ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672
7899 HOUSE JUDICIARY

164

RECORDS CERTIFICATION

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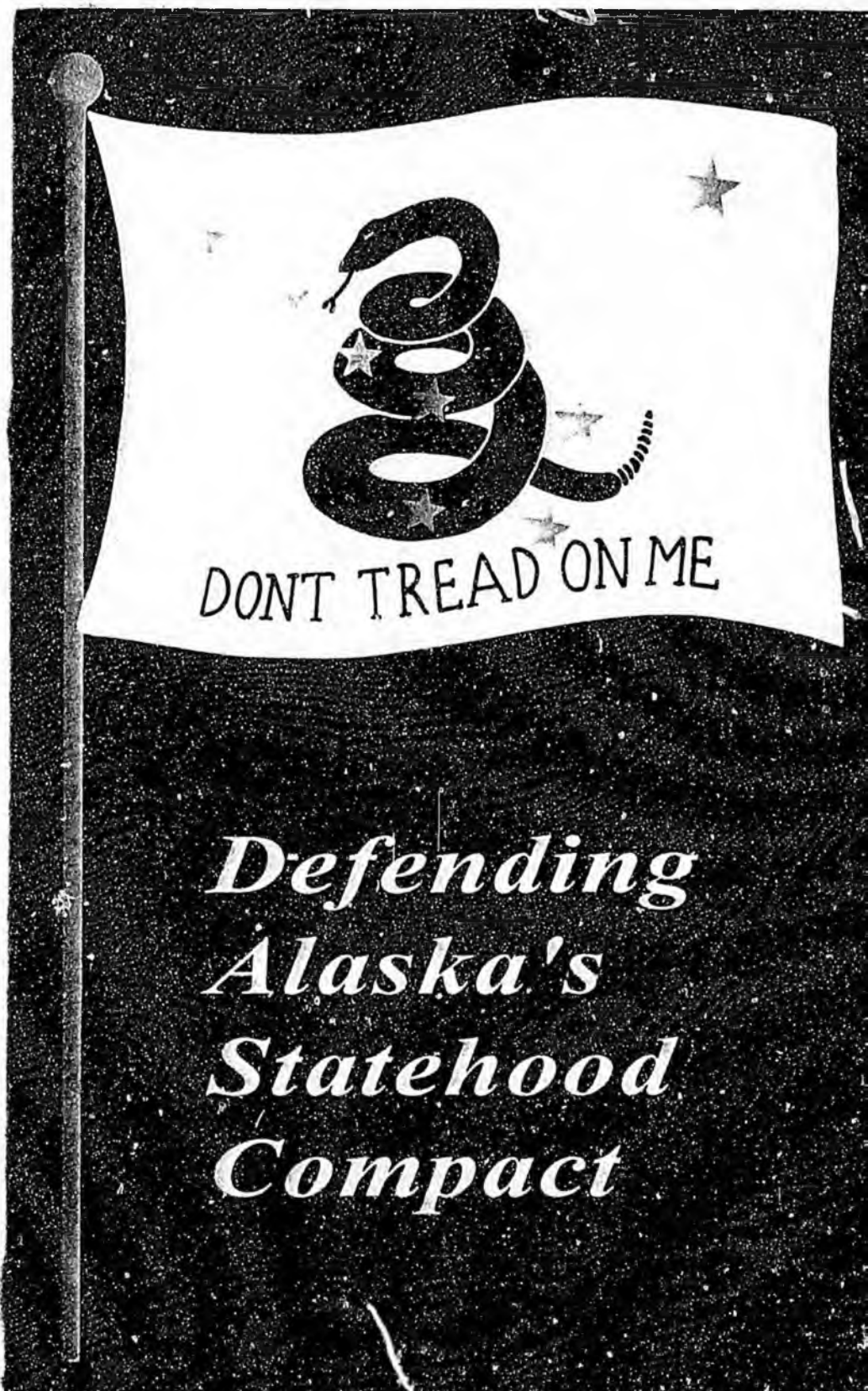
Jerry Duncan
Signature of Camera Operator

9/8/97
Date

02-519 (REV 8/78)

HCR

24



Defending Alaska's Statehood Compact

A PROMISE BROKEN

At statehood, Congress promised that revenues from 218 million federal acres in Alaska would help generate the mineral royalties the new state would need to be economically viable. Today, nearly 80 percent of that acreage, equal to the size of Texas, has been locked up by Congress.

(on the cover) The rattlesnake symbol with the motto " Don't Tread On Me" was used on several colonial flags and was flown in early 1776 as the rank flag of the Commander in Chief of the Fleet, Commodore Esek Hopkins. It has been combined here with eight stars of gold from the Alaska state flag, suggesting that we value our liberty and rights as much as our founding fathers.

The Statehood Compact: A Promise Made

by Governor Walter J. Hickel

Alaskans must protect our Statehood Compact. It is the key to our ability to create a solid foundation for our economy and a quality of life we are proud to pass on to our children. To grasp the importance of the Compact requires a brief look at history.

The question of how to add states to the Union arose even before the United States Constitution was framed. As a result of the revolutionary war, the Northwest Territory was added to the original 13 colonies. In 1785 and 1787, at the urging of Thomas Jefferson, the Continental Congress adopted the Northwest Ordinances, comprehensive acts providing for governance of such lands.

There are several noteworthy provisions of these ordinances which are important today. They affect Alaska's relationship with the federal government.

- *A new state was to be admitted "on an equal footing with the original states in all respects whatever."*
- *The ordinances were considered "as articles of compact, between the original states and the people and states in the said territory, and forever remain unalterable, unless by common consent." (emphasis added)*

These principles have been honored throughout U.S. history. The Supreme Court has held that the authority of Congress to admit new states into the Union is limited to admission on an equal footing with all other states.

A statehood compact is recognized as more than a law that can be changed at the whim of Congress. It is an agreement between the United States of America and the people of a state. In our case, Congress even required Alaska's voters to go to the polls and approve the terms as spelled out in the Alaska Statehood Act. Like any contract, once approved, it cannot be altered by one party without the agreement of the other.

In crafting the Alaska Statehood Act, Congress not only guaranteed that we would acquire all the attributes of sovereignty granted to all states under the U.S. Constitution, it ensured that we would be able to live up to our responsibilities in practical economic terms. It did this by "making the new State master in fact of most of the natural resources within its boundaries..." according to a congressional report at the time.

The terms of the Compact included the grant to Alaska of:

- *103 million acres of land and the subsurface riches beneath those acres.*
- *Ninety percent of the mineral royalties derived from federal lands in Alaska.*
- *The ability to manage Alaska's fish and game.*

Today, those rights have been violated and remain under attack. Actions by both the U.S. Congress and federal agencies have unilaterally violated the terms of Alaska's Compact.

Shortly after statehood, Congress began locking up large areas in Alaska that could produce promised royalties recognized as essential to Alaska's economic survival. For example, in 1980 the Alaska National Interest Lands Conservation Act was enacted, establishing vast national park and refuge holdings throughout the state. This act was not foreseen at statehood. Other withdrawals have since been legislated year after year.

Today, nearly 80 percent of the federal land from which the state was entitled to receive mineral royalties has been withdrawn from mineral development. Currently, Alaska has the following federal land acreage within its borders where mineral extraction of one kind or another is prohibited, where special land designations make development inordinately expensive, or where an Act of Congress is required before even exploration may take place:

National Wildlife Refuges	*75 million acres*
National Parks	*54 million acres*

BLM restricted areas	*26 million acres*
*National Forest conservation units **	*14 million acres*
U.S. Dept. of Defense lands	*2 million acres*
Total restricted lands	*171 million acres*

To put the true dimensions of these withdrawals into perspective, 171 million acres is the same size as the entire State of Texas. To remove such a large potential revenue source without compensation to Alaska is a breach of the Compact, and the State of Alaska is seeking redress and damages.

To remedy these violations, I have directed Attorney General Charlie Cole to prepare a series of landmark lawsuits. A special team has been created within the Department of Law to prepare and prosecute these cases.

The most important suit defends the Compact itself. Other litigation will ensure access to Alaskan lands. As far back as English common law, it is a truism that land cannot be conveyed without access. But many of the Congressional withdrawals are so situated that access to state lands is blocked. This, in effect, makes the state land of little or no value.

In addition, the State of Alaska will challenge all other congressional and federal agency actions that violate the state's sovereignty or the Compact. The federal ban which forbids export of North Slope crude oil is a notorious example. It singles out Alaska, bleeding us of the benefits of our natural resources, our pioneering, and our strong environmental record. No other state is exclusively prohibited from selling its resources in the world marketplace.

The state has filed two additional suits; one to confirm Alaska's title to submerged lands beneath our navigable waters, and the other to ensure our ability to manage fish and game within our state.

Since the early 1970's, Congress has pandered to those who would lock up Alaska. This was and is considered a "cheap environmental vote." Evidence of a double standard lies in the fact that the other 49 states contain just over 30 percent of the nation's wilderness. The rest is in Alaska.

This is ironic because no state has a better environmental record. Including all of the oil activities on the North Slope, we have developed less than one-half of one percent of Alaska. In our lifetimes, we won't develop even another half of one percent of Alaska. All that we do is done carefully, obeying strict federal and state guidelines. Alaskans don't want it any other way.

Remember, neither the U.S. Congress nor the federal agencies can change our Statehood Compact without the approval of the Alaskan people.

As Alaskans, we must stand up for our rights, and each generation to follow must do the same.

* *About half of this USFS acreage is technically open to entry, but restrictions make mineral development so expensive, it is thought to be cost prohibitive.*

Alaska State Legislature

Speaker of the House of Representatives

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

POSITION PAPER

HCR 24

HCR 24 supports the Governor's decision to authorize a suit against the United States government for violating the Alaska Statehood Act. When the Alaska Statehood Act was crafted, Congress guaranteed all attributes of sovereignty that were granted to all other states under the U.S. Constitution. However, over the past few years, the terms of the Alaska Statehood Act have been violated by the Congress. These violations include withdrawal from development of nearly 80% of the federal land from which Alaska was to derive mineral royalties. Alaska is also the only state not allowed to sell her oil resources abroad.

Alaska is a sovereign state and we must not let our sovereignty be violated. The Statehood Act was an agreement between Congress and the People of Alaska and it cannot unilaterally be changed. We must stand up for our rights now and in the future. The attached pamplet being distributed by the Governor's office sets forth further details of this issue.

HCR

28

Alaska State Legislature

Speaker of the House of Representatives

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

POSITION PAPER

HCR 28

In the early 1980s, several inmates incarcerated in Alaska's correctional institutions sued the state alleging that some if not all of the conditions of their confinement were unconsitutional. Although the superior court found **no** conditions of confinement at that time to be unconstitutional, it did find that the conditions **might** become unconstitutional at some future unspecified date. Despite the fact that the plaintiffs failed to present any proof of unconsitutional conditions of confinement, the court decided, and in some cases the state agreed, to allow the court to dictate the conditions of confinement either through the settlement agreements or the court's orders and decisions. This agreement required the department to hire and pay for monitors (at no small cost) to ensure that the conditions were being met.

Since the time the lawsuit was first filed, any potential unconstitutional conditions have been rectified and continued court intervention is unnecessary. With the state's declining revenue picture, we can no longer continue to provide more than is consitutionally required.

HCR 28 urges the Governor to direct the Attorney General to take whatever steps are necessary to dissolve or modify the Cleary partial settlement agreements, court orders, and decisions in this case.

when he reluctantly gave handwriting samples to police after they refused his request to consult his lawyer.

Section 12. Excessive Punishment

> **Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. Penal administration shall be based on the principle of reformation and upon the need for protecting the public.**

The first sentence of this section is drawn verbatim from Article VIII of the U.S. Bill of Rights. There has been little litigation over the constitutionality of fines and bail at either the federal or state level. The provision is understood to mean that bail may not be set higher than the amount necessary to assure the defendant's presence at trial (*John Doe v. State*, 487 P.2d 47, 1971). Thus, a judge may not seek to keep a person incarcerated by setting an unreasonably high bail.

While a definition of "cruel and unusual punishment" clearly includes torture and other forms of barbarous treatment, it has been expanded over the years to encompass punishments that are grossly disproportionate to the seriousness of the crime and to the denial of needed medical treatment (including psychiatric care) to prisoners. Indeed, some state constitutions contain, in addition to or instead of a prohibition against cruel and unusual punishment, an explicit requirement that penalties be scaled to the offense.

In Alaska, a traditional Eskimo convicted of murder claimed that his imprisonment in any facility other than the Bethel jail amounted to cruel and unusual punishment because he spoke Yupik and virtually no English, ate a Native diet which was unavailable in other prisons, and had no experience outside the traditional life of Natives in southwest Alaska. The court was unsympathetic to his claim (*Abraham v. State*, 585 P.2d 526, 1978), as it was to the claim by another prisoner that the denial of conjugal visits was a form of cruel and unusual punishment (*McGinnis v. Stevens,* 543 P.2d 1221, 1975).

The second sentence of this section, requiring that penal administration be based on the principle of reformation and the need to protect the public, has no counterpart in the U.S. Constitution, as it expresses a progressive ideal of prison reform that became popular in the late 1800s. Alaska is one of several states with a constitutional commitment to

humane and rehabilitative treatment of prisoners (for example, Oregon's constitution, Article I, Section 15, states: "Laws for the punishment of crime shall be founded on the principles of reformation, and not of vindictive justice").

The record is clear that in embracing the principle of reformation, delegates to Alaska's constitutional convention did not intend to abolish capital punishment (by means of the argument, in the words of Delegate George McLaughlin, "that you cannot reform a dead man"). Delegate James Doogan stated that the reformation language "was more or less advisory or instructive to the penal institutions." Nonetheless, the Alaska Supreme Court has interpreted it to mean that state prisoners in Alaska have a constitutional right to rehabilitation services (*Rust v. State*, 584 P.2d 38, 1978). This right was clarified in the *Abraham* case: the Eskimo who failed to convince the court that his incarceration outside of the Bethel area was unconstitutional, did convince the court that he had a constitutional right while in prison to rehabilitative treatment for his alcoholism, as such treatment was the key to reforming his criminal behavior (*Abraham v. State,* 585 P.2d 526, 1978).

Alaska's supreme court has enunciated specific sentencing goals that are inherent in the twin constitutional principles of prisoner reformation and public protection. Known as the "Chaney criteria," these are the "rehabilitation of the offender into a noncriminal member of society, isolation of the offender from society to prevent criminal conduct during the period of confinement, deterrence of the offender himself after his release from confinement or other penological treatment, as well as deterrence of other members of the community who might possess tendencies toward criminal conduct similar to that of the offender, and community condemnation of the individual offender, or in other words, reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves" (*State v. Chaney*, 477 P.2d 441, 1970). It has declared that the last of these sentencing goals, reaffirmation of societal norms, may not be used as a guise for retribution, which has no place in Alaska's constitutional scheme (*Smothers v. State*, 579 P.2d 1062, 1978).

The high court has upheld presumptive sentences adopted by the legislature (AS 12.55.125 - 175) against challenges that they conflict with this section of the constitution and that they unconstitutionally infringe on the power of the judiciary (*Nell v. State*, 642 P.2d 1361, 1982).

Penal administration in Alaska has been greatly affected in recent years by a longstanding class action suit brought by prisoners against the state alleging that overcrowding and

other substandard prison conditions violated state statutes and regulations as well as federal and state constitutional provisions, including this section. Originally filed in 1981, the suit followed the pattern of such suits in many other states. It spawned an enormous amount of litigation and negotiation that was not entirely settled a decade later. The court orders and negotiated agreements that have emerged from this so-called *Cleary* case (*Michael Cleary, et al. v. Robert Smith, et al.*, Superior Court, Third Judicial District, No. 3AN-81-5274), have, among other things, clarified and expanded the role of rehabilitation programs in Alaska's prison system.

Section 13. Habeas Corpus

> **The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or actual or imminent invasion, the public safety requires it.**

A writ of habeas corpus is a means by which a person in jail may have the legality of his detention reviewed by a court. It is not a device to determine guilt or innocence; rather, it is intended to determine whether due process was observed when a person was jailed. This is perhaps the oldest and most famous safeguard of personal liberty in the Anglo-American judicial tradition. Protection from the suspension of the writ of habeas corpus is found in the U.S. Constitution (Article I, Section 9) and the other state constitutions. This version differs from conventional statements of the right by the addition of "actual or imminent" before invasion, to account for the conditions of modern warfare.

Section 14. Searches and Seizures

> **The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.**

Here is the search-and-seizure article of the U.S. Bill of Rights (Article IV), with the addition of the words "and other property" and altered punctuation. Although this

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HCR 28

Revision Date:
Title: Get Cleary orders dissolved or changed
Sponsor: Rep. Barnes, Phillips, Williams, Toohey...
Requestor:

Dept. Affected: Alaska Court System
BRU: Trial Courts
Components:
COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) cost: $ None

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel
Agency: Alaska Court System
Phone: 264-8228
Date: 02/03/94

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System
Date: 02/03/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Rev 8/93

RECORDS CERTIFICATION

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Jerry Duncan
Signature of Camera Operator

9/8/97
Date

02-519 (REV 8/78)

HJR

1

Alaska State Legislature
House of Representatives

COMMITTEES:
HEALTH, EDUCATION
& SOCIAL SERVICES
JUDICIARY
STATE AFFAIRS

SPECIAL COMMITTEES:
MILITARY & VETERANS AFFAIRS
OIL & GAS

HOME:
9843 CHICHAGOF LOOP
EAGLE RIVER, AK 99577
PHONE (907) 694-7943

DURING SESSION:
STATE CAPITOL
JUNEAU, AK 99811
PHONE (907) 465-3777

Representative Pete Kott

TO: State of Alaska
Department of Law
Office of the Attorney General

HAND DELIVERED

FROM: Representative Pete Kott
DATE: January 25, 1993
RE: House Joint Resolution 1

Please find enclosed a copy of HJR1, which proposes a constitutional amendment permitting amendments to the constitution by initiative.

I am requesting an opinion from your office concerning the following issues:

1. Assuming that the Constitution is amended as proposed in HJR1, would the restrictions contained in Article XI, Section 7 apply to constitutional amendments through the initiative process?

2. Assuming that the restrictions contained in Article XI, Section 7 would apply to amendments through the initiative process, would said restrictions prevent the amendment or repeal of Article IX, Section 15 or other similar constitutional or statutory provision creating funds?

3. Assuming that the answer to issue number 2, supra, is in the affirmative, is there anything which would prevent the repeal of Article XI, Section 7 through the initiative process and then repealing Article IX, Section 15, thus accomplishing in two steps, what could not be accomplished by one? If so, is there any way of drafting HJR1 so as to prevent this from occurring?

