

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9579 SENATE JUDICIARY

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"Absent this legislation, the Hawaii court decision could force Alaska to recognize same-sex marriages," said Representative Norman Rokeberg who introduced identical legislation last year in the House. "This is a policy call that should be decided by the legislature of Alaska, not a court in another state."

Rokeberg said that while this is a policy that the State of Alaska currently enforces, ambiguity exists because the current statute uses the gender-neutral term "person" instead of man and woman. The existence of such ambiguous language is problematic and has led to litigation on the subject of same-sex marriages.

Rokeberg noted that in 1974 a revisor of statutes bill made "gender Neutral" the entire body of Alaska law, and in doing so, took out the reference to man & woman and replaced it with "person."

SB 308 also prohibits "same-sex relationships" to be entitled to the benefits of marriage. This language precludes the state from recognizing same sex or heterosexual "domestic partnerships" which are not legal marriages, but could be deemed to be entitled to the benefits of marriage, such as employee benefits.

"This law was not meant to be divisive. It was meant to clarify the statutes and make sure that the family, as a unit, is recognized in Alaskan law as the foundation of our society. This is important and something we need to protect legally," said Rokeberg.

"I believe the Alaska Legislature made the right call when it supported this bill," Leman said.

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**Broadcast Note: Audio actualities are available by calling
1-800-478-6540.**

04. U.S. 88

58708

THE NATIONAL LEGAL FOUNDATION

6477 COLLEGE PARK SQUARE, SUITE 306
VIRGINIA BEACH, VIRGINIA 23464
(804) 424-4242 • FAX: (804) 420-0855

April 4, 1996

OPINION LETTER

It is the opinion of the National Legal Foundation that Senate Bill 308 is constitutional under both the United States and Alaska Constitutions.

No federal or state court has ever found any law or policy denying homosexuals the right to marry (or limiting marriage to one man and one woman) to be unconstitutional on federal equal protection or due process grounds. *Dean v. District of Columbia*, 653 A.2d 307 (D.C. App. 1995); *McConnell v. Nooner* 547 F.2d 54 (8th Cir. 1976); *Adams v. Howerton*, 673 F.2d 1036 (9th Cir. 1982), *cert. denied*, 409 U.S. 810; *Baehr v. Lewin*, 852 P.2d 44 (Hawaii 1993); *In re Estate of Cooper*, 592 N.Y.S.2d 797 (App. Div. 1993), *appeal dismissed*, 624 N.E. 2d 696 (N.Y. 1993); *DeSanto v. Barnsley* 476 A.2d 952 (Pa. 1984); *M.T. v. J.T.*, 140 N.J. Super. 77, 355 A. 2d 204 (App. Div. 1976); *Singer v. Hara*, 522 P.2d 1187 (Wash. 1974); *Jones v. Hallahan*, 501 S.W.2d 588 (Ky. 1973); *Baker v. Nelson*, 191 N.W. 2d (Minn. 1971) *appeal dismissed*, 409 U.S. 810 (1972); *Anonymous v. Anonymous*, 325 N.Y.S. 2d 499 (Supp. Ct. 1971).

It is critical to note that in *Baker v. Nelson, Id.*, the homosexuals who were denied the right to marry argued, among other things, that this practice violated both the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The Supreme Court of Minnesota held that "the equal protection clause of the Fourteenth Amendment, like the due process clause, is not offended by the state's classification of persons authorized to marry. There is no irrational or invidious discrimination." *Id.* at 187. Even more crucial is the fact that the United States Supreme Court dismissed the appeal "for want of a substantial federal question." 409 U.S. 810. The Due Process and Equal Protection claims did not carry any weight with the U.S. Supreme Court.

Furthermore, no court until the Hawaii Supreme Court had ever expressed any concerns on state constitutional grounds either. See cases cited above. It is important, therefore, to examine the concerns expressed in the Hawaii case, *Baehr v. Lewin*.

First of all, the Hawaii court declared that "the right to privacy does not include a fundamental right to same-sex marriage." *Id.* at 55 (emphasis added). We believe that the Alaska courts would come to the same conclusion, relying on the same federal cases for guidance (although they are not limited to these cases as guidance). The Hawaii court relied on *Zablocki v. Redhail*, 434 U.S. 374 (1978); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); *Meyer v. Nebraska*, 262 U.S. 390 (1923); and *Maynard v. Hill*, 125 U.S. 190 (1888) to correctly conclude that: "The foregoing case law demonstrates that the federal construct of the fundamental right to marry--subsumed within the right to privacy implicitly protected by the United States Constitution--presently contemplates unions between men and women." *Baehr* at

56. The court then concluded that there was no fundamental right to same-sex marriage under the Hawaii Constitution either.

