state land.

25. *Isakson v. Rickey*, 550 P.2d 359, 362 (Alaska 1976), quoting *State v. Wylie*, 516 P.2d 142, 145 (Alaska 1973). It should be noted here that the general equal protection guarantee in article I, § 1 of the Alaska Constitution is not the only constitutional equal protection clause applicable in the present case. Article VIII of the state constitution relating to natural resources contains a separate guarantee:

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

months before becoming entitled to enjoy the same privileges as long-term residents possess to attend the University at a reduced resident's fee.

Id. at 241. Assuming that the Alaska Supreme Court would uphold a similar one-year residency requirement for reduced tuition in this state's university system, a premise that is not altogether inevitable under the new, "more demanding" rational basis test adopted in *Isakson v. Rickey*, 550 P.2d 359, 362 (Alaska 1976), substantial differences remain between the holding in the *Starns* case and the durational residency requirements of the Beirne Initiative.

A requirement of contribution through domicile in the state which funds an institution of higher education primarily out of tax revenues bears a relatively direct relationship to the rationale of cost equalization. The current residents of the state presumably carry the primary burden for providing the educational service and it is rational (under the deferential lower tier of federal equal protection scrutiny, at least) to require the new resident to pay more for a limited period of time to attend the state university in order to approximate the greater overall cost borne by the longer term resident for access to the same educational opportunity. In contrast, the distribution of land mandated by the Beirne Initiative constitutes the disposal of a permanent state asset the acquisition of which was unrelated to contributions of taxes and earnings by even the longest-term residents of Alaska. Of course, aside from the specific-

Alaska Const. art. VIII, § 17. Inclusion in the state constitution of this separate equal protection guarantee relating specifically to the disposal of natural resources evidences the constitutional framers' particular concern that the benefits from development of Alaska's large store of natural resources be shared by all persons similarly situated with respect to those resources and the purposes to be served by their disposal. This express indication of the importance attached to the interests of the people in the state's resources is thus an independent reason for rigorous scrutiny under *Erickson* of classifications differentiating between groups of residents where the distribution of natural resources is at stake. *State v. Erickson*, 574 P.2d 1, 12 (Alaska 1978).

ic funding sources of the state benefit in question, it is arguable that the longer-term resident has contributed more to the general welfare of the state over the course of his domicile in the state. However, in my view the asserted correlation between the contribution of the land grantee to the state's economy and the varying periods of residency required to become eligible for each incremental forty-acre grant of land under the Beirne Initiative is on its face too tenuous to satisfy the standard of review adopted in *State v. Erickson*, 574 P.2d 1 (Alaska 1978). The parties to this action have made available no additional data supporting this rationale. Therefore, this court is left in the position of hypothesizing facts to sustain the classification on cost-equalization grounds, an exercise we expressly declined to undertake in *Isakson v. Rickey*, 550 P.2d 359, 362 (Alaska 1976). Further, if eligibility for land grants validly may be conditioned on participation in the state's economy for such extended periods of time as the initiative requires, the state apparently would not be prohibited from distributing all of its public benefits (other than those protected by federal equal protection guarantees) proportionately to the length of continued residence in the state. I think that, upon careful evaluation, it becomes clear that the cost-equalization rationale advanced in this case in support of the durational residency requirements accomplishes nothing more than the sanctioning of a bonus or reward for having been a resident of Alaska longer than certain other classes of persons. It would do violence to the meaning of the requirement in *Isakson v. Rickey*, *id.* at 362 (Alaska 1976), that the classification "'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation'" if this court were to uphold the durational

residency requirements of the Beirne Initiative on a cost-equalization rationale.

The second justification for the Beirne Initiative's durational residency requirements advanced by the state is that they insure that state land grants made available by the act actually end up in the hands of those who have demonstrated their genuine attachment to the state and their willingness to remain in Alaska and adapt to its uniquely rigorous climate and frontier characteristics. I do not think this rationale is supported by the express provisions of the Beirne Initiative. Despite its title,²⁶ the act is not a homestead law in the sense that the grantee must undertake to make improvements on the grant land or even to live on the land. In fact, under the terms of the initiative, a land grant applicant need not ever even visit the land acquired and can sell the land or otherwise dispose of it after holding it for one year. This scheme of land disposal may adequately serve the initiative's purpose of transferring state land to private ownership, but it certainly does not require that the land is ultimately developed by those with any degree of attachment to the State of Alaska or that people with experience in "Alaskan living" utilize the land. The three-year durational residency requirement adds nothing to the assurance of these objectives.