The House State Affairs Committee is currently considering HJR1, as well as a similar resolution. Accordingly, clarification of the constitutional ramifications of the above stated issues is a matter of some urgency.

Thank you in advance for your kind assistance in this matter.

cc: House State Affairs Committee
Representative Gail Phillips

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 8, 1993

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

☐ *1031 W. 4TH AVENUE, SUITE 200*
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

☐ *KEY BANK BUILDING*
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

X☐ *P. O. BOX 110300 - STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

The Honorable Pete Kott
Alaska State Legislature
House of Representatives
State Capitol, Room 409
Juneau, AK 99801-1182

Re: Effect of House Joint Resolution 1
Our file no. 663-93-0287

Dear Representative Kott:

You have requested advice concerning House Joint Resolution 1, which would amend the Alaska Constitution to permit amendment of the constitution by initiative. Specifically, you have asked whether subject matter restrictions of article XI, section 7 would apply to initiated amendments to the constitution, and about the effects of the initiative on Alaska Constitution article IX, section 15, which establishes the Alaska Permanent Fund, and on other funds established by the constitution or statutes.

Alaska Constitution, article XI, section 7, prohibits use of the initiative to dedicate revenues, make or repeal appropriations, define the jurisdiction of or prescribe the rules of courts, or enact local or special legislation. If the constitution is amended as proposed in HJR 1, the subject matter restrictions will apply to initiated constitutional amendments. An initiative to amend Alaska Constitution article IX, section 15 to change the percentage or source of money received by the state that must be dedicated to the permanent fund would be prohibited by the subject matter restrictions section.

On the other hand, it is possible that amendment of the constitution to remove article IX, section 15 could be accomplished by initiative without violating the restrictions provisions. Removal of the constitutional provision for the permanent fund would not dedicate revenues; rather, it would eliminate a

constitutional dedication of funds,[1] and would make the permanent fund principal and future mineral royalties available for appropriation by the legislature. This probably would not constitute an appropriation.[2]

Furthermore, as you suggest in your letter, the restrictions section could be amended or eliminated from the constitution by an initiated amendment, thereby opening the door to all manner of initiatives that dedicate revenues and make appropriations.

In order to prevent initiation of amendments to statutory and constitutional provisions for the permanent fund and other funds, HJR 1 could be amended to include an amendment to article XI, section 7 to prohibit the use of the initiative to amend or repeal that section or any constitutional or statutory provision that creates a valid dedicated fund.

---

[1] A separate provision of the Alaska Constitution prohibits dedication of state revenues to special purposes. Alaska Const., art. IX, sec. 7. The permanent fund, the budget reserve fund, and those dedications of funds in effect before the constitution was ratified or that are required for participation in federal programs are exempted from this prohibition. The purpose of the dedicated funds "prohibition is to preserve control of and responsibility for state spending in the legislature and the governor." Sonneman v. Hickel, 836 P.2d 936, 938 (Alaska 1992).

[2] However, the Alaska Supreme Court has construed the prohibition against initiation of appropriations very broadly. See Thomas v. Bailey, 595 P.2d 1 (Alaska 1979) (establishment of a land give-away program was an "appropriation" prohibited by the restrictions clause); Alaska Conservative Political Action Comm. v. Municipality of Anchorage, 745 P.2d 936 (Alaska 1987) (initiative to require transfer of a municipal utility to a private non-profit entity would make an appropriation); McAlpine v. Univ. of Alaska, 762 P.2d 81 (Alaska 1988) (provision of an initiative that required the university to transfer property to the community college system was not prohibited, but provision that specified the amount of property that must be transferred would make an appropriation).

Please let us know if you need further advice in this matter.

Sincerely yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Virginia B. Ragle
Virginia B. Ragle
Assistant Attorney General

VBR:cp

cc: Charles E. Cole, Attorney General
Bruce Botelho, Deputy Attorney General
Deborah Behr, Assistant Attorney General
Kris Lethin, Office of the Governor

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE (2-15-93

HOUSE JOINT RESOLUTION 1
(PROPOSING AMENDMENTS TO THE CONSTITUTION AUTHORIZING THE INITIATIVE PROCESS TO AMEND THE CONSTITUTION IS APPROVED BY TWO-THIRDS VOTES CAST IN THE AFFIRMATIVE ON THE PROPOSED AMENDMENT)

MR. CHAIRMAN.....MEMBERS OF THE HOUSE JUDICIARY COMMITTEE.....MY NAME IS GAIL PHILLIPS.....I REPRESENT HOUSE DISTRICT 7.....

HOUSE JOINT RESOLUTION 1.....PROPOSES AMENDMENTS TO THE STATE CONSTITUTION WHICH WOULD ALLOW THE USE OF THE INITIATIVE PROCESS TO AMENDMENT OUR CONSTITUTION IF APPROVED BY 2/3 VOTES IN THE AFFIRMATIVE.....

PRESENTLY THE PEOPLE OF ALASKA CAN PROPOSE AND ENACT LAWS BY INITIATIVE.....AND.....APPROVE OR REJECT ACTS OF THE LEGISLATURE BY REFERENDUM.....

DURING THE GOVERNOR'S RECENT STATE OF STATE ADDRESS BEFORE A JOINT SESSION OF THE LEGISLATURE.....HE STATED IN PART.....'.....TO IMPROVE OUR GOVERNMENT PROCESS.....I ASK FOR YOUR SUPPORT TO ALLOW THE ALASKA PEOPLE TO AMEND THE CONSTITUTION THROUGH INITIATIVE AND REFERENDUM.....' HE CONTINUED, "SEVERAL OF THE AUTHORS OF ALASKA'S CONSTITUTIONAL CONVENTION HAVE TOLD ME THAT THIS IS THE ONE MAJOR SHORTCOMING IN THE DOCUMENT THEY WROTE. AS IT IS TODAY, SHORT OF A FULL-BLOWN CONSTITUTIONAL CONVENTION, ONLY THE LEGISLATURE.....BY A TWO-THIRDS VOTE.....CAN RECOMMEND AN AMENDMENT TO THE FOUNDATION DOCUMENT OF OUR SOCIETY.....THE PEOPLE <u>SHOULD</u> PARTICIPATE. THEY ARE USUALLY AHEAD OF GOVERNMENT. MANY OF YOU ARE ON RECORD IN FAVOR OF THIS MUCH NEEDED CHANGE. LET'S DO IT", HE CONCLUDED.....

SGN

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE (2-15-93)

PAGE TWO
HOUSE JOINT RESOLUTION 1
(AMENDING CONSTITUTION BY INITIATIVE PROCESS)

I WOULD LIKE TO REPEAT.....ONLY THE LEGISLATURE.....BY 2/3 VOTE.... CAN RECOMMEND A PROPOSED AMENDMENT TO THE CONSTITUTION..... THE LEGISLATURE IS REQUIRED TO HAVE 2/3 VOTES IN EACH BODY TO PASS ANY JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE STATE'S CONSTITUTION BE PLACED BEFORE THE VOTERS.....

IT ONLY MAKES GOOD SENSE.....IN MY ESTIMATION.....THAT AMENDING THE CONSTITUTION BY INITIATIVE SHOULD ALSO REQUIRE A 2/3 AFFIRMATIVE VOTE FOR PASSAGE.....THIS WOULD BE CONSISTENT AND APPROPRIATE.....

THE INITIATIVE PROCESS IS NOT A CUT AND DRIED PROCESS.....IT TAKES A LOT OF PREPARATION WORK PRIOR TO EVEN GETTING THE QUESTION ON THE BALLOT FOR A VOTE.....

1) AN INITIATIVE IS PROPOSED BY FILING AN APPLICATION WITH THE LT. GOVERNOR AND MUST BE ACCOMPANIED BY A DEPOSIT OF $100 AND SHALL BE REFUNDABLE ONLY IF THE PETITION IS PROPERLY FILED.....

2) THE APPLICATION SHALL INCLUDE THE PROPOSED BILL TO BE INITIATED.....THE SIGNATURES AND ADDRESSES OF NOT LESS THAN QUALIFIED VOTERS.....WHO THEN BECOME THE SPONSORS AND THE DESIGNATION OF AN INITIATIVE COMMITTEE OF (3) SPONSORS WHO SHALL REPRESENT ALL SPONSORS AND SUBSCRIBERS IN MATTERS RELATING TO THE INITIATIVE.....

SGN

HOUSE JOINT RESOLUTION 1

ONCE THE LT. GOVERNOR HAS CERTIFIED THE APPLICATION.....HE SHALL PREPARE THE PETITIONS FOR PURPOSES OF CIRCULATION AND IN A NUMBER REASONABLE CALCULATED TO ALLOW FULL CIRCULATION IN THE STATE..... THE PETITIONS MAY BE CIRCULATED THROUGHOUT THE STATE ONLY BY A SPONSOR AND ONLY IN PERSON.....ONCE THE SPONSORS RECEIVED NOTICE FROM THE LT. GOVERNOR THAT THE PETITIONS ARE AVAILABLE FOR DISTRIBUTION.....THEY HAVE ONE YEAR FROM THEN TO OBTAIN SIGNATURES FROM QUALIFIED VOTERS EQUAL IN NUMBER TO 10 PERCENT OF THOSE WHO VOTED IN THE PRECEDING GENERAL ELECTION AND RESIDE IN AT LEAST TWO-THIRDS OF THE ELECTION DISTRICTS OF THE STATE.....

MR. CHAIRMAN.....PRESENTLY 21 STATES ALLOW FOR THE INITIATIVE PROCESS.....17 OF WHICH CAN AMEND THEIR CONSTITUTION BY THIS METHOD.....

I HAVE PROVIDED THE COMMITTEE WITH A LISTING OF THOSE STATES.....

ALSO YOU WILL FIND IN YOUR FILES.....A COLOR CODED CHART INDICATING WHAT CONSTITUTIONAL MEASURES HAVE APPEARED ON THE BALLOT IN ALASKA..... AND BY WHAT PERCENTAGES THEY HAVE PASSED.....AND REPORTS FROM THE LEGISLATIVE RESEARCH AGENCY

SGN

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HJR 1

Revision Date: _____

Department Affected: Office of the Governor

Title: Amendment to the Constitution RE: use of initiative to amend State Constitution

BRU: Division of Elections

Component: General and Primary Elections

Sponsor: Representatives Phillips, Bunde

Requestor: _____

COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0
FUNDING:						
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	2.2*	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0
POSITIONS:						
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: 0

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

Prepared by: Charlot E. Thickstun, Director Phone: 465-4611

Division: Division of Elections Date: 1/15/93

Approved by Commissioner: Lt. Governor John B. Coghill

Agency: Office of the Lt. Governor Date: 1/15/93

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Rev 11/92

Alaska State Legislature

HOUSE OF REPRESENTATIVES

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STATE CAPITOL
JUNEAU, ALASKA
99801-1182

MEMORANDUM

TO: Representative Brian Porter, Chairman Brian
House Judiciary Committee

FROM: Representative Gail Phillips Gail

SUBJECT: House Joint Resolution 1
(use of initiative to amend constitution)

DATE: February 1, 1993

I would appreciate your scheduling the above referenced resolution for a hearing before the House Judiciary Committee at your earliest possible convenience.

Presently 21 states allow for the iniatiative process; 17 of those to amend their state's constitution.

I have provided the attached information for the committee files and anticipate that I may have additional backup prior to the committee's hearing. My sponsor statement will be provided following my testimony.

Your consideration of my request is greatly appreciated.

GP/sgn

Attachments

INTERIM PHONE: (907) 235-6748 INTERIM ADDRESS: BOX 3304, HOMER, AK 99603

REQUEST FOR SCHEDULING

Table 1.3
CONSTITUTIONAL AMENDMENT PROCEDURE: BY INITIATIVE
Constitutional Provisions

State or other jurisdiction	Number of signatures required on initiative petition	Distribution of signatures	Referendum vote
Arizona	15% of total votes cast for all candidates for governor at last election.	None specified.	Majority vote on amendment.
Arkansas	10% of voters for governor at last election.	Must include 5% of voters for governor in each of 15 counties.	Majority vote on amendment.
California	8% of total voters for all candidates for governor at last election.	None specified.	Majority vote on amendment.
Colorado	5% of total legal votes for all candidates for secretary of state at last general election.	None specified.	Majority vote on amendment.
Florida	8% of total votes cast in the state in the last election for presidential electors.	8% of total votes cast in each of 1/2 of the congressional districts.	Majority vote on amendment.
Illinois (a)	8% of total votes cast for candidates for governor at last election.	None specified.	Majority voting in election or 3/5 voting on amendment.
Massachusetts (b)	3% of total votes cast for governor at preceding biennial state election (not less than 25,000 qualified voters).	No more than 1/4 from any one county.	Majority vote on amendment which must be 30% of total ballots cast at election.
Michigan	10% of total voters for all candidates at last gubernatorial election.	None specified.	Majority vote on amendment.
Missouri	8% of legal voters for all candidates for governor at last election.	The 8% must be in each of 2/3 of the congressional districts in the state.	Majority vote on amendment.
Montana	10% of qualified electors, the number of qualified electors to be determined by number of votes cast for governor in preceding general election.	The 10% to include at least 10% of qualified electors in each of 2/5 of the legislative districts.	Majority vote on amendment.
Nebraska	10% of total votes for governor at last election.	The 10% must include 5% in each of 2/5 of the counties.	Majority vote on amendment which must be at least 35% of total vote at the election.
Nevada	10% of voters who voted in entire state in last general election.	10% of total voters who voted in each of 75% of the counties.	Majority vote on amendment, in two consecutive general elections.
North Dakota	4% of population of the state.	None specified.	Majority vote on amendment.
Ohio	10% of total number of electors who voted for governor in last election.	At least 5% of qualified electors in each of 1/2 of counties in the state.	Majority vote on amendment.
Oklahoma	15% of legal voters for state office receiving highest number of voters at last general state election.	None specified.	Majority vote on amendment.
Oregon	8% of total votes for all candidates for governor at last election at which governor was elected for four-year term.	None specified.	Majority vote on amendment.
South Dakota	10% of total votes for governor in last election.	None specified.	Majority vote on amendment.
No. Mariana Islands	50% of qualified voters of commonwealth	In addition, 25% of qualified voters in each senatorial district	Majority vote on amendment if legislature approved it by majority vote; if not, at least 2/3 vote in each of two senatorial districts in addition to a majority vote.

(a) Only Article IV, the Legislature, may be amended by initiative petition.
(b) Before being submitted to the electorate for ratification, initiative measures must be approved at two sessions of a successively elected legislature by not less than one-fourth of all members elected, sitting in joint session.

HJR11

PROCED

State or other jurisdiction

Alabama
Alaska
Arizona
Arkansas
California

Colorado
Connecticut
Delaware
Florida
Georgia

Hawaii
Idaho
Illinois
Indiana
Iowa

Kansas
Kentucky
Louisiana
Maine
Maryland

Massachusetts
Michigan
Minnesota

Mississippi
Missouri

Montana
Nebraska
Nevada
New Hampshire

New Jersey

New Mexico
New York
North Carolina
North Dakota
Ohio

Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina

South Dakota
Tennessee
Texas
Utah
Vermont

Virginia
Washington
West Virginia
Wisconsin
Wyoming

American Samoa
No. Mariana Islands

Puerto Rico

See footnotes at end of

Table 1.4
PROCEDURES FOR CALLING CONSTITUTIONAL CONVENTIONS
Constitutional Provisions

State or other jurisdiction	Provision for convention	Legislative vote for submission of convention question(a)	Popular vote to authorize convention	Periodic submission of convention question required(b)	Popular vote required for ratification of convention proposals
Alabama	Yes	Majority	ME	No	Not specified
Alaska	Yes	No provision(c,d)	(c)	10 years(c)	Not specified(c)
Arizona	Yes	Majority	(e)	No	MP
Arkansas	No		No		
California	Yes	2/3	MP	No	MP
Colorado	Yes	2/3	MP	No	ME
Connecticut	Yes	2/3	MP	20 years(f)	MP
Delaware	Yes	2/3	MP	No	No provision
Florida	Yes	(g)	MP	No	Not specified
Georgia	Yes	(d)	No	No	MP
Hawaii	Yes	Not specified	MP	9 years	MP(h)
Idaho	Yes	2/3	MP	No	Not specified
Illinois	Yes	3/5	(i)	20 years	MP
Indiana	No		No		
Iowa	Yes	Majority	MP	10 years; 1970	MP
Kansas	Yes	2/3	MP	No	MP
Kentucky	Yes	Majority(j)	MP(k)	No	No provision
Louisiana	Yes	(d)	No	No	MP
Maine	Yes	(d)	No	No	No provision
Maryland	Yes	Majority	ME	20 years; 1970	MP
Massachusetts	No			No	Not specified
Michigan	Yes	Majority	MP	16 years; 1978	MP
Minnesota	Yes	2/3	ME	No	3/5 voting on proposal
Mississippi	No		No		
Missouri	Yes	Majority	MP	20 years; 1962	Not specified(l)
Montana	Yes(m)	2/3(n)	MP	20 years	MP
Nebraska	Yes	3/5	MP(o)	No	MP
Nevada	Yes	2/3	ME	No	No provision
New Hampshire	Yes	Majority	MP	10 years	2/3 voting on proposal
New Jersey	No		No		
New Mexico	Yes	2/3	MP	No	Not specified
New York	Yes	Majority	MP	20 years; 1957	MP
North Carolina	Yes	2/3	MP	No	MP
North Dakota	No		No		
Ohio	Yes	2/3	MP	20 years; 1932	MP
Oklahoma	Yes	Majority	(e)	20 years	MP
Oregon	Yes	Majority	(e)	No	No provision
Pennsylvania	No		No		
Rhode Island	Yes	Majority	MP	10 years	MP
South Carolina	Yes	(d)	ME	No	No provision
South Dakota	Yes	(d)	(d)	No	(p)
Tennessee	Yes(q)	Majority	MP	No	MP
Texas	No		No		
Utah	Yes	2/3	ME	No	MP
Vermont	No		No		
Virginia	Yes	(d)	No	No	MP
Washington	Yes	2/3	ME	No	Not specified
West Virginia	Yes	Majority	MP	No	Not specified
Wisconsin	Yes	Majority	MP	No	No provision
Wyoming	Yes	2/3	ME	No	Not specified
American Samoa	Yes	(r)	No	No	ME(s)
Puerto Rico	Yes	2/3	MP	No	MP