Because the right of privacy arises from a due process context, the Hawaii court, quoting *Zablocki*, also held that there was no federal or state due process problem: "the right to marry is part of the fundamental 'right of privacy' implicit in the Fourteenth Amendment's Due process Clause." *Baehr* at 55. Since there was no violation of the right to privacy, there was no violation of due process.

The National Legal Foundation believes that the Senate Bill 308 is constitutional in light of the above brief analysis of the equal protection, due process, and privacy issues under the United States Constitution and under the due process and privacy provisions of Article 1, Sections 1, 3, 7, and 22 of the Alaska Constitution. Furthermore, the National Legal Foundation believes that the Alaska courts would adopt a similar analysis. Any other analysis would fly in the face of every other federal and state court that has ever addressed the issue, including the Hawaii Supreme Court in *Baehr*.

It is true however, that the Hawaii Supreme Court remanded the case to the trial court. It did so because it believed the trial court had erred in granting judgment on the pleadings. *Baehr* at 52-55. The supreme court held that the trial court had erred in applying a rational basis test to the Hawaii marriage statute and remanded case with instructions to apply strict scrutiny. *Id.* at 59-68

It is critical to notice two things. First, the Hawaii Supreme Court went through unconvincing logical contortions to reach the conclusion that strict scrutiny was the proper standard. *Id.* The court analogized its case to *Loving v. Virginia*, 388 U.S. 1 (1967), a case involving Virginia's miscegenation laws: Since the miscegenation laws are unconstitutional because they discriminate on the basis of race, so Hawaii's marriage law must be unconstitutional because it discriminates based on sex. This is a leap of logic that other courts have rejected. Race-based classifications are invidiously discriminatory; sex-based classifications are not because marriage requires by definition a male and a female. In *Singer, supra*, the court made such a statement about the plaintiff's sex discrimination claim and in *Baker, supra*, the court explicitly distinguished *Loving*, rejecting the very argument the *Baehr* court proffered.

Also, the *Baehr* court was forced to acknowledge that the appellant homosexuals were not a "suspect class" but the court would nonetheless consider sex a "suspect category." The court admitted it had never so held before. *Baehr* at 67.

The dissenting opinion thoroughly points out why strict scrutiny should not be applied. *Id.* at 70-74. No fundamental right is involved, the law is not invidiously discriminatory, and no suspect class is involved. *Id.* at 72. The dissent adopted the view of the *Singer* and *Baker* courts: The law does not discriminate on the basis of sex since "the statute applies equally to all

unmarried persons, both male and female, who desire to enter into a legally recognized marriage." *Id.* (emphasis original).

Second and more important than the fact that the Hawaii Supreme Court erroneously applied the strict scrutiny standard, is the fact that the Alaska courts will not have the opportunity to apply this standard. As the Hawaii Supreme Court noted, under its state constitutional jurisprudence, "Whenever a denial of equal protection of the laws is alleged, as a rule our initial inquiry has been whether the legislation in question should be subjected to 'strict scrutiny' or to a rational basis test." *Id.* at 63 (citations omitted). However, in Alaska the case is otherwise. The Alaska courts do not use a strict scrutiny test for statutes not affecting a fundamental right. A statute must only pass the rational basis test: "Under the rational basis test, in order for a classification to survive judicial scrutiny, the classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Hilbers v. Municipality of Anchorage*, 611 P.2d 31 (Alaska 1980).

The following points from our earlier discussion are germane here. Rational basis is the proper standard since no fundamental right is involved. All persons similarly circumstanced are treated alike. Also implicit in the fact that every court to ever address the issue of same-sex marriage (until the *Baehr* court) has denied the homosexuals' challenges to these laws is the acknowledgment that there is a rational basis for prohibiting same-sex marriage. Various reasons are cited in *Zablocki, supra; Skinner supra; Meyer supra; and Maynard supra*. Perhaps the two most common reasons cited in these cases are that the "traditional" family is the nucleus of society; and the procreative aspect of male-female marriages.