Further, residence of three years duration is not reasonably required to insure that only actual residents receive grant lands. Whether or not the state has a justifiable concern that state land be distributed to bona fide residents of Alaska to the exclusion of non-resident applicants,²⁷ requiring a minimum of three years actual domicile to establish bona fide residence status in this state simply bears no substantial relationship to the asserted purpose of the requirement. The Beirne Initiative itself includes other less onerous inc

26. See note 18 *supra*.

27. See generally *Baldwin v. Fish & Game Comm'n*, 436 U.S. 371, 98 S.Ct. 1852, 56 L.Ed.2d 354 (1978), which upheld large disparities in hunting license fees between residents of Montana and non-resident recreational hunters.

But see *Hicklin v. Orbeck*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978), invalidating the "Alaska Hire" law's statutory preference for hiring of state residents for pipeline and other petroleum industry jobs.

resident status which easily may be used to distinguish the resident from the non-resident.²⁸

Given that the three-year durational residency requirement is not substantially related to the purpose of insuring that only bona fide residents with significant ties to the state receive the grant land, the five-year and ten-year requirements are even less relevant to this objective of the act. As stated before, the only conceivable relationship between the duration of residency in the case and the disposal of the state grant land is the notion that long-term Alaska residents deserve a reward for their continued residence. In my opinion, this connection does not meet the "fair and substantial relation" equal protection test of *Isakson*.²⁹

CONNOR, Justice, dissenting.

I.

On the question of whether the initiative makes an appropriation, I respectfully dissent.

In *Thomas v. Rosen*, 569 P.2d 793, 796 (Alaska 1977), we quoted favorably from

28. The initiative's other requirements of residency are set out in note 3 *supra*. Similar indicia of residency were approved in *Hicklin v. Orbeck*, 565 P.2d 159, 169-70 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978) (The United States Supreme Court invalidated the residency requirement portion of the "Alaska Hire" law but did not express its opinion on the appropriateness of the criteria employed to establish residence in a case where such a classification is proper.).

Though my disposition of this case on durational residency grounds makes it unnecessary for me to examine the validity of the remainder of the residency classification, I question particularly the requirement that a resident be a registered voter to qualify for a grant of land under the act. Resident aliens, who are not eligible to register to vote, would be excluded from the Belme Initiative's land distribution scheme if this requirement were enforced. See *Nyquist v. Mauclet*, 432 U.S. 1, 97 S.Ct. 2120, 53 L.Ed.2d 63 (1977); *Sugarman v. Dougall*, 413 U.S. 634, 93 S.Ct. 2842, 37 L.Ed.2d 853 (1973); *Graham v. Richardson*, 403 U.S. 365, 91

State ex rel. Finnegan v. Dammann, 220 Wis. 143, 264 N.W. 622, 624 (1936), which in turn states:

"An appropriation is the setting aside from the public revenue of a certain sum of money for a specified object, in such manner as the executive officers of the government are authorized to use that money, and no more, for that object, and no other."

Courts in other jurisdictions have also defined "appropriation" for state constitutional purposes as applying to the use of money.¹ But even more persuasive is the record of the proceedings of the Alaska Constitutional Convention. As originally proposed, the provision restricting the use of the initiative and referendum prohibited their use in "making or defeating appropriations of public funds."² The floor discussion shows that the main concern of the delegates was that the expenditure of public money should not be subject to direct legislation by the electorate.³

It appears that the committee on style and drafting eliminated the words "of public funds" from the constitutional provisions because the state can only appropriate public funds. The committee chairman, Dele-

S.Ct. 1848, 29 L.Ed.2d 534 (1971); *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 68 S.Ct. 1138, 92 L.Ed. 1478 (1948); *Oyama v. California*, 332 U.S. 633, 68 S.Ct. 269, 92 L.Ed. 249 (1948); *C. D. R. Enterprises, Ltd. v. Board of Educ.*, 412 F.Supp. 1164 (E.D.N.Y.1976), *aff'd*, 429 U.S. 1031, 97 S.Ct. 721, 50 L.Ed.2d 742 (1977), all of which invalidate state discriminatory treatment of resident aliens. See also *Foley v. Connelie*, 435 U.S. 291, 98 S.Ct. 1067, 55 L.Ed.2d 287 (1978).