Provided by Senator Rick Halford for SJR 6 (am State constitution authorizing use of initiative process) 1-27-93

HOUSE JOINT RESOLUTION 1 - Sponsored by Representative Gail Phillips

CONSTITUTIONAL AMENDMENTS APPEARING ON THE BALLOT

Election Date	Subject of Amendment	Provisions Affected	Resolution Number	Vote Totals		% in favor
				For	Against	
08/23/66	Residency Requirement to Vote for President	Article V, Section 1	SJR 1	36,667	12,383	75%
08/27/68	Commission on Judicial Qualifications	Article IV, Section 10	HJR 74	32,481	12,823	71%
08/27/68	Compensation of Judicial Qualification Commission	Article IV, Section 13	HJR 74	27,156	17,467	61%
08/25/70	Establishing Voting Age at 18 Years	Article V, Section 1	HJR 7	36,590	31,216	54%
08/25/70	English Eliminated as Requisite for Voting	Article V, Section 1	HJR 51	34,079	32,578	51%
08/25/70	Secretary of State Designated Lieutenant Governor	Article III, Sections 7 – 11, 13 – 15 and 25; Article XI, Sections 2 – 6; Article XIII, Sections 1 and 3; and Article XV, Section 9	SJR 2	46,102	18,781	71%
08/25/70	Chief Justice Election by Supreme Court	Article IV, Section 2	HJR 11	44,055	19,583	69%
08/25/70	Term of Office for Judicial System Administrator	Article IV, Section 16	HJR 11	43,462	18,651	70%
08/22/72	Residency Requirement for Voting	Article V, Section 1	HJR 126	31,130	20,745	60%
08/22/72	Prohibition of Sexual Discrimination	Article I, Section 3	HJR 102	43,281	10,278	81%

[ ] = passage by 66% or greater = 11

[ ] = passage by 60-66% = 9

[ ] = passage by 50-60% = 2

[ ] = failed passage = 9

Total submitted = 31

CONSTITUTIONAL AMENDMENTS APPEARING ON THE BALLOT

Election Date	Subject of Amendment	Provisions Affected	Resolution Number	Vote Totals		% in favor
				For	Against	
08/22/72	Right of Privacy	Article I, Section 22	SJR 68	45,539	7,303	86%
08/22/72	Eliminate City Representation on Borough Assemblies	Article X, Section 4	SJR 52	30,132	19,354	61%
08/22/72	Limited Entry Fisheries	Article VIII, Section 15	SJR 10	39,837	10,761	79%
08/27/74	Voting on Constitutional Amendments at General Elections	Article XIII, Section 1	HJR 20	56,017	20,403	73%
11/02/76	Action on Veto of Bills	Article II, Sections 9 and 16	HJR 11	71,629	39,980	64%
11/02/76	Permanent Fund from Nonrenewable Resource Revenue	Article IX, Sections 7 and 15	HJR 39	75,588	36,518	66% 66.24
11/02/76	Administration and Review of State Land Disposals	Article VIII, Section 10	SJR 10	46,652	64,744	42%
11/02/76	Direct Financial Aid to Students	Article VII, Section 1	HJR 73	54,636	64,211	46%
11/07/78	Powers of Legislative Interim Committees	Article II, Section 11	SJR 16	48,078	68,403	40%
11/04/80	Legislative Annulment of Regulations	Article II, (New Section)	HJR 82	58,808	62,010	42%
11/04/80	Disqualifications of Legislators	Article II, Section 25	SJR 2	47,054	99,705	32%
11/04/80	Interim and Special Legislative Committees	Article II, Section 11	HJR 80	41,868	102,270	29%
11/04/80	Appointment and Confirmation of Members	Article III, Section 26	HJR 20	56,316	90,506	38%

CONSTITUTIONAL AMENDMENTS APPEARING ON THE BALLOT

Election Date	Subject of Amendment	Provisions Affected	Resolution Number	Vote Totals		% in favor
				For	Against	
11/02/82	Veterans' Housing Bonding Authority	Article IX, Section 8	HJR 71	111,460	*69,497*	62%
11/02/82	Changes in Commission on Judicial	Article IV, Section 10	HJR 32	123,172	*53,424*	70%
11/02/82	Limiting Increases in Appropriations	Article IX, Section 16; Article XV, Sections 26, 27 and 28	SJR 4	110,669	*71,531*	61%
11/06/84	Legislative Annulment of Administrative Regulations	Article II, (New Section)	HJR 5	*91,171*	98,855	48%
11/06/84	Limiting Length of Regular Legislative Sessions	Artice II, Section 8	HJR 2 (Rules)	150,999	*94,299*	62%
11/04/86	Legislative Annulment of Administrative Regulations	Article II, (New Section)	SJR 40	*65,176*	94,299	41%
11/08/88	Resident Hiring Preference	Article I, Section 23	HJR 18	162,997	*30,650*	84%
11/06/90	Budget Reserve Fund	Article IX, Section 17	SJR 5	124,280	*63,307*	66% 66.25

Rejected by voters.

Prepared by the Legislative Research Agency, September 1992 (92.A).

HOUSE COMMITTEE REPORT

(11)

Date Referred: January 11, 1993

FURTHER REFERRALS: Judiciary, Finance

Date of Committee Action: 1-30-93

The STATE AFFAIRS Committee considered: HJR 1

HOUSE JOINT RESOLUTION NO. 1 USE OF INITIATIVE TO AMEND CONSTITUTION

Proposing amendments to the Constitution of the State of Alaska authorizing the use of the initiative to amend the Constitution of the State of Alaska by approval of two-thirds of the votes cast on the proposed amendment.

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
			X		
	✓		X		
	✓				
	X				

CHAIRMAN'S SIGNATURE

STATE AFFAIRS COMMITTEE REPORT

Alaska State Legislature

Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 465-3991
Fax: (907) 463-3331

April 24, 1991

MEMORANDUM

TO: Senator Richard Eliason

FROM: Gordon S. Harrison, Director

RE: **Amendments to the Alaska Constitution**
Research Request 91.267

You asked for a list of amendments to the Alaska Constitution and the sponsor(s) of the resolution proposing each amendment. The table accompanying this memorandum presents the information you requested. You also asked for my opinion about the amendments that have been most significant. I believe that two amendments have had especially important social and economic impacts: the amendment that authorized the program of limited entry in the fisheries and the amendment that created the Alaska Permanent Fund. Two other important amendments are those that guaranteed a right to privacy and that limited the legislative session to 120 days. These amendments are highlighted on the table.

I hope this information is useful to you. If we can be of additional assistance, do not hesitate to contact us.

Attachment

LIST OF AMENDMENTS TO THE ALASKA CONSTITUTION (1991)

Year of Legislative Action	Title	Legislative Reference	Provisions Affected	Sponsors
1966	Permits voting requirements for President and Vice President to be set by law.	SJR 1	Article V, Section 1	Pollock
1968	Provides for removal, suspension, and censure of judges; creates commission on judicial qualifications [now judicial conduct]	2d FCCS SCS CS HJR 74	Article IV, Sections 10, 13	The Judiciary Committee by request
1969	Sets voting age at 18 years	HJR 7	Article V, Section 1	Schwamm, Anderson, Beirne, Boardman, Bradner, Bronson, Chance, Cornelius, Croft, Deveau, Eliason, Guess, Hensley, Hohman, Holm, Jackson, Kay, Kerttula, McVeigh, Metcalf, Miller, Orbeck, Paukan, Peratrovich, Reeves, Rettig and Sassara
1970	Changes title of secretary of state to lieutenant governor	SJR 2	Article III, Sections 7 – 13 –15, 25; Article XI, Sections 2 – 6; Article XIII, Sections 1, 3	Miller
1970	Provides for election of chief justice by majority of supreme court; places executive director of the court system under the control of the entire supreme court	FCCS SCS CS HJR 11	Article IV, Sections 2, 16	Kay, Bradner, Cornelius, Fink, Jackson, McVeigh and Miller
1970	Eliminates requirement to read or speak English for voting	HJR 51 am S	Article V, Section 16	Croft, Banfield, Borer, Bradner, Bronson, Chance, Cornelius, DeVeau, Eliason, Guess, Hensley, Hohman, Kay, McGill, McVeigh, Miller, Moses, Paukan, Peratrovich, Reeves, Rettig, Sackett, Sassara, Schwamm and Young
1971	Amends exclusive right of fisheries provision (permits limited entry program)	HCS CS SJR 10	Article VIII, Section 15	Rules Committee at request of governor

LIST OF AMENDMENTS TO THE ALASKA CONSTITUTION (1991)

Year of Legislative Action	Title	Legislative Reference	Provisions Affected	Sponsors
1972	Includes "sex" in civil rights provision	HJR 102	Article 1, Section 3	Rules Committee at request of governor
1972	Guarantees right to privacy	HCS SJR 68	Article 1 Section 22	Rules Committee by request
1972	Deletes one-year residency for voting	HJR 126 am S	Article V, Section 1	Rules Committee at request of governor
1972	Changes representation on borough assemblies	SJR 52	Article X, Section 4	Rules Committee at request of governor
1973	Provides for ratification of amendments in general election	HJR 20	Article XIII, Section 1	Parker
1975	Permits the legislature to reconsider in special session bills vetoed by governor	SCS CS HJR 11	Article II Sections 6, 9	Urion, Bowman, Bradner, Eliason, Fink, Freeman, Miller, Parker and Wallis
1976	Creates Alaska Permanent Fund	SCS CS SS HJR 39 (Resources) am S	Article IX Sections 7, 15	Rules Committee at request of governor
1981	Renames Commission on Judicial Qualifications	CS HJR 32 (Judiciary) am S	Article IV, Section 10	Judiciary Committee
1981	Imposes appropriation limit	FSS FCCS SJR 4	Article IX, Section 16; Article XV	Rules Committee at request of governor
1982	Permits general obligation debt for veterans housing	CS HJR 71 (State Affairs)	Article IX, Section 8	Cotten
1983	Limits length of legislative sessions	SCS CS HJR 2 (Rules)	Article II, Section 8	Hayes, Barnes, Flood, Phillips, Furnance, Abood, Liska, Cowdery, Szymanski, Fischer and Fritz
1988	Allows state to give hiring preference to Alaska residents	HJR 18 (Finance)	Article 1, Section 23	Donley, Gruenberg, Boyer, Hoffman, Koponen, Springer and Grussendorf
1990	Creates budget reserve fund	HCSCSSS SJR 5 (Finance am H)	Article IX, Section 17	Faiks, Jones Eliason, Fischer, Kelly and Uehling

Prepared by the Legislative Research Agency, April 1991 (91.267).

Alaska State Legislature

Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 465-3991
Fax: (907) 463-3351

April 30, 1991

MEMORANDUM

TO:

FROM: Gordon S. Harrison, Director

RE: **Initiative Process**
Research Request 91.262

You asked for information about the initiative process in a western state other than Alaska. We have chosen Utah as a case study, although we are enclosing some comparative information from the *Book of the States, 1990-1991* (published by the Council of State Governments) about the initiative process in the 23 states that currently allow some variation of it.

Initiative

The initiative is the method by which citizens can enact legislation or put before the legislature a proposed law. The *direct* initiative allows the voters to enact legislation; the *indirect* initiative allows voters to introduce a bill in the legislature.

Voters may not initiate federal laws in the United States. In fact, the initiative is rarely permitted by national governments (Australia and Switzerland are two of just a few exceptions). The initiative is far more common at the state and local level.

Both the initiative and referendum--the referendum allows voters to reject at the polls an act adopted by the legislature--were championed by political reformers early in this century as devices for expanding popular participation in lawmaking. As a consequence, these progressive measures were either authorized by statute or incorporated into state constitutions in many states.

According to the *Book of the States, 1990-1991*, the direct or indirect initiative is available to citizens in 23 states. In just two of these is only the indirect initiative permitted.

Use of the direct initiative is frequently limited. For example, the initiative many not be used to amend the constitution in some states (including Alaska), nor may it be used in some states (again, including Alaska) to appropriate money. Typically, an initiative may not be vetoed by the governor. Some states give the legislature a chance to act on the subject matter of an initiative before voters are presented with the act drawn up by the sponsors

of the initiative petition. In Alaska, for example, Article XI, Section 4 gives the legislature a chance to deal with the subject of an initiative petition. If the legislature enacts a law that is "substantially the same" as the petition, the petition dies.

Some states prohibit the legislature from repealing or amending an initiated law, or at least for doing so for a specified length of time after the measure is adopted. In Alaska, for example, an initiated law may not be repealed for two years after its enactment, although it may be amended by the legislature (which, of course, might be tantamount to repeal).

In order for an initiative to reach the ballot, the petition must have a substantial number of signatures. This is to ensure that the measure is widely supported, and to protect against frivolous use of the process. The number of required signatures varies from state to state, and it is usually expressed as a percent of the number of voters who cast ballots in the most recent election.

All initiated laws must conform to constitutional and other legal standards that pertain to regular legislation. For example, voters in Alaska may not by initiative adopt a "special or local act" prohibited by Article II, Section 19 of the state constitution.

Initiative In Utah

In Utah the initiative is authorized by statute rather than by the state constitution (Attachment A). The initiative may not be used to amend the constitution; it may be used only to enact legislation. There are no limits on the type of legislation that may be adopted by the initiative.

Utah law provides for both a direct and indirect initiative. The indirect initiative, by which petitioners may introduce a bill in the legislature, requires less effort than a direct initiative: an indirect initiative requires valid signatures from five percent of the total votes cast for the office of governor in the most recent election; a direct initiative requires the signatures of ten percent of the voters. Filing deadlines and other details of these two procedures are described in the statutes.

A bill submitted to the legislature by the indirect initiative process "shall be either enacted or rejected without change or amendment by the legislature (20-11-2)."

A law enacted by the direct initiative may not be vetoed by the governor. However, an initiated law may be amended by the legislature at any time.

Attached to this memorandum are several tables from the publication *Book of the States, 1990-1991* (Attachment B) that present information about the initiative process in each of the 23 states that allow it. These tables permit a fairly

detailed comparison of the initiative process in Utah with that in other states.

I hope this is the information you were looking for. Please contact us if we can offer further assistance.

Attachments

THE BOOK OF THE STATES

1990-91 EDITION

Volume 28

The Council of State Governments
Lexington, Kentucky

Table 5.14
STATE INITIATIVES: REQUESTING PERMISSION TO CIRCULATE A PETITION

State	Applied to (a)		Signatures required to request a petition (b)		Request submitted to	Request form furnished by (c)	Restricted subject matter (d)	Individual responsible for petition		Financial contributions reported (e)	Deposit required (f)
	Amendment	Statute	Amendment	Statute				Title	Summary		
Alabama											
Alaska		D		100	LG	SP	Y	LG	LG	Y	$100.00
Arizona	D	D	15% EV	10% EV	SS	ST	N			Y	
Arkansas	D	D			AG	SP	N	AG	AG	N	
California	D	D			AG	SP	N	AG	AG	Y	$200.00
Colorado	D	D					N	(g)	(g)	Y	
Connecticut											
Delaware											
Florida	D				SS	SP	N	P	P	Y	
Georgia											
Hawaii											
Idaho		D		20	SS	SP	N	AG	AG	Y	
Illinois	D										
Indiana											
Iowa											
Kansas											
Kentucky											
Louisiana											
Maine		I				SP	Y	P	P	Y	
Maryland											
Massachusetts	I	I	10	10	AG	ST	Y	AG	AG	Y	
Michigan	D	I					Y			Y	
Minnesota											
Mississippi											
Missouri	D	D			SS	SP	Y	SS,AG		Y	
Montana	D	D			SS	SP	Y	AG	AG	Y (h)	
Nebraska	D	D			SS	SP	Y	AG	AG	Y	N
Nevada	D	I			SS	SP	Y	P	P	Y (i)	
New Hampshire											
New Jersey											
New Mexico											
New York											
North Carolina											
North Dakota	D	D	25	25	SS	SP	Y	SS,AG	SS,AG	Y (e)	
Ohio	D	I			SS	SP	Y		AG	Y	
Oklahoma	D	D			SS	SP	N	AG	AG	Y	
Oregon	D	D	25	25	SS	SP	N	AG	AG	Y	
Pennsylvania											
Rhode Island											
South Carolina											
South Dakota	D	D			SS	SP	N	P		Y	
Tennessee											
Texas											
Utah		I,D		5	LG	SP	N	LG	LG	N	
Vermont											
Virginia											
Washington		I,D		1	SS	SP	N	AG	AG	Y	N
West Virginia											
Wisconsin											
Wyoming		D		100	SS	SP	Y	AG,SS	AG,SS		$100.00

Source: State election administration offices.

Key:
. . . — Not applicable
D — Direct
I — Indirect
EV — Eligible voters
LG — Lieutenant Governor
SS — Secretary of State
AG — Attorney General
P — Proponent
ST — State
SP — Sponsor
Y — Yes
N — No

(a) An initiative may provide a Constitutional Amendment or develop a new statute, and may be formed either directly or indirectly. The direct initiative allows a proposed measure to be placed on the ballot after a specific number of signatures have been secured on a petition. The indirect initiative must first be submitted to the legislature for decision after the required number of signatures have been secured on a petition, prior to placing the proposed measure on the ballot.

(b) Prior to circulating a statewide petition, a request for permission to do so must first be submitted to a specified state officer.

(c) The form on which the request for petition is submitted may be the responsibility of the sponsor or may be furnished by the state.

(d) Restrictions may exist regarding the subject matter to which an initiative may be applied. The majority of these restrictions pertain to the dedication of state revenues and appropriations, and laws that maintain the preservation of public peace, safety, and health.

(e) In some states, a list of financial contributors and the amount of their contributions must be submitted to the specified state officer with whom the petition is filed. In North Dakota, if over $100 in aggregate for calendar year.

(f) A deposit may be required after permission to circulate a petition has been granted. This amount is refunded when the completed petition has been filed correctly.

(g) Title Setting Board—SS, AG, Director of Legislative Legal Services.

(h) Contributions reported to Commissioner of Political Practices; petitions filed with SS.

(i) Expenditures made in excess of $500.00 for the purpose of advocating the passage or defeat of the measure must be reported.