In addition, the United States Supreme Court has stated that "majority sentiments about the morality of homosexuality" are adequate grounds upon which to base a statute. *Bowers v. Hardwick* 478 U.S. 186, 196 (1986).

The National Legal Foundation believes that the Senate Bill 308 is constitutional in light of the above brief analysis of equal protection issues under Article 1, Sections 1 and 3 of the Alaska Constitution. Furthermore, the National Legal Foundation believes that the Alaska courts would adopt a similar analysis based on their required use of the rational basis test.

In summary, the National Legal Foundation believes Senate Bill 308 to be completely constitutional and further believes that the Alaska courts would so find.

Notwithstanding the clear weight of evidence that Senate Bill 308 is constitutional, two arguments are sometimes advanced which purport to show that the bill may be unconstitutional. Both of those arguments are fallacious.

First, the idea is advanced that S.B. 308 would violate the Full Faith and Credit Clause of the United States Constitution. This is simply untrue. The United States Supreme Court has declared that:

Prima facie, every state is entitled to enforce in its own courts its own statutes, lawfully enacted. One who challenges that right, because of the force given to a conflicting statute of another state by the Full Faith and Credit Clause, assumes the burden of showing, upon some rational basis, that of the conflicting interests involved those of the foreign state are superior to those of the forum. It follows that not every statute of another state will override a conflicting statute of the forum by virtue of the Full Faith and Credit Clause

Alaska Packers Association v. Industrial Accident Commission of California, 294 U.S. 323, 547-48 (1935).

In *Pacific Employers Insurance Company v. Industrial Accident Commission*, 306 U.S. 493 (1939) the Supreme Court further explained:

the very nature of the federal union of states, to which are reserved some of the attributes of sovereignty, precludes resort to the full faith and credit clause as the means for compelling a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate. . . .

This Court must determine for itself how far the full faith and credit clause compels the qualification or denial of rights asserted under the laws of one state, that of the forum, by the statute of another state. But there would seem to be little room for the exercise of that function when the statute of the forum is the expression of domestic policy, in terms declared to be exclusive in its application to persons and events within the state.

Id. at 502-503.

Thus, as even advocates of same sex marriage concede, the matter is reduced to a choice-of-laws issue. See, e.g., Barbara J. Cox, *Same-Sex Marriage and Choice-Of-Law: If we Marry in Hawaii, are we still Married When we Return Home?* 1994 WIS. L. REV. XXX: 1033 and Deborah M. Henson, *Will Same-Sex Marriages be Recognized in Sister States?: Full Faith and Credit and Due Process Limitations on States' Choice of Law Regarding the Status and Incidents of Homosexual Marriages Following Hawaii's Baehr v. Lewin* 32 University of Louisville Journal of Family Law 551.

The United States Supreme Court will only invalidate a state's choice-of-law doctrine if it is "arbitrary or fundamentally unfair" because there is no "significant contact or significant aggregation of contacts, creating state interests." *Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981). Because this is inherently not the case in the situation in which a couple seeks to have

their marriage recognized by the forum state, states are free to adopt whichever doctrine they chose. Henson, *supra*. States, including Alaska, that follow the Restatement (Second) of Conflict of Laws (1971) are free to refuse to recognize foreign marriages which violate their strong public policy. Cox, *supra*, 1094-96.

Without Senate Bill 308, Alaska might be hard pressed to prove a strong public policy against same-sex marriage and could be forced by its own courts to recognize these marriages. However, if the bill is enacted, the Alaska courts would be able to refuse to recognize them without any Full Faith and Credit problems.

The second argument advanced against the unconstitutionality of S.B. 308 is that it would infringe the fundamental right to interstate travel. Again, this is untrue. Opponents of S.B. 308 know that they must implicate a fundamental right in order to force this legislation to be subjected to a strict scrutiny standard (see discussion above). However, invoking interstate travel in this context simply will not work.

Interstate travel jurisprudence is notoriously confusing. There was a time when the United States Supreme Court used this right as a means to strike a wide variety of state statutes. See, Gregory B. Hartch, Comment, *Wrong Turns: A Critique of the Supreme Court's Right to Travel Cases*, 21 William Mitchell L. Rev. 457 (1995) Thus, suggesting this right as an avenue of attack on the bill may make sense to its opponents.