29. This test was also applied in: *State v. Erickson*, 574 P.2d 1 (Alaska 1978); *State v. Lewis*, 559 P.2d 630 (Alaska 1977), *cert. denied*, 432 U.S. 901, 97 S.Ct. 2943, 53 L.Ed.2d 1073.

1. *Dorsey v. Petrott*, 178 Md. 230, 13 A.2d 630 (1940); *Michigan Good Roads Federation v. Alger*, 333 Mich. 352, 53 N.W.2d 481 (1952).

2. Part 6, Appendices, December 9, 1955, at 1820, 23-24.

3. Part 2, Proceedings, December 16, 1955, at 931-33, 941-42.

gate Sundborg, stated that those words were eliminated because the committee regarded them as redundant and unnecessary.⁴

In light of this history, I can find no sound reason for stretching the constitutional language to cover the distribution of land, a subject plainly not considered within the meaning of "appropriations" by our constitutional framers.

I would hold that the superior court erred in concluding that the initiative at bar amounted to a prohibited appropriation.

II.

My colleagues do not reach the question of whether the initiative violates the constitutional guarantee of equal protection of laws or the prohibition against special legislation. Because I would hold that the initiative does not amount to an appropriation, I must also express my views on these subjects.⁵

The Alaska Constitution, Art. XI, Sec. 7, provides that, "The initiative shall not be used to . . . enact local or special legislation." The homestead initiative is attacked as violating this provision. It is argued that the durational residency requirements of the initiative should be subjected to strict scrutiny as penalizing the right to travel. Alternatively, it is urged that the durational residency requirements do not bear a fair and substantial relationship to the purposes of the act.

I think the first argument is misplaced. It is true that laws which impinge upon the fundamental right of interstate migration, by denying the necessities of life or by penalizing the right to migrate, are invalid

unless a compelling state interest justifies those laws.⁶

However, the initiative does not pose any obstacle to interstate migration. It does not deny to anyone the necessities of life or penalize a person for having migrated to Alaska. There is no fundamental right to receive land from the state to which one migrates. Certainly there are no cases which even intimate that such a right exists. The granting of state lands is a benefit conferred upon recipients of land grants, but it is not a penalty inflicted upon those to whom the grants are not made.

In this sphere of activity the state enjoys a large measure of autonomy. As the United States Supreme Court has observed:

"The governments of the States are sovereign within their territories save only as they are subject to the prohibitions of the Constitution as their action in some measure conflicts with powers delegated to the National Government, or with Congressional legislation enacted in the exercise of those powers." *Parker v. Brown*, 317 U.S. 341, 359-60, 63 S.Ct. 307, 317-318, 87 L.Ed. 315 (1943).

The Alaska Constitution expressly permits the state to dispose of its lands. Art. VIII, Sec. 9, provides:

"Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not necessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages."

4. Part 4, Proceedings, January 24, 1956 at 269-70.

5. I am not dealing with these questions as exhaustively as I might were I not in dissent. I am merely setting forth my general views on these subjects.

6. *Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972); *Memorial Hospital*

v. Maricopa County, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974); *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1968); *Hicklin v. Orbeck*, 565 P.2d 159, 162 (Alaska 1977), reversed on other grounds, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978). See also L. Tribe, *American Constitutional Law*, 1003-1005 (1978).

Cite as, Alaska, 595 P.2d 21

Thus the object of the initiative, a grant of land, is quite plainly within the lawful powers of the state.⁷

As noted above, this legislation does not require strict scrutiny. Therefore, the compelling state interest test does not apply. We have stated in our previous cases that where fundamental rights or suspect classifications are not in issue, we will employ a more deferential test.

"Examining both the legislative goals and the means used to advance them, we must determine whether the legislation bears a 'fair and substantial relationship' to legitimate purposes." *State v. Lewis*, 559 P.2d 630, 643 (Alaska 1977).⁸

We have also noted that the test to be employed in determining whether a statute amounts to special legislation, prohibited by the constitution, is substantially the same as that applicable to non-suspect classifications which are challenged as violating the guarantee of the equal protection of the laws. *State v. Lewis, supra* at 643.