Table 5.15
STATE INITIATIVES: CIRCULATING THE PETITION

State or other jurisdiction	Basis for signatures: Amendment	Basis for signatures: (see key below)	Basis for signatures: Statute	Maximum time period allowed for petition circulation (a)	Can signatures be removed from petition (b)	Completed petition filed with	Days prior to election: Amendment	Days prior to election: Statute
Alabama			10% TV from 2/3 CD	1 year	Y	LG		
Alaska	15% VG		10% VG	2 years	Y	SS	4 months	4 months
Arizona	10% EwG, 5% each from 15 cc		8% VEG, 5% each from 15 co			SS		
Arkansas	8% VG		5% VG	150 days	Y	SS	131 days	131 days
California								
Colorado	5% VSS		5% VSS	6 months		SS	3 months	
Connecticut								
Delaware						SS	91 days	
Florida	8% VEP, 8% from 1/2 CD							
Georgia								
Hawaii						SS		4 months
Idaho			10% VG			SS		
Illinois	8% VG			2 years	Y		6 months	
Indiana								
Iowa								
Kansas								
Kentucky								
Louisiana			10% VG	1 year		SS		
Maine								
Maryland								
Massachusetts	3% VG, no more than 25% from 1 co.		3% VG, no more than 25% from 1 co. (c)		Y	SS		
Michigan	10% VG		8% VG	(d)		SS	(e)	(e)
Minnesota								
Mississippi								
Missouri	8% VG, 8% each from 2/3 CG		5% VG, 5% each from 2/3 CD	12 months	Y	SS	4 months	
Montana	10% VG, 10% each from 2/5 SLD		5% VG, 5% each from 1/3 SLD	1 year	Y	SS	(f)	(f)
Nebraska	10% EV, 5% each from 2/5 co.		5% EV, 5% each from 2/5 co.		Y	SS	4 months	4 months
Nevada	10% TV, 10% each from 3/4 co.		10% TV, 10% each from 3/4 co.	(g)		SS	30 days prior to LS	30 days
New Hampshire								
New Jersey								
New Mexico								
New York								
North Carolina						SS	90 days	90 days
North Dakota	4% resident population		2% resident population					
Ohio	10% VG, 1.5% each from 1/2 co.		3% VG, 1.5% each from 1/2 co. (h)			SS	90 days	90 days
Oklahoma	15% VH		8% VH	90 days	N	SS		
Oregon	8% VG		6% VG			SS	4 months	4 months
Pennsylvania								
Rhode Island								
South Carolina								
South Dakota	10% VG		5% VG	1 year		SS	one year	189 days
Tennessee								
Texas								150 days
Utah			10% VG, 10% each from 1/2 co.	2 years	Y	LG		
Vermont								

STATE INITIATIVES: CIRCULATING THE PETITION—Continued

State or other jurisdiction	Basis for signatures: Amendment	Basis for signatures: (see key below)	Basis for signatures: Statute	Maximum time period allowed for petition circulation (a)	Can signatures be removed from petition (b)	Completed petition filed with	Days prior to election: Amendment	Days prior to election: Statute
Virginia								
Washington			8% VG	(b)	Y	SS		(i)
West Virginia								
Wisconsin								
Wyoming			15% TV	18 months	Y	SS		60 days

Source: State election administrative offices.

Key:
... — Not applicable
VG — Total votes cast for the position of governor last election
EV — Eligible voters
VH — Total votes cast for the office receiving the highest number of votes cast last general election
TV — Total voters in last general election
ED — Election district
co. — county
SS — Secretary of State
LS — Legislative Session

(a) The petition circulation period begins when petition forms have been approved and provided to sponsors. Sponsors are those individuals granted permission to circulate a petition, and are therefore responsible for the validity of each signature on a given petition.
(b) Should an individual wish to remove his/her name from a petition, a request to do so must be submitted in writing to the state officer with whom the petition is filed.
(c) First Wednesday in December.
(d) In Michigan, signatures dated more than 180 days prior to the filing date are ruled invalid.
(e) Constitutional Amendment—not less than 120 days prior to the next general election; statute—approximately 160 days prior to the next general election.
(f) Second Friday of the fourth month prior to election (3 1/2 months).
(g) Constitutional Amendment—276 days; Amend or create a statute—291 days.
(h) Direct—6 months; Indirect—10 months.
(i) Direct—4 months; Indirect—10 months prior to legislative session.

ATTACHMENT A

ned by legal voters thereof equal in number to the following percentages all the votes cast in the county, city, or town for all candidates for gov- ıor at the next preceding election at which a governor was elected:

a) If the total number of such votes exceeds 10,000, the petition shall signed by 10%.

b) If the total number of such votes does not exceed 10,000, but is more ın 2,500, the petition shall be signed by 12 ½%.

c) If the total number of such votes does not exceed 2,500, but is more ın 500 the petition shall be signed by 15%.

d) If the total number of such votes does not exceed 500, but is more ın 250, the petition shall be signed by 20%.

e) If the total number of such votes does not exceed 250, the petition ıll be signed by 30%.

listory: L. 1917, ch. 56, § 22; C.L. 1917, 111; R.S. 1933 & C. 1943, 25-10-22; L. 1981, 102, § 2.

ıpiler's Notes.

'he 1981 amendment inserted the subsec- ı and subdivision designations; inserted erences to counties throughout the section; l made minor changes in phraseology and ıctuation.

Collateral References.

Statutes ⇦ 309, 349.

82 CJS Statutes § 123.

42 AmJur 2d 676, Initiative and Referendum § 27.

Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor, 126 ALR 1031, 27 ALR 2d 604.

20-11-23. Procedure — Arguments. (1) In all counties, cities, and wns the manner of exercising the initiative and referendum powers served by the constitution to the people thereof shall be similar to the ocedure prescribed by this chapter for the state initiative and referen- m, and the duties required of the county clerk and the lieutenant gover- r by this chapter as to state legislation shall be performed as to such unty or municipal legislation by the county clerk, city recorder, or town rk, as the case may be; the duties required of the governor shall be per- rmed by the chief executive officer of the county, mayor, or president of e board of town trustees, as the case may be; and the duties required the attorney general shall be performed by the county, city, or town torney, as the case may be. The provisions of this chapter shall apply every county, city, and town in all matters concerning the operation of e initiative and referendum in its county or municipal legislation. The inting and binding of the "local voter information pamphlet" shall be ıid for by the county, city, or town; distribution of the pamphlets shall : made to every voter in the county, city, or town, so far as possible, by ıe clerk or recorder, as the case may be, either by mail or carrier, not ss than eight days before the election at which the measures are to be ıted upon. Arguments supporting county or municipal measures shall be ed with the clerk or recorder, as the case may be, not less than 30 days fore the election at which they are to be voted upon; and opposing argu- ents shall be filed not less than 30 days before the election. It is intended

to make the procedure in county or municipal legislation as nearly as practicable the same as the initiative and referendum procedure for measures relating to the people of the state at large.

(2) The arguments regarding the measures described in Subsection (1) shall be prepared as follows:

(a) The arguments for and against each measure shall not exceed 300 words in length and shall be printed on the same sheet of paper upon which the proposed measure is also printed, except that if the proposed measure exceeds 1,000 words in length the clerk or recorder, as the case may be, may provide a synopsis of 1,000 words or less of the proposed measure. Where a synopsis is provided, it shall be noted where a complete copy of the proposed measure is available for public review.

(b) The arguments for the measure shall be prepared by the sponsors, whether of the governing body or of a voter or voter group, except that no more than five names shall appear as sponsor. The arguments against the measure shall be prepared by opponents from among the governing body, if there be any, or from among voters requesting permission of the governing body to prepare these arguments. If more than one person or group desires to submit arguments for or against the measure, the governing body shall make the final designation, except that sponsors shall always have priority in making the argument for a measure and members of governing bodies shall always have priority over others. The requests to prepare the arguments must be presented to the governing body at least 45 days before the election at which the proposed measure is to be voted upon.

(3) The following statement shall be printed on the front cover or the heading of the first page of the printed arguments:

"The arguments for or against the proposed measure(s) are the opinions of the authors."

History: L. 1917, ch. 56, § 23; C.L. 1917, § 2312; R.S. 1933 & C. 1943, 25-10-23; L. 1981, ch. 102, § 3; 1981, ch. 105, § 1; 1984, ch. 68, § 56.

Compiler's Notes.

The 1981 amendment by chapter 102 included counties with cities and towns as having initiative and referendum powers.

The 1981 amendment by chapter 105 also included counties with cities and towns as having initiative and referendum powers; increased the time for filing opposing arguments from 20 to 30 days before the election; and added subsecs. (2) and (3).

The 1984 amendment substituted "lieutenant governor" for "secretary of state" in the first sentence of subsec. (1).

Effective Date.

Section 2 of Laws 1981, ch. 105 provided: "This act shall take effect on May 15, 1981."

Cross-References.

Voter information pamphlets, 20-11a-1 et seq.

Conditions precedent.

Under this section and 20-11-16, in the case of a referendum of an ordinance, the checking by the county clerk is an essential element to a petition or a section thereof requisite to require filing by the officer and require him to proceed. Allan v. Rasmussen (1941) 101 U 33, 117 P 2d 287.

Words and phrases defined.

Deviation from state initiative and referendum procedure, which might be suggested by the use of the word "similar," is limited by requirement that procedure be "as nearly

practicable" the same as that prescribed reference of an act of the legislature. lan v. Rasmussen (1941) 101 U 33, 117 P 2d 7.

ollateral References.

Construction and application of constitunal or statutory requirement as to short title, ballot title, or explanation of nature of proposal in initiative, referendum or recall petition, 106 ALR 556.

Time within which officer must perform duty to pass upon sufficiency of initiative, referendum or recall petition, 102 ALR 51.

20-11-24. Time for filing referendum petitions. Referendum petitions gainst any ordinance, franchise, or resolution passed by the governing dy of a county, city, or town shall be filed with the clerk or recorder, the case may be, within 30 days after the passage of the ordinance, resotion, or franchise.

History: L. 1917, ch. 56, § 24; C.L. 1917, 313; R.S. 1933 & C. 1943, 25-10-24; L. 1981, 102, § 4.

mpiler's Notes.

The 1981 amendment inserted "county"; erted "as the case may be"; and made ior changes in phraseology and punctua-

ss-References.

When ordinances take effect, 10-3-705, 3-712.

ng requirement.

he 1977 amendment to 20-11-16 did not ressly nor impliedly repeal the 30-day filrequirement of this section, nor did it norize the filing of the referendum peti- before the completion of the signature k and certification. Riverton Citizens for stitutional Government v. Beckstead 1) 631 P 2d 885.

Municipal referendum.

Under this and other sections of this chapter, a checking of the petition is a condition precedent to a legally sufficient petition in case of a municipal referendum. Allan v. Rasmussen (1941) 101 U 33, 117 P 2d 287.

Original mandamus proceedings.

In original mandamus proceedings to compel city recorder to receive and file petition for referendum of a resolution of board of commissioners, the question of validity of resolution is not before the supreme court for review. However, upon repeal of resolution, right to require referendum election ceases. Keigley v. Bench (1936) 90 U 569, 63 P 2d 262.

Collateral References.

Statutes ⇐ 354.

82 CJS Statutes § 129.

42 AmJur 2d 682, 683, Initiative and Referendum §§ 33, 34.

0-11-25. Submission to people. If any ordinance shall be proposed by iative petition, the petition shall be filed with the clerk or recorder, as case may be, and he shall transmit it to the next session of the governbody. The governing body shall either ordain or reject the same as proed within 30 days thereafter, and, if the governing body shall reject proposed ordinance or amendment or shall take no action thereon, then clerk or recorder, as the case may be, shall submit the same to the ers of the county, city, or town at the next ensuing countywide or nicipal election held therein not less than 90 days after the same was t presented to the governing body. The governing body may ordain the inance or amendment and refer it to the people, or it may ordain the inance without referring it to the people, but in that case it shall be ject to referendum petition in like manner as other ordinances. If the erning body sha" eject the ordinance or amendment or take no action eon, it may ord.. a competing ordinance or amendment, which shall be submitted by the clerk or recorder, as the case may be, to the people of the county, city, or town at the same election at which the initiative proposal is submitted. This competing ordinance or amendment, if any, shall be prepared by the governing body and ordained within 30 days allowed for its action on the measure proposed by initiative petition. If conflicting ordinances shall be submitted to the people at the same election and two or more of such conflicting measures shall be approved by the people, then the measure which shall have received the greatest number of affirmative votes shall be paramount in all particulars as to which there is conflict, even though such measure may not have received the greatest majority. The governing body may by ordinance order special elections to vote on such county or municipal measures.

History: L. 1917, ch. 56, § 25, C.L. 1917, § 2314; R.S. 1933 & C. 1943, 25-10-25; L. 1981, ch. 102, § 5.

Compiler's Notes.

The 1981 amendment inserted references to county throughout the section; and made minor changes in phraseology and punctuation.

Collateral References.

Statutes ⇐ 375.

82 CJS Statutes § 136 et seq.

42 AmJur 2d 689 et seq., Initiative and Referendum § 42.

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum, 33 ALR 2d 1118.

CHAPTER 11a

VOTER INFORMATION ON LEGISLATION

Section

20-11a-1. Measures to be submitted to voters, referendum measures — Preparation of argument for adoption. Whenever the legislature submits any measure to the voters of the state or whenever an act of the legislature is referred to the voters by referendum petition, the sponsor of the measure or act and one member of either house who voted with the majority on the submission of the measure or on the act shall be appointed by the presiding officer of the house of origin of the measure to draft an argument for the adoption of the measure. This argument shall not exceed 500 words in length. If the sponsor of the measure or act desires separate arguments to be written in favor by each person appointed, separate arguments

"Verified names."

This phrase means names verified by the county clerk. Allan v. Rasmussen (1941) 101 U 33, 117 P 2d 287.

Withdrawal of names generally.

Person who has signed petition may, at any time before petition has been acted upon, withdraw his name, and if timely done, his name should not be counted. Halgren v. Welling (1936) 91 U 16, 63 P 2d 550.

Timely personal appearance with request made to proper officer, board or individual with identity established either by personal knowledge or by proof by one familiar with facts, or written withdrawal accompanied by proof of identity by affidavit either of signer or someone who knows identity of signatures, is sufficient to permit withdrawal of signatures from petition. Halgren v. Welling (1936) 91 U 16, 63 P 2d 550.

Collateral References.

Statutes ⇐ 314-316, 354-356.

82 CJS Statutes §§ 124, 125, 127-129.

42 AmJur 2d 681-688, Initiative and Referendum §§ 32-40.

Time within which officer must perform duty to pass upon sufficiency of initiative, referendum or recall petition, 102 ALR 51.

20-11-17. Ballot title — Duties of attorney general and Office of Legislative Research and General Counsel. When an initiative petition shall be declared to be sufficient by the lieutenant governor he shall forthwith transmit to the attorney general a copy of the law so proposed for initiation, and within ten days thereafter the attorney general shall provide and return to the lieutenant governor a ballot title for such measure. Whenever a referendum petition is declared sufficient, the lieutenant governor shall transmit a copy of the petition to the Office of Legislative Research and General Counsel, who shall prepare and return to him within 15 days a ballot title for the referendum. The ballot title may be distinct from the legislative title of the measure, and shall express, in not exceeding 100 words, the purpose of the measure. The ballot title shall be printed, with the number of the measure, as determined by the Office of Legislative Research and General Counsel, on the official ballot. In making such ballot title the Office of Legislative Research and General Counsel shall to the best of its ability give a true and impartial statement of the purpose of the measure, and in such language that the ballot title shall not be intentionally an argument, or likely to create prejudice, either for or against the measure. A copy of every ballot title upon being filed by the Office of Legislative Research and General Counsel with the lieutenant governor shall forthwith be served upon any of the sponsors of the petition by the lieutenant governor; such service may be by mail or telegraph. If the ballot title so furnished by the Office of Legislative Research and General Counsel is unsatisfactory or does not comply with the requirements of this section, upon motion of at least three of the sponsors of the petition, an appeal may be taken from the decision of the Office of Legislative Research and General Counsel to the supreme court. The supreme court shall thereupon examine such measures and hear arguments, and in its decision thereon shall certify to the lieutenant governor a ballot title for the measure in accord with the intent of this section. The lieutenant governor shall have the title thus certified to him certified to the county clerks to be printed on the official ballot; provided, that nothing in this chapter shall be construed to require the lieutenant governor to have the title of any proposed law for initiation or of any measure for referendum, printed on the official ballot, unless a sufficient petition as herein provided shall have been filed in his office at least 105 days before any general election at which the proposed law or measure is to be submitted.

History: L. 1917, ch. 56, § 17; C.L. 1917, § 2306; R.S. 1933 & C. 1943, 25-10-17; L. 1975, ch. 57, § 13; 1984, ch. 68, § 54.

Compiler's Notes.

The 1975 amendment substitued "an initiative petition" for "the petition" in the first sentence; deleted "or referendum" after "initiation" in the first sentence; inserted the second sentence pertaining to a referendum petition; inserted "as determined by the legislative council" in the fourth sentence; substituted "legislative council" for "attorney general" in the fifth, sixth and seventh sentences; substituted "or of any measure for referendum" for "or the number of any measure for referendum" in the last sentence; and substituted "105 days" for "50 days" in the last sentence.

The 1984 amendment substituted "lieutenant governor" for "secretary of state" throughout the section; and substituted "Office of Legislative Research and General Counsel" for "legislative council" throughout the section.

Repealing Clause.

Section 14 of Laws 1975, ch. 57 provided "Sections 20-3-41.1 and 20-3-41.2, Utah Code Annotated 1953, as enacted by chapter 39, Laws of Utah 1967, and section 20-11-18, Utah Code Annotated 1953, as amended by chapter 36, Laws of Utah 1953, are repealed."

Collateral References.

Statutes ⇐ 319, 320, 359, 360.

82 CJS Statutes §§ 138-140.

42 AmJur 2d 693, Initiative and Referendum § 46.

Construction and application of constitutional or statutory requirement as to short title, ballot title, or explanation of nature of proposal in initiative, referendum or recall petition, 106 ALR 555.

20-11-18. Repealed.

Repeal.

Section 20-11-18 (L. 1917, ch. 56, § 18; C.L. 1917, § 2307; R.S. 1933 & C. 1943, 25-10-18; L. 1953, ch. 36, § 1), relating to publication of initiative or referendum information, was repealed by Laws 1975, ch. 57, § 14. For present provisions, see 20-11a-1 et seq.

20-11-19. Manner of voting. The manner of voting upon measures submitted to the people shall be as follows:

The number and ballot title as herein provided for shall be printed upon the official ballot, with the words "For" and "Against" immediately to the right thereof, each followed by a square in which the elector may place a cross to indicate his vote. Electors desiring to vote "for" shall place a cross within the square following the word "for," and those desiring to vote "against" shall place a cross within the square following the word "against."

History: L. 1917, ch. 56, § 19; C.L. 1917, § 2308; R.S. 1933 & C. 1943, 25-10-19.