However, things have changed. In *Bray v. Alexandria Women's Health Clinic*, 122 L. Ed. 2d 34 (1993), the United States Supreme Court clarified the limitations of the right to interstate travel. It "protects interstate travelers against two sets of burdens: 'the erection of actual barriers to interstate movement' and 'being treated differently' from intrastate travelers." *Id.* at 51 (citations omitted). Certainly, S.B. 308 erects no actual barriers to entering the state and it ensures that interstate and intrastate travelers will be treated equally, not differently--neither can gain recognition of a same-sex marriage. This is in direct contrast to the oft-cited right to travel cases *Shapiro v. Thompson*, 394 U.S. 618 (1969), and *Dunn v. Blumstein*, 405 U.S. 330, (1972) which struck down state statutes that contained residency requirements because they discriminated against those who had recently traveled to the state.

In conclusion, the National Legal Foundation not only believes that Senate Bill 308 is constitutional, but also finds no validity to the arguments advanced by opponents of the bill.

SCR

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TESTIMONY OF JOHN R. AYERS
President, e.Net, Ltd.
510 L Street, Suite 400
Anchorage, Alaska 99501

Hearing of the Senate Judiciary Committee
SCR 26
April 15, 1998

Thank You Mr. Chairman. Mr. Chairman, Members of the Committee:

I am testifying today in support of Senate Concurrent Resolution No. 26 because I feel strongly that the State of Alaska should not charge different prices for rights-of-way that are not based upon market values for the use, and conditions of use, of those rights-of-way. Much has been said about history and past practice by the administration. No doubt much more will be said in an attempt to continue with a policy that is not relevant to the specific issue of rights-of-way for telecommunications infrastructure in today's environment. My point being that in the past the State charged minimal rates to encourage development of utilities that were monopolies. Such is not the case today for telecommunications which exist in a competitive environment; in such a market, the value of the use of the right-of-way should be determinative. Moreover, I do not understand how the dichotomy between needing to balance State Government finances by increasing revenue or decreasing spending and charging below market rates for the use of valuable State rights-of-way can be purported to be sound fiscal policy by the Administration.

I believe that significant price differentials for rights-of-way between the same locations because of inconsistent and outmoded State policies will only harm consumers in the long run. As a consultant to telecommunications companies in Alaska, and as a long time participant in the telecommunications industry, I do not want to see one firm being handed a competitive advantage of any magnitude vis-à-vis another similarly situated firm. Competitive advantage should be the logical outcome of superior execution in the marketplace. The State of Alaska should be striving to insure that a predictable, competitively neutral environment results from its policies, for it is in this way that the State can best insure consumers have access to fiber optics and services derived from fiber optics at fair and reasonable prices.

As I understand it, the Administration currently has the legal authority to grant rights-of-way across State lands at prices based on fair market value of the use of the right-of-way. However, if the Administration wants the Legislature to enact a statewide pricing methodology/policy, which the Governor indicated in a March 11, 1998 letter, I believe that the Administration should grant pending applications for rights-of-way on an interim basis at fair market prices and allow the Legislature to address this issue during the next legislative session. This way, the Legislature will have sufficient time to conduct a careful and thorough investigation of this issue and, in the interim, the State of Alaska will not face

the prospect of litigation under the federal Telecommunications Act of 1996 from companies which have been granted rights-of way at discriminatory prices.

Whatever the State of Alaska decides to do, I believe that the pricing policy finally adopted should be applied to rights-of way across all State lands, including Railroad lands, and that all telecommunications companies should be charged the same price for rights-of way between the same locations under the same conditions of use. My favorite quote came to mind as I considered my testimony before you today. It comes from a book by Theodore Levitt called, appropriately to our discussion, THE MARKETING MODE. It goes something like this, "There comes a time in the life of every organization when it must abandon principle and do what's right." Mr. Chairman, this is a time to do what's right.

Thank you for the opportunity to testify.

e. Net, Ltd.

510 L Street Suite 400
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Fax Transmission

FROM *John Myers*

TO *Senate Judiciary Committee
Chairman Robin Taylor*

DATE *4/16/98*

COMPANY

TIME

VOICE

PAGES *3*

FAX *907 465 5522*

Sen. Taylor

*My testimony that I was unable to cross
examine. For your information.*

Thanks and Regards



P.S. Thanks also. Nice to hear from you.



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210 East Bluff Drive
Anchorage AK 99501-1100

April 14, 1998

The Honorable Robin Taylor, Chairman
Senate Judiciary Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Sent Via Facsimile to 907-465-3922

Dear Senator Taylor:

It is my understanding that Senate Concurrent Resolution No. 26, sponsored by the Senate Judiciary Committee, relating to the policy on use of a state right-of-way for fiber optic cables, will be the subject of a public hearing before your Committee on April 15, 1998. I would like to take this opportunity to comment on this resolution.