I know of no principle of law which prohibits a state from distributing land to its residents upon the basis of how long they have resided in the state. The initiative before us parcels out state lands as an incentive to settle and develop the state, as well as to encourage citizen awareness of and involvement in the affairs of the state. Those who have spent more time in the state and who have made, it is presumed, a greater contribution to the state's economy and well-being are given greater amounts of land. To insure permanent settlement of the land and to enhance economic growth, I think it is permissible for the state to base its land grants upon length of residence. This is a practical method of assuring that the land will go to those who have a more permanent attachment to Alaska than casual visitors or newcomers. In my view, the initiative does not violate the prohibition against special legislation nor does it deny to anyone the equal protection of the laws.

While Art. VIII, Sec. 9, refers to the legislature, the people through the initiative enjoy the same power as the legislature, so long as the initiative is not used for a purpose prohibited by Art. XI, Sec. 7, Alaska Constitution.

Because our test requiring a fair and substantial relationship between the legislative ends and the means used to achieve them is more exacting than the federal rational basis test, it follows that the federal requirements of equal protection of the laws are also satisfied.

It is my opinion that the initiative is constitutionally valid.



Phillip A. REYNOLDS, Appellant,

v.

STATE of Alaska, Appellee.

No. 4024.

Supreme Court of Alaska.

May 11, 1979.

Upon pleas of guilty, defendant was convicted in the Superior Court, Third Judicial District, James A. Hanson, J., of one felony count and one misdemeanor count of receiving and concealing stolen property. Defendant was sentenced to three years, the maximum, on felony count, and one year, the maximum, on misdemeanor count, which sentences were to be served consecutively to each other and to a sentence then being served for a parole revocation on an earlier offense, but with three years of combined sentences being suspended, with defendant to be on probation for five years, during which time, in addition to other conditions of probation, defendant was to enroll in a treatment alternative to street crimes program was to make restitution of \$958, and was not to consume nonprescrip-

8. See also, *Isakson v. Pickey*, 550 P.2d 359, 261-63 (Alaska 1976).

HJR

50

HJR

77

COMMITTEE REPORT

SENATE

4/13/82

FURTHER: None

Date: May 10, 1982

Mr. President:

The Committee on JUDICIARY has had HJR 77

Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature

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 HJR 77 same title
 new title
- and recommends HJR 77
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]
CHAIRMAN

18 H-155

Introduced: 1/25/82
Referred: Judiciary

BY THE RULES COMMITTEE
BY REQUEST OF THE ADMINISTRATIVE
REGULATION REVIEW COMMITTEE

1 IN THE HOUSE

2 HOUSE JOINT RESOLUTION NO. 77

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Consti-
6 tution of the State of Alaska re-
7 lating to annulment of regulations
8 by the legislature.

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

10 * Section 1. Article II, Constitution of the State of Alaska, is amended
11 by adding a new section to read:

12 SECTION 22. ANNULMENT OF REGULATIONS. The legislature by a
13 concurrent resolution approved by a majority vote of the membership of
14 each house may annul a regulation adopted by a state department or
15 agency. The annulment of the regulation is effective ^{30 days after} on the date the
16 concurrent resolution is approved by ^{A 2/3 vote of each} both houses unless the concurrent
17 resolution specifies a different date.

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

22
23
24 3.) Every such resolution must be restricted to a single subject
25
26 4.) The vote on such resolutions shall be recorded
27
28
29

City moves

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 19, 1982

SBUEJCT Annulment of regulations
 (HJR 77)

TO: Senator Patrick M. Rodey

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

HJR 77 proposes a constitutional amendment which would allow annulment of regulations by concurrent resolution. Both versions allow the legislature in the resolution to set the effective dates of the annulment.

You have asked whether specifying a date on which the annulment is effective other than the constitutionally prescribed date would require an extraordinary majority.

In my opinion it would not.

The requirement for a two-thirds vote for adoption of an effective date is contained in Sec. 18, Article II, Constitution of the State of Alaska which provides:

SECTION 18. Laws passed by the legislature become effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date.

By its specific terms the section is applicable only to "laws passed by the legislature".

In State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (1980) our Supreme Court held the statute allowing annulment of regulations by concurrent resolution unconstitutional. The basis on which the Court held the statute unconstitutional was essentially that a concurrent resolution is not subject

to the constitutional requirements for enactment of law. In that case the Court considered the enactment procedure and stated:

"Finally, there is the clause that laws do not become effective, unless a two-thirds vote of the membership of each house provides otherwise, until ninety days after they are enacted. Art. II, § 18. This is designed to provide a fair opportunity to those people affected by legislation to learn of the laws they must live by.