20-11-20. Return and canvass — Conflicting measures — Law effective on proclamation. The votes on measures and questions submitted to the people shall be counted, canvassed, and returned by the regular boards, judges, clerks, and officers as votes for candidates are counted, canvassed, and returned, and the abstract made by the several county clerks of votes on measures shall be returned to the lieutenant governor in the

manner provided by Section 20-8-8 for abstracts of votes for state officers. The lieutenant governor shall certify to the governor the vote for and against such measures and the governor shall forthwith issue his proclamation, giving the whole number of votes cast in the state for and against each measure and question, and declaring such measures as are approved by the greatest number of affirmative votes, provided such number is a majority of those voting thereon, to be in full force and effect as the law of the state of Utah. When the governor is of the opinion that two measures, or that parts of two measures, approved by the people at the same election are entirely in conflict and opposed, he shall proclaim that measure to be law which has received the greatest number of affirmative votes, regardless of the difference in the majorities which those measures have received. Within ten days after such proclamation any qualified voter, who shall have signed the petition to submit the measure which is declared by the governor to be superseded by another measure approved at the same election, may apply to the supreme court to review the governor's decision. The court shall forthwith consider the matter and decide whether or not such measures are in conflict, and shall certify its decision, within ten days after the matter is submitted to it for decision, to the governor. The governor shall, within 30 days after his previous proclamation, proclaim all those measures approved by the people as law which the supreme court has decided not to be in conflict, and of all those which the supreme court shall have decided to be in conflict he shall proclaim as law the one which has received the greatest number of affirmative votes, regardless of difference in majorities.

History: L. 1917, ch. 56, § 20; C.L. 1917, 2309; R.S. 1933 & C. 1943, 25-10-10; L. 1984, ch. 68, § 55.

Compiler's Notes.

The 1984 amendment substituted "lieutenant governor" for "secretary of state" in the first and second sentences.

Collateral References.

Statutes ⇐ 322, 362.

82 CJS Statutes §§ 147, 148.

42 AmJur 2d 713, 714, Initiative and Referendum §§ 63-65.

Determination of canvassing boards or election officials as regards counting or exclusion of ballots as subject of review by mandamus, 107 ALR 618.

20-11-21. Direct legislation in counties, cities, and towns. Subject to the provisions of this chapter, the legal voters of any county, city, or town, such numbers as required in this chapter, may initiate any desired legislation and cause the same to be submitted to the governing body or to a vote of the people of the county, city, or town for approval or rejection, or may require any law or ordinance passed by the governing body of the county, city, or town to be submitted to the voters thereof before the law or ordinance shall take effect.

History: L. 1917, ch. 56, § 21; C.L. 1917, 2310; R.S. 1933 & C. 1943, 25-10-21; L. 1981, ch. 102, § 1.

Compiler's Notes.

The 1981 amendment inserted "county" throughout the section; substituted "governing body" for "law-making body" in two places; and made minor changes in phraseology and punctuation.

Construction and application.

An ordinance adopted by city commission vacating city street must be submitted to vote of people before it becomes effective. Provo City v. Denver & R. G. W. R. Co. (1946) 156 F 2d 710, certiorari denied 329 US 764, 91 L Ed 658, 67 S Ct 124, citing Keigley v. Bench (1939) 97 U 69, 89 P 2d 480, 122 ALR 756.

Legislative or administrative powers.

A resolution passed by city board of commissioners directing mayor to execute an acceptance of offer from bond brokers to buy city's bonds is legislative in character; therefore, the approval or rejection of the resolution is proper subject matter for referendum. The city recorder is required to accept and file the resolution as a mere ministerial duty; he is not required to pass upon the validity of the resolution. Keigley v. Bench (1936) 90 U 569, 63 P 2d 262.

Initiated ordinance which authorized executive department of city to contract for erection and construction of electric power plant and distribution system with independent contractor on a cost plus basis, under and subject to terms and limitations fixed in ordinance, was a proper exercise of the legislative power by the people through the initiative. Utah Power & Light Co. v. Provo City (1937) 94 U 203, 74 P 2d 1191, certiorari denied 305 US 628, 83 L Ed 402, 59 S Ct 92, distinguished in 2 U 2d 319, 273 P 2d 174.

This section limits the applicability of a referendum to laws and ordinances passed by the law-making body of a city or town, and section applies only to such laws, ordinances, resolutions or motions that are legislative in character, and does not apply to those administrative in character. Keigley v. Bench (1939) 97 U 69, 89 P 2d 480, 122 ALR 756.

Provisions of proposed ordinance which related to the recall and refunding of bonds authorized by previous ordinance, and to change in dates of the bonds and date of principal and interest payments, were administrative in their nature and were not subject to referendum, but provision which provided for a 20-year plan of refunding, instead of a 15-year period, constituted a definite change in financial policy which was legislative in its nature and required submission to the electorate. Keigley v. Bench (1939) 97 U 69, 89 P 2d 480, 122 ALR 756.

Since initiative and referendum laws apply only to legislative matters, the issue of the salaries of policemen and firemen could not be referred to the electorate where, by its nature, and under the terms of the city charter, the issue was administrative in character. Shriver v. Bench (1957) 6 U 2d 329, 313 P 2d 475.

Repeal of council-manager charter of city.

Even though there is no direct or express constitutional or statutory provision or council-manager charter provision that the council-manager charter of a second class city is repealable, the people have an inalienable right to repeal a charter which they had a right to adopt, and an ordinance providing for the repeal of a council-manager charter and the establishment of a commission form of government for a second class city was valid. Provo City v. Anderson (1961) 12 U 2d 417, 367 P 2d 457.

Zoning ordinances.

Although this section and 20-11-23 set forth the manner of exercising the initiative privilege, the electors may not initiate any ordinance under it. Thus the electors could not by initiative ordinance rezone a city since such procedure would not comply with the zoning statute under which they claim their power to zone, and in effect it would be attacking collaterally the very statute under which they claimed their power to zone. Until the general law governing the processes of zoning was affected by repeal or amendment by the legislature, or by referendum or initiative by the people, it guided the processes of the cities and directed the means by which it was to be accomplished. Dewey v. Doxey-Layton Realty Co. (1954) 3 U 2d 1, 277 P 2d 805.

The original enactment of a zoning ordinance would generally be subject to referendum; however, ordinances implementing the basic zoning enactment, such as by exceptions and variances, would generally not be subject to referendum. Wilson v. Manning (1982) 657 P 2d 251.

Collateral References.

42 AmJur 2d 655, Initiative and Referendum § 7.

Law Reviews.

The Local Initiative — A Proper Sounding Board for National Issues?, 1968 Utah L. Rev. 464.

20-11-22. Petitions — Number of signers. (1) All initiative and referendum petitions in counties, cities, and towns to be mandatory must be

be no uniformity as to the number of circulation sheets contained in the sections. The lieutenant governor shall make up the sections as specified, attaching to the front of each section a petition copy as above described, and he shall securely bind together the sheets of each section at the top thereof in such a way that the sections may be conveniently opened for signing. He shall number each section and keep a record of the numbers of all sections delivered to the sponsors.

History: L. 1917, ch. 56, § 12; C.L. 1917, § 2301; R.S. 1933 & C. 1943, 25-10-12; L. 1984, ch. 68, § 51.

Compiler's Notes.

The 1984 amendment substituted "lieutenant governor" for "secretary of state."

20-11-13. Fees — Bids from printers — Duties of lieutenant governor. Upon filing the application for petition copies the sponsors shall pay a fee of $50 for all services to be performed in connection therewith. The lieutenant governor shall determine from said application (or if unable to so determine therefrom, shall notify the sponsors of such inability, whereupon they shall, by supplementary application, distinctly set out their instructions as to the same), the number of petition sections desired, and the number of circulation sheets required for each section. He shall forthwith upon such determination, which shall be made within three days after the filing of the application, solicit bids from not less than three competent printers for the printing of the required number of petition copies, together with the certificate of the lieutenant governor that the law contained thereon is a full, true, and correct copy of the law as proposed by the sponsors for initiation, or the true and correct number and title of the law as proposed for referendum. The body of the petition shall be printed in six-point type, single leaded, and the requisition for bids shall so specify. Within ten days after the filing of the application for the petition copies and circulation sheets the lieutenant governor shall notify one or more of the sponsors of the lowest and best bid received from the requisitions made, and he shall require the payment of that amount into his office before he shall proceed with the petition. The lieutenant governor shall also require the payment of $5 per 100 for all circulation sheets furnished to the sponsors. Upon payment of such amounts the lieutenant governor shall order from the printer submitting the lowest and best bid the required number of petition copies, containing his certificate thereon as above specified. The lieutenant governor shall, within ten days after the payment of the amounts above specified, make up into sections the petition copies and circulation sheets as above provided.

History: L. 1917, ch. 56, § 13; C.L. 1917, 2302; R.S. 1933 & C. 1943, 25-10-13; L. 1977, h. 95, § 4; 1984, ch. 68, § 52.

Compiler's Notes.

The 1977 amendment increased the filing fee from $10 to $50; and increased the payment required for circulation sheets furnished to sponsors from 50 cents per 100 to $5 per 100.

The 1984 amendment substituted "lieutenant governor" for "secretary of state" throughout the section.

Mandamus.

Mandamus was granted to compel city recorder to solicit bids for printing two proposed ordinances to repeal prior ordinances providing for construction of municipal electric plant, where recorder's sole ground of refusal was that in his opinion the proposed ordinances were unconstitutional but such unconstitutionality did not appear on their face. Coleman v. Bench (1938) 96 U 143, 84 P 2d 412.

Merits of proposed law.

The secretary of state cannot, nor can the supreme court in a mandamus proceeding, pass upon a question of merit, worth, wisdom, validity, or policy of any proposed law intended to be initiated. White v. Welling (1936) 89 U 335, 57 P 2d 703.

Ministerial duty of officer.

Duties imposed by this section are ministerial, and officer has no discretion, except insofar as to determine whether the document or instrument submitted and purporting to contain the proposed law to be initiated, has the semblance of a law, or is such a matter as is not properly the subject of the Initiative and Referendum Act. White v. Welling (1936) 89 U 335, 57 P 2d 703; Coleman v. Bench (1938) 96 U 143, 84 P 2d 412.

Officer cannot pass upon the constitutionality of any proposed law under procedure dealing with application for petition copies. If the proposed law shows on its face that it is unconstitutional, the supreme court would refuse to mandate the officer. White v. Welling (1936) 89 U 335, 57 P 2d 703; Coleman v. Bench (1938) 96 U 143, 84 P 2d 412.

Sponsor furnishing petitions.

Failure of the recorder to accept printed forms, which were printed under the sponsor's direction, did not render the sponsor's petition for referendum ineffective. The form of the petition copies, certificates and circulation sheets and their binding in 15 separate sections complied with the statute in every substantial detail. Where the sections of the printed forms which were circulated were in correct form except for absence of signature of the recorder, corporate seal of the city and certificate as to the title and number of the ordinance and since no one was adversely affected in reliance on the recorder's failure to act, the petition was not invalidated by her failure to do her duty for the sponsors had done all that they could do to make the petition effective and were not defeated by recorder's failure to act. Palmer v. Broadbent (1953) 123 U 580, 260 P 2d 581.

Type of print.

Where form was printed in 5 ½ point type instead of six-point type as required by this section, it was sufficient compliance with the statute. Palmer v. Broadbent (1953) 123 U 580, 260 P 2d 581.

20-11-14. Misconduct of electors and officers — Penalty. Every person who is a qualified elector of this state may sign a petition for the referendum or for the initiation of any measure upon which he is legally entitled to vote. Any person signing any name other than his own to any petition, or knowingly signing his name more than once for the same measure at one election, or who is not at the time of signing the same a legal voter of this state, or any officer or person knowingly and willfully violating any provision of this chapter, shall be punished by a fine not exceeding $500, or by imprisonment in the state prison not exceeding two years, or by both such fine and imprisonment.

History: L. 1917, ch. 56, § 14; C.L. 1917, § 2303; R.S. 1933 & C. 1943, 25-10-14.

20-11-15. Verification of petition — Clerical errors disregarded. Each and every sheet of the petition containing signatures shall be verified on the back thereof, as prescribed in the blank verification printed thereon, by the officer in whose presence the sheets were signed. The forms pre-

e petition shall be sufficient, notwithstanding clerical and merely techni- l errors.

History: L. 1917, ch. 56, § 15; C.L. 1917, 104; R.S. 1933 & C. 1943, 25-10-15.

Collateral References.
Statutes ⇐ 312, 352.
82 CJS Statutes §§ 124, 125.
42 AmJur 2d 678, Initiative and Referendum § 30.

nicipal referendum.
'his section applies to a municipal referen- n. Accordingly, names of signers of peti- ı must be checked. Allan v. Rasmussen 41) 101 U 33, 117 P 2d 287.

20-11-16. Sufficiency of signatures — Determination and remedies. ch section of the initiative or referendum petition when signed and veri- l as herein provided shall be delivered not less than 150 days before any ıeral election to the county clerk of the county in which such section s circulated. The county clerk shall check all the names of the signers less than 127 days before any general election against the official regis- tion lists of his county, and certify thereon whether or not each name hat of a duly registered voter. He shall then transmit all of the sections the lieutenant governor, who shall check off from his record, as they filed, the number of the sections of the petition so filed. After such ition is filed the lieutenant governor shall forthwith cause the number names appearing on each verified circulation sheet so certified by the nty clerks to be counted, and, if the number of names so counted equals exceeds the number of names required by the provisions of this chapter, shall mark upon the front of the petition the word "sufficient"; if the ies properly signed, verified, and certified to by the county clerks do equal or exceed the number so required, he shall mark on the front eof the word "insufficient." The lieutenant governor shall forthwith fy any one of the sponsors of his finding. In case his finding is "insuffi- t," the sponsors or any of them may demand in writing a recount of names appearing on such petition in the presence of the sponsors or of them. If the petition is found insufficient through lack of signers, sponsors may, by paying the costs thereof, demand as many additional ılation sheets as they may deem necessary, and the lieutenant governor l bind such new sheets to whatever sections of the petition the sponsor ponsors may designate, and he shall allow the sponsors to withdraw section or sections for purposes of recirculation, keeping a record of numbers of all sections so withdrawn. If the lieutenant governor shall se to accept and file any petition for the initiative or for the referen- , any citizen may apply within ten days after such refusal to the eme court for a writ of mandamus to compel him to do so. If it shall ecided by the court that such petition is legally sufficient, the lieuten- governor shall then file it, with a certified copy of the judgment ched thereto, as of the date on which it was originally offered for filing is office. On a s ing that any petition filed is not legally sufficient, court may enjoin the lieutenant governor and all other officers from

certifying or printing on the official ballot for the ensuing election the ballot title and numbers of such measures.

History: L. 1917, ch. 56, § 16; C.L. 1917, § 2305; R.S. 1933 & C. 1943, 25-10-16; L. 1977, ch. 95, § 5; 1984, ch. 68, § 53.

Compiler's Notes.
The 1977 amendment inserted "not less than 150 days before any general election" in the first sentence; inserted "all" in the second sentence; inserted "not less than 127 days before any general election" in the second sentence; substituted "certify" for "indicate" in the second sentence; deleted "verified" before "names appearing" near the beginning of the fourth sentence; inserted "so certified by the county clerks" and "and certified to by the county clerks" in the fourth sentence; and made minor changes in phraseology and punctuation.

The 1984 amendment substituted "lieutenant governor" for "secretary of state" throughout the section.

Addresses of signers.
Signatures on initiative petition, after which post-office addresses and street addresses or places of residence were omitted, could not be counted by secretary of state. Halgren v. Welling (1936) 91 U 16, 63 P 2d 550.

Delivery of petition.
The delivery to the county clerk, provided for by this section, must be performed by the sponsors. Allan v. Rasmussen (1941) 101 U 33, 117 P 2d 287.

Duty of county clerk.
Requirement that county clerk indicate on petition section sheets, opposite each signature, whether or not each name is that of a duly registered voter is mandatory. Halgren v. Welling (1936) 91 U 16, 63 P 2d 550.

Word "check," as used in this section, means that county clerk shall compare name of each signer on petition sheets against official registration lists of his county for purpose of determining whether or not signer is registered voter. Halgren v. Welling (1936) 91 U 16, 63 P 2d 550.

Where certificates of county clerks merely certified that petitioners' signatures were found correct, and no statement was made or attempted to be made that each name on attached petition was or was not that of a duly registered voter, secretary of state was without jurisdiction to find that number of qualified signers on petition as a whole was insufficient. Halgren v. Welling (1936) 91 U 16, 63 P 2d 550.

The duty of determining the validity of the names on the circulation sheet is reposed upon the county clerk, and the secretary of state may rely upon the certification by the county clerk. Cope v. Toronto (1958) 8 U 2d 255, 332 P 2d 977.

Duty of the secretary of state.
Where the secretary of state has relied upon the circulation sheets certified to him by the county clerk and followed the procedure set out by law for having the proposed act printed on the ballots, the law does not grant authority to the supreme court to issue a writ of mandamus to direct him to undo that which he has done. Cope v. Toronto (1958) 8 U 2d 255, 332 P 2d 977.

Effect of 1977 amendment.
The 1977 amendment to this section did not expressly or impliedly repeal 20-11-24, nor did it authorize the filing of the referendum petition before the completion of the signature check and certification. Riverton Citizens for Constitutional Government v. Beckstead (1981) 631 P 2d 885.

Filing of petition.
This section does not require city recorder to file petition for referendum where question to be submitted has ceased to exist. Keigley v. Bench (1936) 90 U 569, 63 P 2d 262.

If petition be filed within the time prescribed, the filing officer must not wait until expiration of such time to make his count, for if the number of signers be found insufficient by such officer, the sponsors may have additional circulation sheets issued in order to recirculate the petition. This recirculation for the purpose of securing additional qualified signers may not be done after the time for filing has expired. Allan v. Rasmussen (1941) 101 U 33, 117 P 2d 287.

Recount of names.
Where initiative petition contained over 3,000 names less than required, secretary of state could not be compelled to recount the signatures and otherwise exert efforts to make up the deficiencies. Simons v. Monson (1938) 95 U 552, 83 P 2d 266.

Requirement as to checking.
In case of a municipal referendum, the checking provided for by this section is a condition prerequisite to a legally sufficient petition. Allan v. Rasmussen (1941) 101 U 33, 117 P 2d 287.

82 CJS Statutes §§ 145-147, 150.
42 AmJur 2d 798, 801-805, 809, 810, Initiative and Referendum §§ 56, 58-60, 63-65.

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum, 93 ALR 2d 1118.

20-11-7. Procedure for direct legislation — Sponsors. The procedure to be followed in initiating or referring any act or law shall be as follows:

An application, hereinafter known as the application for "petition copies," having annexed thereto five copies of the proposed law, shall be filed in the office of the lieutenant governor. The application shall be signed by not fewer than five persons, hereinafter designated "sponsors." The sponsors shall sign their names to the application, together with their residences, including the street and number of such residences, if they can be so designated. The sponsors shall be qualified electors of the state, and shall acknowledge their signatures under oath before some officer competent to administer oaths who is personally acquainted with them; they shall likewise be required to swear before such officer that they have voted in some general election held within the county in which they reside within three years next preceding the date of their taking the oath, and such affidavit of electoral qualification must appear on the application containing their signatures or on a paper annexed thereto.

The lieutenant governor shall inform any person making inquiry in regard thereto of the number of votes cast for governor in the next preceding general election at which a governor was elected, as the same appears from the official canvass of such election.

History: L. 1917, ch. 56, § 7; C.L. 1917, § 2296; R.S. 1933 & C. 1943, 25-10-7; L. 1984, ch. 68, § 46.

Compiler's Notes.

The 1984 amendment substituted "lieutenant governor" for "secretary of state" in two places.

Sufficiency of application.

If information given is sufficient to enable person of ordinary intelligence to find place of residence and establish identity of sponsor of initiative petition, it is sufficient, though containing technical error. Halgren v. Welling (1936) 91 U 16, 63 P 2d 550.

Objection to absence of reference to initiative petition in sponsor's application on ground that such practice would render petition susceptible to withdrawal of proposed law and insertion of another was not well taken where no such withdrawal was alleged actually to have occurred. Halgren v. Welling (1938) 91 U 16, 63 P 2d 550.

Use of abbreviations by sponsors.

Use, on initiative petition, of abbreviation "S. L. C." after sponsor's street address to refer to Salt Lake City was only clerical or technical error. Halgren v. Welling (1936) 91 U 16, 63 P 2d 550.

Collateral References.

Statutes ⇐ 304, 305, 344, 345.
82 CJS Statutes §§ 122, 126.
42 AmJur 2d 672, Initiative and Referendum § 22.

20-11-8. Circulation sheets — Form of. All the signatures to any petition for initiative or referendum shall be placed on sheets of paper known as "circulation sheets," substantially 14 inches long and 11 inches wide. Such circulation sheets shall be ruled with a horizontal line 1-¼ inches from the top. The space above such line shall remain blank and shall be for the purpose of binding. The circulation sheet shall be vertically divided

into columns. The first column shall appear at the extreme left of the sheet, be ⅝ of an inch wide, be headed with "For Office Use Only," and be subdivided with a light vertical line down the middle; the next adjacent column shall be three inches wide, headed "Registered Voter's Printed Name (must be legible to be counted)"; the next adjacent column shall be three inches wide headed, "Signature of Registered Voter"; the final column shall be 4-⅜ inches wide, headed "Street Address, City, State Zip Code".

The word "Warning" shall be printed or typed at the top of each circulation sheet under the horizontal line. Below the word "Warning" the following statement shall be either printed in not less than eight-point type, single leaded, or typed in equivalent size:

"It is a felony for any one to sign any initiative or referendum petition with any other name than his own, or knowingly to sign his name more than once for the same measure, or to sign such petition when he knows he is not a registered voter."

Each sheet shall contain under said printing or typing 25 horizontally ruled lines, 7/16 of an inch apart. Upon the back of each sheet shall be printed or typed the following:

State of Utah, County of _____

I, _____, of _____, hereby certify that I am a registered voter of this state, that all the names which appear on this sheet were signed by persons who professed to be the persons whose names appear thereon, and each of them signed his name thereto in my presence; I believe that each has printed and signed his name, and written his post-office address and residence correctly, and that each signer is a registered voter of the state of Utah.

Subscribed and sworn to before me this _____ day of _____, _____.

_____
Notary public or other official title.

Upon payment of the fees hereinafter required the lieutenant governor shall furnish the number of circulation sheets requested in the application of the sponsors, and make them up into sets as hereinafter specified, according to instructions contained in the specifications.

History: L. 1917, ch. 56, § 8; C.L. 1917, § 2297; R.S. 1933 & C. 1943, 25-10-8; L. 1979, ch. 84, § 1; 1981, ch. 109, § 23; 1984, ch. 68, § 47.

Compiler's Notes.

The 1979 amendment substituted requirement that a voter certify circulation sheet before an officer competent to administer oaths for requirement that all signatures be made before such an officer and certified by him; inserted provision allowing petitions to be typewritten; and made minor changes in phraseology.

The 1981 amendment changed the specifications for circulation sheets; inserted provisions for printing the names of signatories; substituted "registered voter" for "legal voter" throughout the section; and made minor changes in phraseology, punctuation and style.

The 1984 amendment substituted "lieutenant governor" for "secretary of state" in the last paragraph.

Address of signer of petition.

This section implies that post-office address and street number of signer of initiative petition should be written personally by the signer or under his authority. Halgren v. Welling (1936) 91 U 16, 63 P 2d 550.

Indication of post-office address or place of residence of signer of initiative petition by ditto marks is permissible. Halgren v. Welling (1936) 91 U 16, 63 P 2d 550.

Recount of signatures.

Where initiative petition contained over 3,000 names less than required, secretary of state could not be compelled to recount the signatures and otherwise exert efforts to make up the deficiencies. Simons v. Monson (1938) 95 U 552, 83 P 2d 266.

Collateral References.

Statutes ⇦ 306, 307, 309, 311, 312, 346, 347, 349, 351, 352.

82 CJS Statutes §§ 123-125, 131.

42 AmJur 2d 676-679, Initiative and Referendum §§ 27-30.

20-11-9. Form of initiative petition. The following shall be substantially the form of petition for any measure proposed by the initiative:

INITIATIVE PETITION

o the Honorable _____, Lieutenant Governor:

We, the undersigned citizens and legal voters of the state of Utah, spectfully demand that the following proposed law (here follows proosed law) shall be submitted to the legal voters (or legislature) of the ate of Utah for their (or its) approval or rejection at the regular election be held (or session commencing) on the _____ day of _____, ___; and each for himself says: I have personally signed this petition; m a legal voter of the state of Utah; my residence and post-office address e correctly written after my name.

History: L. 1917, ch. 56, § 9; C.L. 1917, 98; R.S. 1933 & C. 1943, 25-10-9; L. 1984, 68, § 48.

mpiler's Notes.

he 1984 amendment substituted "Lieuten-Governor" for "Secretary of State."

Initiative petition.

here initiative petition contained over) names less than required, secretary of state could not be compelled to recount the signatures and otherwise exert efforts to make up the deficiencies. Simons v. Monson (1936) 95 U 552, 83 P 2d 266.

Collateral References.

Statutes ⇦ 304, 308.

82 CJS Statutes § 122.

42 AmJur 2d 672, Initiative and Referendum § 22.

)-11-10. Form of referendum petition. The following shall be substitially the form of petition for the referendum to the electors of any passed by the legislature:

PETITION FOR REFERENDUM

he Honorable _____, Lieutenant Governor:

e, the undersigned citizens and legal voters of the state of Utah, ectfully order that senate (or house) bill No. _____, entitled (title t, and, if the petition is against less than the whole act, set forth here part or parts of which the referendum is sought), passed by the ___ session of the legislature of the state of Utah, be referred to the people of the state of Utah for their approval or rejection at the regular election to be held on the _____ day of _____, 19___; and each for himself says: I have personally signed this petition; I am a legal voter of the state of Utah; my residence and post-office address are correctly written after my name.

History: L. 1917, ch. 56, § 10; C.L. 1917, § 2299; R.S. 1933 & C. 1943, 25-10-10; L. 1984, ch. 68, § 49.

Compiler's Notes.

The 1984 amendment substituted "Lieutenant Governor" for "Secretary of State."

Collateral References.

Statutes ⇦ 344, 347.

82 CJS Statutes § 122.

42 AmJur 2d 672, Initiative and Referendum § 22.

20-11-11. Printing of petitions. Upon payment of the fees as hereinafter specified the lieutenant governor shall cause to be printed copies of the form of petition above set out, properly completed by inclusion of the matter required, sufficient in number to fulfill the requirement of the sponsors as designated by their application for petition copies.

In arriving at the number of circulation sheets and petition copies which they may require the sponsors shall specially take into consideration the provisions of Section 20-11-12.

History: L. 1917, ch. 56, § 11; C.L. 1917, § 2300; R.S. 1933 & C. 1943, 25-10-11; L. 1984, ch. 63, § 50.

Compiler's Notes.

The 1984 amendment substituted "lieutenant governor" for "secretary of state."

Mandamus.

Mandamus was granted to compel city recorder to solicit bids for printing two proposed ordinances to repeal prior ordinances providing for construction of municipal electric plant, where recorder's sole ground of refusal was that in his opinion the proposed ordinances were unconstitutional but such unconstitutionality did not appear on their face Coleman v. Bench (1938) 96 U 143, 84 P 2d 412.

Sponsors supplying forms.

All of the detailed procedure provided for in the statute for obtaining these printed forms is mere formality since as long as the prescribed forms are supplied, who arranged for and the procedure followed in having them printed have no substantial effect on the result. The only purpose of the detailed procedure is for the benefit of the sponsors of a referendum. The sponsors have a right to waive these provisions and supply these printed forms through their own arrangements and at their own expense, which they must pay in any event. As long as the forms furnished meet the statutory requirements it is the duty of the recorder to accept them. Palmer v. Broadbent (1953) 123 U 580, 260 P 2d 581.

Collateral References.

Statutes ⇦ 304, 344.

82 CJS Statutes § 126.

20-11-12. Sections of circulation sheets. The petition, for purpose of circulation, may be divided into sections, each section to contain not more than 50 circulation sheets. No section, however, shall be circulated for signatures, unless it has attached to the front sheet thereof a certified petition copy, as described in Section 20-11-11. The sponsors shall set out in their application for petition copies the number of sections into which each petition is to be divided for circulation, and the number of circulation sheets which it is to contain.

districts as established in this act of the 1981 first special session of the Utah legislature.

(2) Each county clerk shall obtain copies of the official maps for his or her county from the lieutenant governor's office. Each county clerk shall, before all elections and pursuant to Section 17-5-18, establish the voting districts within each of the districts.

(3) In questions of interpretation of the census maps and census district information of this state, the official maps on file at the lieutenant governor's office shall serve as the indication of the legislative intent in drawing the district boundaries.

History: C. 1953, 20-10-5, enacted by L. 1981 (1st S.S.), ch. 4, § 3.

Title of Act.

An act relating to congressional reapportionment; providing for three congressional districts; establishing the first, second and third congressional districts; enacting supplemental provisions; and providing effective dates.

This act amends section 20-10-3, Utah Code Annotated 1953; enacts section 20-10-5, Utah Code Annotated 1953; and repeals and reenacts section 20-10-4, Utah Code Annotated 1953, as last amended by chapter 38, Laws of Utah 1971. — Laws 1981 (1st S.S.) ch. 4.

Effective Date.

Section 4 of Laws 1981 (1st S.S.), ch. 4 provided: "This act shall take effect on January 1, 1982, for the purposes of nominating and electing representatives in the Congress of the United States. For all other purposes this act shall take effect on January 3, 1983." Effective January 17, 1982. Failed to obtain two-thirds vote required for earlier effect.

CHAPTER 11

DIRECT LEGISLATION ELECTIONS

20-11-1. Initiative and referendum authorized. Legal voters of this state in the number required herein may, by joining in a petition for that purpose filed in the office of the lieutenant governor as hereinafter provided, initiate any desired legislation, and cause the same to be submitted to the legislature or to a vote of the people for approval or rejection, or may require any law passed by the legislature (except those laws passed by a two-thirds vote of the members elected to each house of the legislature) to be referred to the voters before such law shall take effect; provided, that in order to make any such petition mandatory a majority of all the counties of the state must each furnish signatures of legal voters not less in number than the percentages herein required.

History: L. 1917, ch. 56, § 1; C.L. 1917, § 2290; R.S. 1933 & C. 1943, 25-10-1; L. 1984, ch. 68, § 42.

Compiler's Notes.

The 1984 amendment substituted "lieutenant governor" for "secretary of state."

Cross-References.

Authorized by Constitution, Const. Art. VI, § 1.

Enacting clause, 36-10-1.

Municipal government, optional form proposed by initiative, 10-3-1203.

Voter information pamphlets, 20-11a-1 et seq.

Construction and application.

Officers charged with administration of this law should interpret it, if possible, so as to sustain it and make its purposes effective, and bring about the purposes intended by the legislature. Halgren v. Welling (1936) 91 U 16, 63 P 2d 550.

While technical construction should not be invoked to hinder or defeat the right of direct legislation by the people, procedure clearly indicated by the legislature may not be varied in such a way as to defeat some of its salutary features. Allan v. Rasmussen (1941) 101 U 33, 117 P 2d 287.

The act authorizing initiative legislation receives a liberal construction to effectuate its purpose and all doubts as to technical deficiencies or failure to comply with the exact letter of procedure will be resolved in favor of the accomplishment of that purpose. Cope v. Toronto (1958) 8 U 2d 255, 332 P 2d 977.

Resolutions of people.

Resolutions by the people are not provided for in the Initiative and Referendum Act. White v. Welling (1936) 89 U 335, 57 P 2d 703.

Collateral References.

Statutes ⇐ 301 et seq.

82 CJS Statutes §§ 115-151.

42 AmJur 2d 649 et seq., Initiative and Referendum § 1 et seq.

Construction and application of constitutional or statutory provisions expressly excepting certain laws from referendum, 146 ALR 284, 100 ALR 2d 314.

Construction and application of constitutional or statutory requirement as to short title, ballot title, or explanation of nature of proposal in initiative, refereendum or recall petition, 106 ALR 555.

Initiative statute as in effect constitutional amendment, 62 ALR 1352.

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum, 33 ALR 2d 1152.

Taxpayer's capacity to maintain suit to enjoin submission of initiative, referendum, or recall measure to voters, 6 ALR 2d 557.

Withdrawal: right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefore, 27 ALR 2d 604.

Law Reviews.

Amendment of Acts Approved by the People, 12 Iowa L. Rev. 272.

Constitutionality of a Delegation of Legislative Power to the People, 17 Iowa L. Rev. 239.

The Local Initiative — A Proper Sounding Board for National Issues?, 1968 Utah L. Rev. 464.

The Utah Recall Proposal, 1976 Utah L. Rev. 29.

20-11-2. Initiative — By petition to legislature. Upon the presentation to the lieutenant governor, at any time not less than ten days before

the commencement of any regular session of the legislature, of an initiative petition, signed as herein provided by legal voters equal in number to 5% of all the votes cast for all candidates for governor at the next preceding general election at which a governor was elected and verified and certified to as provided in this chapter, the lieutenant governor shall transmit the same to the legislature as soon as it convenes and organizes. The law proposed by such petition shall either be enacted or rejected without change or amendment by the legislature. If any law proposed by such petition shall be enacted by the legislature, it shall be subject to referendum petition in like manner as other laws. If any law so petitioned for is not enacted by the legislature, it shall be submitted to a vote of the people at the next ensuing general election; provided, sufficient additional signatures to the petition are first obtained to bring the total number of signatures up to 10% of all votes cast for all candidates for governor at the next preceding general election at which a governor was elected, these additional signatures also to be verified and certified as provided in this chapter.

History: L. 1917, ch. 56, § 2; C.L. 1917, § 2291; R.S. 1933 & C. 1943, 25-10-2; L. 1977, ch. 95, § 1; 1984, ch. 68, § 43.

Compiler's Notes.

The 1977 amendment inserted "and verified and certified to as provided in this chapter" in the first sentence; and added "these additional signatures also to be verified and certified as provided in this chapter" to the end of the section.

The 1984 amendment substituted "lieutenant governor" for "secretary of state" in two places in the first sentence.

20-11-3. Submission to people. Upon the presentation to the lieutenant governor, at any time not less than four months before any general election, of an initiative petition, signed as herein provided by legal voters equal in number to 10% of all the votes cast for all candidates for governor at the next preceding general election at which a governor was elected, proposing a law set forth therein and verified and certified to as provided in this chapter, the lieutenant governor shall submit the law so proposed to a vote of the people at the next ensuing general election.

History: L. 1917, ch. 56, § 3; C.L. 1917, § 2292; R.S. 1933 & C. 1943, 25-10-3; L. 1977, ch. 95, § 2; 1984, ch. 68, § 44.

Compiler's Notes.

The 1977 amendment inserted "and verified and certified to as provided in this chapter." The 1984 amendment substituted "lieutenant governor" for "secretary of state" in two places.

Recount of signatures.

Where initiative petition contained over 3,000 names less than required, secretary of state could not be compelled to recount the signatures and otherwise exert efforts to make up the deficiencies. Simons v. Monson (1938) 95 U 552, 83 P 2d 266.

Collateral References.

Statutes ⇦ 321.
82 CJS Statutes § 137.
42 AmJur 2d 689, Initiative and Referendum § 42.

20-11-4. Referendum by petition. Upon the presentation to the lieutenant governor, within 60 days after the final adjournment of the legislature, of a petition signed as herein provided by legal voters equal in number to 10% of all the votes cast for all candidates for governor at the next preceding general election at which a governor was elected and verified and certified to as provided in this chapter, asking that any act, or section or part of any act, of the legislature be submitted to the people for their approval or rejection, the lieutenant governor shall submit such act, or section or part of such act, to the people for their approval or rejection at the next succeeding general election.

History: L. 1917, ch. 56, § 4; C.L. 1917, § 2293; R.S. 1933 & C. 1943, 25-10-4; L. 1977, ch. 95, § 3; 1984, ch. 68, § 45.

Compiler's Notes.

The 1977 amendment inserted "and verified and certified to as provided in this chapter."

The 1984 amendment substituted "lieutenant governor" for "secretary of state" in two places.

Municipal referendum.

This section applies to a municipal referendum. Allan v. Rasmussen (1941) 101 U 33, 117 P 2d 287.

Collateral References.

Statutes ⇦ 344.
82 CJS Statutes §§ 122-131.
42 AmJur 2d 754 et seq., Initiative and Referendum § 22 et seq.

Referendum of question of repeal of statute in absence of constitutional requirement, 76 ALR 1062.

Withdrawal: right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor, 126 ALR 1031, 27 ALR 2d 604.