"The question presented by this case is whether the legislature can exercise its legislative power without following these enactment provisions. In our view the answer must be in the negative, for otherwise they would serve no purpose. In Plumley v. Hale, 594 P.2d 497, 502 (Alaska 1979) we held that the requirements of Art. II § 14 are mandatory, not permissive. The minutes of the proceedings of our constitutional convention indicate that the delegates were fully aware that only by following the enactment procedures could the legislature make law. Thus, Delegate Sundborg stated:

"Now, a majority vote in each house of the legislature is not equivalent to passing a law, because it does not require the signature of the governor, and it does not require conformance with the provisions of this constitution and the provisions of such laws as will be passed under it with respect to the procedure in enacting a law. So, when we say in the second sentence, 'The state may by law,' we are saying that that law must be passed by the legislature in the manner that is required by the constitution and the statutes, and either signed by the governor or passed over his veto or become law without his signature in the manner provided in the constitution, which we felt was the real intention of the body rather than merely requiring that the legislature by a majority in each house and without adhering to any of those other restrictions and without any reference to the governor could contract debt on behalf of the state.

"5 Proceedings of the Alaska Constitutional Convention at 3405 (January 28, 1956)."

Senator Patrick M. Rodey
Page 3
May 19, 1982

and later stated:

Appellee finds it significant that the Alaska Constitution contains no provision like that in section 7, clause 3 of article I of the United States Constitution which authorizes the executive to veto legislative resolutions, and that executive involvement in the enactment of resolutions was not deemed necessary by the framers of the state constitution. This point, however, does not advance Appellee's case. Under the United States Constitution joint resolutions are one means by which laws are enacted; they are therefore naturally included among those legislative acts subject to Presidential veto. However, under the state constitution resolutions are not an alternative law enactment process, and therefore there is no need to make them subject to an executive veto. (Emphasis added)

In this case the Court explicitly held the enactment procedures, including the effective date provision cited, not applicable to concurrent resolutions.

BGB:ljb



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MAY 10, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- HB 678 - "An Act relating to membership in electric and telephone cooperatives."
- HB 668 - "An Act relating to the release of records by the Department of Fish and Game to the Department of Public Safety; and providing for an effective date."
- HJR 77 - Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.
- HB 210 - "An Act relating to child custody."
- HB 577 - "An Act repealing provisions relating to justification of the use of force in resisting or interfering with arrest."
- HB 575 - "An Act relating to culpable mental states prescribed as elements of criminal assaults."
- HB 2 - "An Act relating to land; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:10 P.M. Committee members present were: Senators Rodey, Parr, and Anderson. Senators Bennett and Ray were absent.

010 - Call to order.

023 - Chairman Rodey brought HB 678 before the committee.

043 - *Anderson* moved to pass from committee with individual recommendations. There was no objection.

057 - HB 668 was brought before the committee.

077 - Senator Anderson moved to adopt the Senate committee substitute. There was no objection.

088 - Senator Parr moved to pass out of committee with individual recommendations. There was no objection.

109 - HJR 77 was brought before the committee.

131 - Senator Parr moved to adopt the committee substitute. There was no objection.

138 - Senator Anderson moved to pass out of committee with individual recommendations. There was no objection.

208 - Chairman Rodey announced that the committee will be hearing HB 2 in specific sections, dividing the bill up between University lands, homesteading, and seismographic material.

212 - Teresa Hebert, Exxon attorney, testified giving a language suggestion. She asked that the committee not adopt Sec. 11 & 12 of HB 2 which deal with seismographic material.

445 - Chairman Rodey returned HB 2 to the file.

453 - Chairman Rodey brought HB 210 before the committee.

465 - Representative Rogers testified, stating he would rather have mandatory mediation, but he also wished to avoid a fiscal note on the bill.

679 - Senator Parr moved to adopt the committee substitute. There was no objection.

685 - Senator Anderson moved to pass the bill from committee with individual recommendations. There was no objection.

689 - The next item of business was HB 577.

691 - Representative Anderson testified in favor of this bill.

786 - For the record, Senator Ray entered the meeting.

097 - Senator Parr asked the committee to hold the bill over until the next meeting. There was no objection and the bill was laid on the table.

140 - The last item of business was HB 575.

277 - After discussion, Senator Ray moved to pass HB 575 with individual recommendations.

285 - After a brief discussion, Senator Ray withdrew his motion.