20-11-5. Effective date of legislation. No act passed by the legislature shall go into effect until 60 days after the final adjournment of the session of the legislature which passed it, except laws passed by a two-thirds vote of the members elected to each house of the legislature. When a referendum petition has been filed, the act shall not go into effect, unless and until it shall be approved by a vote of the people at the next ensuing general election.

History: L. 1917, ch. 56, § 5; C.L. 1917, § 2294; R.S. 1933 & C. 1943, 25-10-5.

Municipal referendum.

This section makes it necessary that expedition should be used in submitting an ordinance to vote under this chapter. Allan v. Rasmussen (1941) 101 U 33, 117 P 2d 287.

Collateral References.

Statutes ⇦ 357.
82 CJS Statutes §§ 145, 146.
42 AmJur 2d 713, 714, Initiative and Referendum §§ 64, 65.

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum, 33 ALR 2d 1118.

20-11-6. Effective date of direct legislation — No veto. Any act or law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect five days after the date of the official proclamation of the vote by the governor. No act or law adopted by the people shall be subject to veto by the governor; but acts and laws approved by the people under the initiative or referendum provisions hereof may be amended by the legislature at any subsequent session thereof.

History: L. 1917, ch. 56, § 6; C.L. 1917, § 2295; R.S. 1933 & C. 1943, 25-10-6.

Collateral References.

Statutes ⇦ 375.

ATTACHMENT B

Alaska State Legislature

Legislative Research Agency

130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
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January 31, 1992

MEMORANDUM

TO:

FROM: Gordon S. Harrison, Director gsh

RE: **Vote Totals on Recent Initiative Measures**
Research Request 92.144

You asked for the vote totals, by senate district, for each of the initiative measures appearing on the ballot in the last three general elections.

Initiative measures appear on the ballot in primary elections as well as general elections. This is because the constitution requires the lieutenant governor to put certified initiative measures on the ballot "for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing" (Article XI, Section 4). As it happens, there were initiative measures on the primary ballots in 1986 and 1990. We have included these in our analysis.

Below is a summary of the initiative measures that appeared on the primary and general election ballots in 1986, 1988 and 1990. Vote totals by senate district are shown on the accompanying table.

1986 Primary

Nuclear Weapons Freeze (Ballot Measure No. 1)

- This measure directs the governor to conduct the state's affairs in conformity with the objectives of nuclear weapons control and reduction (approved).

1988 General Election

Civil Liability (Ballot Measure No. 2)

- This tort reform measure would make each party liable only for damages equal to his or her share of fault (approved).

VOTE TOTALS BY ELECTION DISTRICTS FOR BALLOT INITIATIVES
(1986, 1988, 1990)

Senate District	Primary 1986		General 1988				Primary 1990				General 1990	
	Nuclear Freeze		Civil Liability		Community Colleges		Alaska Railroad		Gambling		Marijuana	
	FOR	AGAINST	FOR	AGAINST	FOR	AGAINST	FOR	AGAINST	FOR	AGAINST	FOR	AGAINST
A	2,609	2,001	6,142	1,555	3,209	4,156	969	3,794	1,474	3,479	4,700	2,967
B	3,331	1,974	6,464	1,877	3,519	4,504	1,760	4,059	2,173	3,909	4,550	3,843
C	6,671	3,697	8,266	3,718	2,619	9,248	2,526	6,536	2,703	6,777	6,019	6,440
D	4,538	3,616	7,739	3,242	4,259	6,439	1,673	5,975	2,540	5,278	6,014	5,130
E	9,728	7,256	17,041	6,444	9,974	12,866	4,285	13,866	6,988	11,383	13,509	11,621
F	9,453	6,734	15,532	5,948	9,829	11,308	2,908	13,836	5,552	11,423	12,510	9,699
G	7,554	4,848	11,742	5,003	8,137	8,337	2,274	10,365	4,509	8,245	8,515	8,472
H	6,410	4,303	10,087	4,790	7,818	6,736	2,081	8,338	3,704	6,819	7,400	6,876
I	7,760	6,245	15,653	6,289	10,881	10,668	2,827	13,114	5,564	10,522	12,987	8,621
J	3,836	3,506	9,013	2,952	4,999	6,586	2,043	6,092	3,649	4,619	7,223	4,389
K	9,484	5,945	16,169	5,690	7,332	14,381	2,833	11,756	6,070	8,748	10,542	10,424
L	3,064	2,376	4,666	1,943	3,573	2,701	2,051	3,070	2,003	3,149	3,715	3,359
M	3,060	2,621	4,201	2,150	3,817	2,280	2,040	3,311	1,922	3,469	3,620	3,176
N	2,828	2,002	5,796	2,605	3,506	4 509	1,342	3,157	1,594	3,007	3,959	3,627
	80,326	57,124	138,511	54,206	83,472	104,719	31,612	107,269	50,445	90,827	105,263	88,644

Source: Division of Elections, "Official Returns," 1986, 1988, 1990.

Prepared by the Legislative Research Agency, January 1992 (92.144).

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

Alaska State Legislature

Legislative Research Agency

130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

January 31, 1992

MEMORANDUM

TO:

FROM: Gordon S. Harrison, Director gsh

RE: **Vote Totals on Recent Initiative Measures**
Research Request 92.144

You asked for the vote totals, by senate district, for each of the initiative measures appearing on the ballot in the last three general elections.

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- This measure directs the governor to conduct the state's affairs in conformity with the objectives of nuclear weapons control and reduction (approved).

1988 General Election

Civil Liability (Ballot Measure No. 2)

- This tort reform measure would make each party liable only for damages equal to his or her share of fault (approved).

Independent Community College System (Ballot Measure No. 3)

- This law would create a state community college system separate from the University of Alaska (defeated).

1990 Primary Election

Related to Alaska Railroad Operations (Ballot Measure No. 1)

- This law would prohibit the Alaska Railroad from transporting freight between Alaska and other states (defeated).

Alaska Gambling Board (Ballot Measure No. 2)

- This law would allow gambling by local option (defeated)

1990 General Election

Marijuana Law Amendments (Ballot Measure No. 2)

- This law would criminalize the possession and use of small amounts of marijuana in the home (approved)

I hope this information is useful. If you have any questions, please contact this agency.

Attachment

VOTE TOTALS BY ELECTION DISTRICTS FOR BALLOT INITIATIVES
(1986, 1988, 1990)

Senate District	Primary 1986		General 1988				Primary 1990				General 1990	
	Nuclear Freeze		Civil Liability		Community Colleges		Alaska Railroad		Gambling		Marijuana	
	FOR	AGAINST	FOR	AGAINST	FOR	AGAINST	FOR	AGAINST	FOR	AGAINST	FOR	AGAINST
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Source: Division of Elections, "Official Returns," 1986, 1988, 1990.

Prepared by the Legislative Research Agency, January 1992 (92.144).

HJR

3

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 11, 1993 FURTHER REFERRALS: Finance

Date of Committee Action: 3-29-93

The JUDICIARY Committee considered: HJR 3

HOUSE JOINT RESOLUTION NO. 3 LIMITING TERMS OF LEGISLATORS

Proposing amendments to the Constitution of the State of Alaska limiting tenure in the legislature.

RECOMMENDATIONS:
be replaced with CS HJR 3 (JUD)
[X] the same title
[ ] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[X] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

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

APPROVES PREVIOUS: (Dept/Date)
[X] fiscal note(s) Governor 2/11/93
[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Brian D. Porter	✓	Gail Phillips		✓	
Irene Nordlund	✓	Lily Davidson	✓		
		Jeannette James		✓	
		Pete Kott		✓	

Brian D. Porter
CHAIRMAN'S SIGNATURE

8-LS0155\K
Cook
3/24/93

CS FOR HOUSE JOINT RESOLUTION NO. 3(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MARTIN, Kott

A RESOLUTION

Proposing amendments to the Constitution of the State of Alaska relating to terms of legislators.

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

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

SECTION 3. ELECTION AND TERMS. Legislators shall be elected at general elections. Their terms begin on the fourth Monday of the January following election unless otherwise provided by law. The term of representatives shall be two years, and the term of senators, four years. One-half of the senators shall be elected every two years. **No person may serve consecutively more than eight full calendar years as a representative. No person may serve consecutively more than eight full calendar years as a senator. In addition, no person may serve consecutively more than fourteen full calendar years in the legislature.**

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

SECTION 29. APPLICATION OF 1994 TENURE AMENDMENT. Years served in the legislature before the convening of the First Regular Session of the

Nineteenth Alaska State Legislature shall not be considered for purposes of applying the tenure limit added by the 1994 amendment to Section 3 of Article II.

* **Sec. 3.** The amendments 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 laws of the state.

Rep. Brian Forter, Chairman

House Judiciary Committee

Date: March 10, 1993
Place: Capitol Room 120

Subject of Meeting: HJR 3 Limitation of Legislative Terms; HB 152 Jurisdiction of Magistrates; HB 62 Employee's Use of Legal Products; HB 147 Liability for Reference Info.

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
C.S. CHRISTENSEN	COURT SYSTEM	303 K ST ANCH	99501		264-8228	(Y) N	HB 152
Resa Jerrel	NFIB	9156 Skywood	99801		789-4278	(Y) N	HJR 3
Doug Rickey	Rep-Gussenhorf	State Cap.				(Y) N	HB62 - if needed
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

NFIB Survey

Term Limitation

6. Should Alaska state legislators be limited in the number of terms they can serve in office? 79.7 14.1 6.2

☐ Yes ☐ No ☐ Undecided
1 2 3 18

6a. If you answered "Yes" to question 6, how many terms should a member of the House of Representatives serve? (Select one.)

1. _____ Two terms (4 years) 47.1
2. _____ Four terms (8 years) 46.6
3. _____ Six terms (12 years) 6.3 19

6b. If you answered "Yes" to question 6, how many terms should a state senator be allowed to serve? (Select one.)

1. _____ Two terms (8 years) 87.7
2. _____ Four terms (16 years) 12.3
3. _____ Six terms (24 years) — 20

Background: Under the Alaska Constitution, the governor is limited to serving two consecutive terms in office. There is no limit to the number of terms that legislators can serve. A term is two years for House members and four years for Senate members. It has been suggested that the number of terms that legislators may serve should be limited.

Proponents of limiting the number of terms that legislators can serve believe that having an unlimited number of terms allows individual legislators to gain too much power. They also say that incumbents who have served for a long period of time have an unfair campaign advantage over any opposition.

In addition, proponents believe that career politicians become complacent and lose touch with their constituents. They further maintain that limiting the number of terms that lawmakers can serve would bring new faces and fresh ideas to state government.

Opponents argue that limiting the number of terms is unnecessary because voters can and do reject incumbents. They contend that lawmakers need time in order to gain the necessary expertise on a wide variety of issues.

These opponents also believe that senior lawmakers can spend more time in helping constituents because they can afford to spend less time campaigning. In addition, opponents fear that state lawmakers in their last term would not be responsive to the public.

NFIB Alaska

National Federation of
Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS
(NFIB/ALASKA)

IN SUPPORT OF

HJR 3 TERM LIMITATION

9159 Skywood Lane
Juneau, AK 99801

The Guardian of
Small Business

CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS RESA JERREL, AND I AM THE STATE DIRECTOR FOR THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA. I AM HAPPY TO BE HERE TODAY TO SUPPORT HJR 3.

NFIB/ALASKA IS COMPRISED OF 5,000 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE AGENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERS ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES. WE THEN SHARE THE RESULTS OF OUR POLL WITH THE LEGISLATURE AND ADMINISTRATION.

ON THE 1991 STATE BALLOT OUR MEMBERS VOTED EIGHTY PERCENT IN FAVOR OF TERM LIMITATIONS.

WHEN ASKED HOW MANY TERMS SHOULD A MEMBER OF THE HOUSE OF REPRESENTATIVES SERVE? WE RECEIVED THE FOLLOWING RESULTS:

47.1% TWO TERMS (4 YEARS)
46.6% FOUR TERMS (8 YEARS)
6.3% SIX TERMS (12 YEARS)

WHEN ASKED THE SAME QUESTION ABOUT SENATE TERMS, WE RECEIVED THE FOLLOWING RESULTS:

88% TWO TERMS (8 YEARS)
12% FOUR TERMS (16 YEARS)
0% SIX TERMS (24 YEARS)

THE VAST MAJORITY OF OUR MEMBERS BELIEVE THAT LEGISLATIVE TERMS SHOULD BE LIMITED TO 8 YEARS - AND THAT IS THE TERM LIMIT SET FORTH IN SJR 3.

I AM HAPPY TO SEE THIS RESOLUTION BEING CONSIDERED EARLY IN SESSION, I WOULD URGE YOU TO MOVE THE BILL OUT OF COMMITTEE - AND LET THE CITIZENS OF ALASKA HAVE TO OPPORTUNITY TO VOTE ON THIS ISSUE.

NFIB/ALASKA THANKS YOU FOR THE OPPORTUNITY TO COMMENT IN FAVOR OF THIS LEGISLATION. IF YOU HAVE ANY QUESTIONS I WOULD BE HAPPY TO TRY AND ANSWER THEM.

ELECTIVE DISTRICT 14
ELMENDORF A.F.B.
EAST ANCHORAGE
GOVERNMENT HILL

REP. TERRY MARTIN

HOME
355 DONNA DR., #11
ANCHORAGE, AK 99504
PHONE: 333-6990

DURING SESSION
P.O. BOX V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE: 465-3783

Alaska House of Representatives

MEMORANDUM

DATE: February 17, 1993

TO: Representative Brian Porter
Chairman, Judiciary Committee

FROM: Representative Terry Martin TM

RE: HJR 3 - Scheduling

Attached are the support materials for HJR 3 - Limitation of Terms. At your earliest convenience, would you please schedule HJR 3 in the House Judiciary. The primary purpose of this resolution is to limit the amount of legislative terms served by state representatives and senators in Alaska.

If you have any questions or require additional information, please contact my aide Tom Anderson at 6618.

REQUEST FOR SCHEDULING

ELECTIVE DISTRICT 14
ELMENDORF A.F.B.
EAST ANCHORAGE
GOVERNMENT HILL

REP. TERRY MARTIN

HOME
355 DONNA DR., #11
ANCHORAGE, AK 99504
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DURING SESSION
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PHONE: 465-3783

Alaska House of Representatives

SPONSOR SUMMARY

HJR 3

An amendment to the Constitution of the
State of Alaska relating to the limitation of terms
in the Alaska State Legislature

HJR 3 is an amendment to the Constitution of the State of Alaska requiring a limitation on legislators serving in the House of Representatives and the State Senate. A person in the House cannot serve consecutively more than four full or partial terms, and a person in the Senate may not serve consecutively more than two full or partial terms. In addition, no legislator may serve consecutively during more than eleven full or partial calendar years.

Need for Legislation

In retrospect of the past election in 1992, and in view of the current national trend against continuous incumbency, it would seem appropriate that a constitutional amendment be implemented through which career politicians are prevented from running for the same office.

At the original Alaskan Constitutional Convention, drafters and delegates concurred that lifelong politicians were not desired. Whereas knowledge and seniority accrued through long service in the House and Senate, the intent for creating a legislature was to maintain a continuous stream of fresh thoughts and ideas. This resolution would amend the constitution and impose the term limit.

In our recent national election on November 3rd, 14 states had the limitation of terms initiative for federal and state legislative seats on their ballots, all of which passed. In addition, 29 state legislatures introduced the term limit bill/resolution in their prospective states. In 1992, figures show that out of the 7,461 state legislators, 1,374 (18%) were new members. Indeed, the sentiment of today's voter is to limit the term of the legislator.

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Alaska House of Representatives

SECTIONAL ANALYSIS

HJR 3

Proposing an amendment to the Constitution of the State of Alaska limiting tenure in the legislature

Section 1.

States that no representative may serve consecutively more than four full or partial terms, no senator may serve consecutively more than two full or partial terms, and no legislator may serve consecutively during more than eleven full or partial calendar years.

Section 2.

Adds a new subsection, (29), relating to the tenure of legislators, stating that the 1994 amendment will only apply to office served after 1992.

Section 3.

States that the amendment proposed by HJR 3 will be placed on the ballot at the next general election.

HOUSE COMMITTEE REPORT

2/11

(7)

Date Referred: January 11, 1993 FURTHER REFERRALS: Judiciary / Finance

Date of Committee Action: 2-11-93

The STATE AFFAIRS Committee considered: HJR 3

HOUSE JOINT RESOLUTION NO. 3 LIMITING TERMS OF LEGISLATORS

Proposing amendments to the Constitution of the State of Alaska limiting tenure in the legislature.

RECOMMENDATIONS: [X] the same title
be replaced with CS HJR 3 (STA) [ ] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[X] fiscal impact GOV
[ ] zero fiscal note

APPROVES PREVIOUS: (Dept/Date)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Vezey	X	Ulmer		X	
Olberg	X	B Davis		X	
G. Davis	✓				
Sanders	✓				
Kott	✓				

Vezey
CHAIRMAN'S SIGNATURE

STATE AFFAIRS REPORT

SUBMITTED BY REP MARTIN
RE: HJR 3
1/21/93

Incumbents face trouble: state legislators

CINCINNATI — About 70% of state legislators agree that voter discontent will cause substantial numbers of incumbent state lawmakers to lose their seats in the general election, according to the results of a National Conference of State Legislatures (NCSL) poll.

Two-thirds of legislators who have held office at least seven years expect incumbents to lose their re-election bids Nov. 3. Nearly three-fourths of lawmakers with at least 12 years of legislative service expect incumbents to lose.

The lawmakers were polled at the annual NCSL convention in late July in Cincinnati. The poll was conducted on the floor of the exhibition hall by LEXIS, part of Mead Data Central Inc., Dayton, Ohio, a full-text, computer-assisted legal research service.

Three-fourths of the lawmakers surveyed oppose limits on the number of terms they can serve. About 93% of Democratic legislators are against term limitations, while 58% of Republicans oppose such limits. Not surprisingly, more than 80% of the lawmakers who have held office for seven years or more oppose limits.

Nearly two-thirds of state legislators favor a constitutional amendment requiring a balanced federal budget. Of the lawmakers polled, 91% of the Republicans favor the amendment, but 59% of the Democrats oppose it.

In other poll findings, six of seven legislators agree that heavy reliance on property taxes to fund public schools creates fiscal inequities among school districts. To remedy such inequities, 44% of the legislators indicated they favor increasing state income taxes, 32% prefer hikes in state sales tax levels and 22% favor redistributing property taxes across school districts.

About 58% of legislators said they favor efforts to privatize government activities. About 83% of Republicans and 38% of Democrats indicated they look favorably on privatization.

— *Ellen Shubart*

The Anchorage Times

"Believing in Alaskans, putting Alaska first"

Publisher: BILL J. ALLEN
Editors: DENNIS FRADLEY, PAUL JENKINS, WILLIAM J. TOBIN

The Anchorage Times Commentary in this segment of the *Anchorage Daily News* does not represent the views of the *Daily News*. It is written and published under an agreement with former owners of *The Times*, in the interests of preserving a diversity of viewpoints in the community.

Time for term limits

THE ELECTION campaign just ended — and we speak here of the local races for state offices — offered in a disgusting way new evidence of the absolute necessity for limiting terms in the Alaska Legislature.

Tens of thousands of dollars were spent by candidates in some races. Maybe a hundred thousand or more in a few.

No matter how important we all might feel legislative service to be, it is not — and should not — be something to be bought at a huge cost.

Clearly, the candidates themselves are not spending their own money to win these big-buck seats in Juneau.

Instead, they are spending a little bit of yours — through individual contributions — and an awful lot that comes from special interests, the big spenders who are compelled (because that's the way the system works these days) to try to protect their backsides by seeing to it that friendly faces are elected to the Legislature.

And so we elect legislators who often are more committed to big money backers than they are to their constituents at large.

AND THE PRESSURE is always on to act in the Legislature, and to vote in the Legislature, in ways that will ensure re-election the next time around.

It's a way of doing things that no longer fits the mood of the people, or the needs of the state as the new century looms ahead.

The first priority of restoring good government to Juneau is to provide Alaska with a true citizen Legislature.

We haven't had that for decades — not since we started paying pensions to lawmakers, not since we permitted legislators to stay in Juneau more than four months a year, not since the members of the House and Senate elevated their positions to full-time jobs, and not since we let them become year-round professional politicians without jobs in the real world.

It's time for a change.

And no constitutional amendment is required. All the 1993 session needs to do is to pass a term limitation law.

It should be right up near the the top of priority matters when the ladies and gentlemen of the House and Senate convene in Juneau Jan. 11.

THE ANCHORAGE TIMES, P.O. Box 100040, Anchorage, AK 9

SUBMITTED BY
REP. MARTIN
RE: HJR 3
1/21/93

Election Update: Focus on Legislatures

Term limits sweep country

Veteran lawmakers are unable to hide

By TODD SLOANE
Staff Writer

Love 'em or hate 'em, term limits for state legislators are here to stay in 15 states, and chances are they're coming soon to a state near you.

Within weeks of the Nov. 3 passage of term limits for state legislators in 12 states — which joined California, Colorado and Oklahoma in limiting legislative tenure — new term limit proposals came forth in Georgia and New Jersey.

Proposals already are working their way toward the ballot in Maine, Idaho, Utah and Massachusetts. And there are growing movements to limit terms in New York and Texas.

Typical of the latest proposals was one from Georgia Lt. Gov. Pierre Howard, who pledged Nov. 9 to seek a limit to terms equal to eight years for state executive officers and 12 years for legislators.

Mr. Howard said the difference between a state government without term limits and one with term limits "is the difference between fishing in a stagnant pond and fishing in a trout stream where the water's running through." The proposal will be put in the hopper by Senate Majority Leader Wayne Garner, a fellow Democrat.

Voters, some attention-seeking politicians and taxpayer groups say they love term limits because the measures put an end to career politicians and their cozy, money-driven relationships with special interests while relaxing partisan gridlock.

By and large, legislative leaders and public policy analysts hate term limits, saying they will lead

See Term limits on Page 20

Term limits

Twelve states, including Washington (left), adopted term limits for state legislators on Nov. 3:

Arizona, Arkansas
Florida, Michigan
Missouri, Montana
Nebraska, Ohio
Oregon
South Dakota
Washington
Wyoming

Three states already had term limits:

California
Colorado
Oklahoma

Election Update: Focus on Legislatures

Term limits

Continued from Page 3

to more gridlock as leadership loses control of the crowded government institutions. The loss of institutional and policy memory and fealty to leadership will lead to numerous agendas in constant conflict, they say.

It is too early to determine how term limits for state legislators will play out, but one of the major goals of the limits, "throwing the bums out," already has started to be realized in California, which adopted term limits in 1990. An Assembly member is allowed to serve no more than six years, or three two-year terms, in his or her lifetime. On the other side of the Legislature, senators get eight years, or two four-year terms.

The departure of Democrat Barry Keene, the one-time Senate majority leader who said he resigned out of frustration with gridlock in California's legislative process, was probably hastened by the knowledge that he would get to serve only his current term, which was scheduled to expire in 1996.

Bruce Bronzan, a Democrat considered one of the country's most experienced health policy experts and chairman of the California Assembly's Health Committee, left for an academic post, saying he couldn't pass up the opportunity; the knowledge that he would be out on his ear in just two years anyway influenced his decision, say insiders in Sacramento.

First limited crop of lawmakers

The 28 new members of the California Assembly, who account for more than one-third of its 80 members, represent the first crop of elected lawmakers who know they can serve no more than six years, assuming that each is re-elected twice.

New Democratic Assemblyman Louis Caldera, who represents the area of central Los Angeles, said, "People have a sense that they've been elected to do a job and they have only a short period of time to do it. I'm not going there to occupy space."

Lewis K. Uhler, co-author of the state's term limit initiative, said this year's candidates were different because they knew before running that they could not make a career out of legislative service. He said the group was more experienced, older and also represented a broader cross-section of the populace than past legislative classes.

"This seems to be a group of people with more concern for solving the issues than simply getting re-elected, which is what we thought this process was all about," Mr. Uhler said.

How this new breed of legislator will change institutions and affect public policy is already being assessed nationally.

"Within a few years, we are going to see entire leaderships being thrown out," said Karl Kurtz, director of state services for the National Conference of State Legislatures, Denver. Without seniority, "people will have only a few years to become and serve as legislative leaders. You will likely see one-term speakers, with their successors already in line before they take charge."

In large states like California, Michigan and Ohio, where political leaders have established large campaign funds to aid current and potential members of the same political parties, there will be no reason for leaders to maintain these funds because the loyalty to specific leaders won't be meaningful, Mr. Kurtz said.

Lack of institutional memory

Alan Rosenthal, director of the Eagleton Institute of Politics at Rutgers University, New Brunswick, N.J., argued that term limits will eliminate institutional memory, causing a new kind of policy gridlock.

"You now have legislators who have honed their political expertise over many, many years, who know what has been tried and worked and what has been tried and didn't work," he says. "What will probably happen under term limits is that, as new people keep coming in, policy will be rewritten and rewritten. The real question will be whether local governments will be able to absorb all of these policy changes."

If power shifts away from legislatures, it will go to executive branch agencies, which will have far more institutional memory. Governors will seem to be more effective than weak legislative leaders, Mr. Rosenthal argues.

Measures differ considerably

Two State University of New York professors, Gerald Benjamin and Michael J. Malbin, who both work with the Rockefeller Institute of Government, Albany, N.Y., pointed out in their book, "Limiting Legislative Terms," that not all term limits are alike.

For instance, California limits lifetime service to six and eight years in the Assembly and Senate, respectively, while Colorado opted for a limit on continuous service in one chamber. Once a person hits the limit of eight consecutive years, he or she must do something else for four years before serving again in that body.

However, those four years may be spent in the other house of the Legislature. The majority of term limit plans adopted Nov. 3 follow the Colorado method. This would have the effect of allowing skilled "entrepreneurial" career politicians to stay in business. Legislatures and other government offices will become a game of musical chairs, Messrs. Benjamin and Malbin speculate. ■

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HJR 3

Revision Date:
Title: Amendment to the Constitution RE: limiting tenure in the legislature
Sponsor: Representatives Martin and Kott
Requestor:

Department Affected: Office of the Governor
SRU: Division of Elections
Component: General and Primary Elections
COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0
FUNDING:						
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	2.2*	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0
POSITIONS:						
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: 0

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

Prepared by: Charlot E. Thickstun, Director Phone: 465-4611
Division: Division of Elections Date: 1/15/93

Approved by Commissioner: Lt. Governor John B. Coghill
Agency: Office of the Lt. Governor Date: 1/15/93

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A Bulwark Against Faction

James Madison's Case for Term Limits

Stephen C. Erickson

In 1787 a French diplomat made a remarkable prediction about the American political system. Reporting to his home government, Louis Guillaume Otto pointed to what he believed was a critical flaw in the new American Constitution:

> It is true that the President will be elected for only four years, the Senators for only six, the Representatives for only two, but they will always be *eligible* [Otto's emphasis]; will not elections be for sale...especially when they will be able to command the public treasury at will?

Anti-Federalist opponents of the Constitution had serious doubts about a lack of term limitation, fearing a distant government that would grow independent of its electors and become corrupted by centralized power.

Term limitation also had a backer within the ranks of the Federalists, the "Father of the Constitution" himself, James Madison. Madison's call for legislative term limitation was unique, in that he proposed to use the concept as a means to control special interests. It is his argument that speaks to us most forcefully today.

Rotation of Offices

The notion of restricting re-election is as old as the democracy of ancient Greece, where the practice of legislative term limitation found expression in the writings of Aristotle. The idea was adopted by English republicans, the most influential of whom was James Harrington. Harrington made "rotation of offices" a centerpiece of his model *Commonwealth of Oceana*, a plan Madison probably studied when contemplating the design of an American republic.

Harrington's concept of rotation was passed down to generations of English and American republican thinkers, including the framers of the Articles of Confederation. A number of early American state constitutions also adopted the concept for a range of office holders, from governors to local sheriffs and coroners. Madison's colleague and fellow Virginian George Mason wrote term limitation into the influential Virginia Declaration of Rights, illustrating how re-election restrictions were commonly associated with the most essential constitutional guarantees against tyrannical government. Anti-Federalists believed that legislators inevitably became corrupted when allowed to hold office for long periods of time, and that one way to ensure just laws was to compel legislators to live periodically as ordinary citizens under the laws of their own design.

Equally important, rotation of offices would educate large numbers of citizens in the art of governing through office holding, and thus make it more difficult for government to encroach on their liberties undetected. Many Americans of the founding generation saw rotation of offices through mandatory term limitation as a key to the maintenance of a selfless and politically astute citizenry, qualities known as public virtue, which were necessary if the republic was to survive.

Popular Government's "Mortal Diseases"

Madison agreed that a measure of public virtue was required for the operation of republican government, but was more inclined to believe that man was essentially a self-interested creature and that public virtue alone was not enough to secure the republic. His great concern was that groups of people, or factions as he called them, would come to dominate government at the expense of the common good. Madison's idea of faction is nearly identical to the modern notion of special interest.

In his now-famous Federalist Number 10, Madison defined faction as a group of citizens "adverse to the rights of other citizens, or to the permanent and aggregate interests of the community." He pointed out that factions may derive from different moral and philosophical opinions, but are especially potent and determined when motivated by economic interests. They are "the mortal diseases under which popular governments have everywhere perished," said Madison. Because factions are endemic to free society, the central intellectual challenge in designing a constitution for the United States was to minimize the effects of special interests on government. The enslavement of modern American government to special interests and local constituencies at the expense of pressing national concerns indicates that something

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has gone drastically wrong with the Founders' strategy for controlling faction.

The system of checks and balances taught to every American school child is the Founders' first weapon against faction. Their plan gave the various branches of government not only different powers, but also contrasting temperaments.

To the executive they gave energy and to the judiciary independence. In keeping with the classical model, the Founders attempted to provide the two branches of Congress with the complementary characters of wisdom and virtue. Chosen by direct election, the House was designed to be immediately representative of the people, exercising republican government in its raw form. Madison argued that this lower branch would be most capable of reflecting the public virtue found in the body of the citizens, but might lack the wisdom to distinguish self-interests from broader community interests, become motivated by popular passions, and thus be prone to faction.

Archive Photos

Unlike Anti-Federalists who wanted term limits to keep government close to the people, Madison wanted them to give legislators more independence from their own narrow constituencies.

Coolness in the Senate

To check the potentially narrow-minded perspective of the lower branch, Madison supported a Senate that would proceed "with more coolness, with more system, and with more wisdom than the popular branch." Popular passions were to be cooled through indirect election, a "refining process" whereby senators were elected by state legislatures—although Madison personally preferred indirect means other than state governments. Members of the upper house represented greater territories and would therefore possess a broader view, and hold office for six-year terms to give them more time to become acquainted with national concerns. While the upper house would be a constant check upon faction, its actions would in turn be monitored by the lower house to safeguard against the potential corruption of government bodies more distant from the oversight of the people. On paper, the House and Senate struck an ideal balance.

But differences between the upper and lower houses of Congress disappeared in the 19th and early 20th centuries, as the indirect election process was gradually eliminated throughout the states. Today's senators are, in effect, representatives with longer terms, and are no more resistant to special interests than their counterparts in the House. Even if the Founders' "refining" mechanism were still in place, it is difficult to see how it would be an adequate defense against modern special interests, given the vast capability of modern government to serve those interests. Indeed, circumstances have rendered both houses of Congress identical in character and temperament.

Advantage of Large Republic

Another way Madison hoped to discourage faction was in the creation of a large republic. While a small republic might easily split into two factions or interests, Madison believed that a large and populous territory like the United States, containing many conflicting interests, would be less prone to faction because in a large republic it would be difficult for any single interest to form a majority and serve itself at the expense of the common good; on the contrary, a host of conflicting interests would check each other. Madison's theory held as long as the federal government's power remained relatively limited. Yet limited federal power encouraged the rise and militant assertion of a minority Southern slave interest, which led to the Civil War—America's bloodiest battle with faction.

Ironically, the Civil War marked a major step in the growth of an increasingly powerful federal government that eventually undermined Madison's large-republic theory. Commanding enormous power and resources, modern government now serves thousands of special interests simultaneously in ways unimagined by Madison and his fellow Founding Fathers. Today special interests are banded together and served by their agents in government, principally congressmen, to form a collective majority. Modern politics have rendered national interests to be, in practice if not in reality, the sum of a vast number of special interests. The mechanisms the Founders incorporated into the Constitution are too feeble to address the threats posed by special interests to a modern state operating within an infinitely more complex society than that of 18th-century America.

Madison Calls Twice for Term Limits

Madison, however, proposed to deploy another weapon in the fight against special interests, and that weapon was legislative term limitation.

The idea was first raised at the Philadelphia Convention on May 29, 1787 in the Virginia Plan. Although introduced by Governor Edmund Randolph, the Virginia Plan had been outlined by Madison in letters to Randolph and George Washington prior to the convention, and served as the initial working draft of the Constitution itself. The plan declared that members of the lower house were to be ineligible to run for re-election after a single two-year term in office and would not be allowed to run again for an unspecified number of years thereafter. The upper house was to be elected by the lower house, incorporating Madison's preferred refining

mechanism. As a result, term limitation could potentially affect the entire legislative branch. Here, in the Virginia Plan, Madison called for a radical application of legislative term limitation, mandating an entire new House of Representatives every two years and holding out the possibility for frequent and significant changes in the Senate.

Madison's Virginia Plan called for a two-year limit in the House of Representatives.

Although term limitation was later struck from the Virginia Plan, Madison again raised the issue in a noteworthy speech on June 26 that encapsulated much of what he would later write in Federalist 10. The delegates had been discussing the creation of a Senate where Madison hoped to establish a bulwark against faction. Writing about himself in the third person in his notes from the convention, Madison stated:

> [He] did not conceive that the term of nine years could threaten any real danger; but in pursuing his particular ideas on the subject, he should require that the long term allowed to the second branch should not commence till such a period of life, as would render a perpetual disqualification to be re-elected.

Here Madison differentiated the House and Senate far more profoundly than did the final draft of the Constitution. As a result of short terms and the potential for re-election, the House would be sensitive to the changing needs and interests of the population. The Senate, on the other hand, comprised of the old and presumably wise, would take a long and more objective view and, without election pressures that result from short terms and re-elections, would be more capable of rising above narrow self-interests than members of the House. Such ideas, found in his convention speeches and in the Virginia Plan, reflect the true Madison even more than his famous writings in *The Federalist*, where he argued not necessarily for his own proposals, but in favor of a constitution that was the product of a great political compromise.

Madison's efforts on behalf of term limitation were modest and encountered almost no encouragement at the Philadelphia Convention. Arch-Federalists took strong objection to the prospect of a government of amateurs. Their argument is one that has always dogged the case for term limitation, and indeed their objections are frequently echoed by modern critics of the idea.

Madison also agreed that government must be wise, and he therefore could support a nine-year term in the Senate to ensure that one house of Congress was well experienced. Classical political theorists had advised the creation of upper houses comprised of aristocrats, reasoning that only a leisure class would have the time to read widely enough to govern wisely. In Harrington's republic, the upper house debated and proposed legislation, but it was the lower house that voted it up or down. Thus, government was divided into the higher function of debating and proposing carried out by an educated elite, and the lower function of choosing, performed by the representatives of more virtuous freeholders.

The Rise of Career Politicians

But who actually proposes modern legislation? Today, laws and policies are developed by legions of legislative staffers, bureaucrats, and lobbyists, while the choosing is left to elected officials in both houses of Congress. In terms of the classical model, the brain trust has moved from the old aristocratic upper house to a professional class of public policy experts. Given the complexities of modern government and society, no other division of labor seems possible. The modern U.S. Congress is no smarter than the bureaucracy that supports it, and is therefore neither especially wise nor virtuous.

No doubt many of Madison's colleagues at the Philadelphia Convention would have joined him in support of legislative term limitation had they foreseen the possibility of the rise of a class of career politicians, all but unimaginable in 1787. Indeed, Madison acknowledged that "a few" members of the legislative branch would be "frequently re-elected" but that "new members would always form a large Proportion." The Anti-Federalists were less convinced, and their case for re-election restrictions based upon worries about corruption and the establishment of a detached ruling class is still relevant today.

But it is Madison's argument for term limitation that cuts to the heart of what is wrong with the present American political system. Unlike his Anti-Federalist critics who called for term limitation to prevent the rise of a government independent of the people, Madison sought to use the concept to give legislators more independence from their own narrow constituencies and self-interests. He attempted to create a system whereby legislators were not advocates for special groups, but impartial umpires for the national interest.

Madison understood that all legislative decisions are biased and attempted to minimize those biases by encouraging legislators to be less interested and more judicious through mechanisms like term limitation. Madison knew that the desire to be re-elected could make legislators pawns to special interests. And getting re-elected is naturally a primary concern of modern career politicians. Thus, the present system maximizes the influence of special interests at the expense of the common good, and turns Madison's vision of the American republic completely on its head.