298 - Senator Ray moved to add the provisions in SB 535 on to HB 575 as a committee substitute. There was no objection, and the committee substitute was adopted.

306 - Senator Ray moved to pass the committee substitute with individual recommendations. There was no objection.

314 - The meeting was adjourned at 2:20 P.M.

Final sponsor: Rules/Administrative
Regulation Review
Committee

THE HOUSE

BY THE JUDICIARY COMMITTEE

SENATE CS FOR HOUSE JOINT RESOLUTION NO. 77 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.

RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. Article II, Constitution of the State of Alaska, is amended adding a new section to read:

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by a concurrent resolution approved by a majority vote of the membership of each house may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective (thirty days after) the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date.

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



Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 28, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- HJR 77 - Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.
- HB 848 - "An Act reenacting the law relating to the marital deduction in testamentary transfers; and providing for an effective date."
- SJR 61 - Proposing amendments to the Constitution of the State of Alaska relating to appropriations and the retention, investment and expenditure of certain state revenues; and superseding the amendments proposed by Legislative Resolve No. 1, First Special Session of the Twelfth Legislature (FSS FCCS SJR 4).

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.

003 - Call to order.

008 - Chairman Rodey brought HJR 77 before the committee.

019 - Phil Holdsworth, representing Miners Assoc., & Coal Operators, testified in favor of HJR 77.

045 - Art Peterson, Assistant Attorney General, testified in opposition of HJR 77.

415 - Mr. Peterson proposed the following amendments: On Page 1, Line 15 delete "on" and insert "30 days after:". On Page 1, Line 16, after the word "by" insert "a 2/3 vote of each house". On Page 1, Line 17 after "." add the following sentences: Every such resolution must be restricted to a single subject. The vote on such resolutions shall be recorded.

565 - Representative Malone testified in favor of HJR 77.

600 - Senator Ray moved to adopt 30 day clause offered by Mr. Peterson. There was no objection.

649 - HJR 77 laid on the table.

654 - HB 848 was brought before the committee.

665 - Steve Levi, of Speaker Hayes office, testified in favor of HB 848.

754 - HB 848 was laid on the table.

805 - Senator Ray distributed an amendment to SJR 61 for committee member's consideration. There was no objection to the amendment and it was adopted.

991 - Ron Lorensen, Deputy Attorney General, offered an amendment to Page 1, Line 9, after ";" insert "providing for effective date for those amendments". There was no objection to the amendment.

048 - Senator Rodey offered an amendment to Page 2, Line 10, to insert a "." after the word "investment".

085 - After discussion, Senator Rodey reconsidered his amendment.

243 - The meeting was adjourned at 2:50 P.M.

BALLOT PROPOSITION NO. 1

LEGISLATIVE ANNULMENT OF REGULATIONS Constitutional Amendment

(Committee Substitute for House Joint Resolution No. 82 Amended)

SUMMARY

(As it will appear on the November 4, 1980 General Election Ballot)

This proposal would permit the legislature to annul, by adopting a resolution, regulations adopted by state agencies. Annulment of regulations by resolution was authorized by the First State Legislature in 1959; however, in 1980 the Alaska Supreme Court held that the constitution permits the legislature to annul a regulation only by passing a bill, which requires three readings of the bill and a roll call vote which is recorded. The procedures for adopting resolutions are governed by legislative rules and require only the approval of the resolution by voice vote of a majority of both houses. A bill passed by the legislature annulling a regulation could be vetoed by the governor or repealed by referendum. A resolution annulling a regulation could not.

BALLOT FORM:

A vote "FOR" adopts the amendment.

A vote "AGAINST" rejects the amendment.

FOR
AGAINST

VOTE CAST BY MEMBERS OF 11TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas <u>18</u>	Nays <u>0</u>	Absent or Not Voting <u>2</u>
House	(40 members):	Yeas <u>36</u>	Nays <u>0</u>	Absent or Not Voting <u>4</u>

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal would add a new section, section 22, to Article II of the state constitution. If adopted, the proposal would authorize the legislature to annul or set aside a regulation which has been adopted by a state department or agency. In order to annul a regulation, the legislature could adopt a concurrent resolution by approval of the resolution by majority vote of the membership of each house of the legislature. The resolution specifies the date on which the annulment of a regulation would take effect.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by a concurrent resolution approved by a majority vote of the membership of each house may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective on the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date.