AT&T Alascom has reviewed SCR 26 and would like to state for the record that we believe that rights of way across state lands for fiber optic cable projects should be granted under existing state standards. In the event that there are two conflicting state standards, the standard that encourages infrastructure development and competition should prevail.

Thank you for allowing me the opportunity to present AT&T Alascom's view on this matter and we look forward to participating in further discussions regarding this issue.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Herman".

Laurie Herman
External Affairs Director

SJR

3

INFORMATION RELATED TO: SJR3

Distributed by Senate Judiciary at the request of:

Mr. Paul J. Sweet
P. O. Box 1562
Palmer, Alaska 99645

Paul J Sweet

POB 1562

Palmer, Alaska 99645

745-2242



I ENTIRELY RESCIND THE CLEARY DECISION

Paul Sweet points out that prisoners in the State of Alaska are provided first class accommodations, recreation, health care, education, counseling, vocational training and opportunities. In addition, there are a myriad of dictates provided for prisoners because of the Cleary decision. Some examples follow--

Corrections provides at state expense,

• Eyeglasses to pretrial detainees if they're in custody longer than 15 days

• Law library provided for inmates at expense of the state--includes an extensive materials and resource lists, a trained law librarian, typing paper, typewriter and carbon paper. As of this date, the Matanuska-Susitna Borough does not have a law library. The space dedicated to the law library has been converted to office space. The residents of the Mat-Su Borough have been told they must commute to Anchorage in order to use the nearest law library. The law library that was housed in the Mat-Su courthouse had less than half of the items the Cleary decision requires in all prisons, there was not a trained clerk to assist citizens using the law library.

• Rehabilitation has not worked as is evidenced by the

• recidivism rate of the prisoners.

• Health, dental and eye care budget totaled 15 million dollars, divide 3600 prisoners into the budget and this allows for \$4150 per prisoner. 8.5 million dollars was spent on surgical, hospital and doctor care last year for 3,000 prisoners in correctional institutions and 600 in half-way houses. Dental care totaled \$850,000 for 3,600 prisoners. Eye care totaled \$60,000. There are 100 nurses to serve the 3,000 prisoners in correction institutions, plus 8 physician's assistants and dentists on call with top of the line equipment. Psychiatrists, physicians and therapists are also available.

State of Alaska Public Health Services received 13.5 million dollars last year for 650,000 residents. Divided into 13.5 million equals approximately \$21.00 per resident. A total of 108 nurses serves the entire state. Eye and dental care are not covered. Hospitalization is not included except in the case of emergency. The Public Health Center in Waukena state that 408 of the residents in the Matanuska-Susitna Borough are not properly immunized due to lack of personnel. Public health care facilities are only open 8 hours per day.

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5 days per week. Public health care facilities are not staffed with psychiatrists, physicians or therapists. The same standards should be applied to correctional facilities.

I wrote this last year. I noticed new statutes being proposed such as no fees, prisoner payment of medical care. Last two years, only 60,000 have collected in 2 years for insurance from prisoners according to Health Care (Mrs. Miklos?) I think. We spent 30,000,000 in two years. I am sure more prisoners than indicated have insurance. Dept. has not found it easier to bill state.

I don't have my glasses on in an
scratching

over

Get rid of Clay decision and
put the conventions Dept back
where it belongs, not the
courts,

Paul J. Peters

P.S.

Pg. 79 of Clay Decision will
tell you how to get it back to
Dept for getting rid of the
whole thing or in part.

When you explain the treatment
~~for~~ for medical, mental, lawyers et
compared to what similar population
maybe they will see. Don't

send any more work lists to
Dad. just get out ask for
it as a whole legislature

sorry about the writing in a hurry

*Senators Parrel and
Ledes requested a CS
reflecting this change*

CS FOR SENATE JOINT RESOLUTION NO. 3()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS DONLEY, Halford, Pearce

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska limiting the
2 rights of prisoners to those required under the Constitution of the United States.

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

4 * Section 1. Article I, sec. 12, Constitution of the State of Alaska, is amended to read:

5 Section 12. Criminal Administration. Excessive bail shall not be required,
6 nor excessive fines imposed, nor cruel and unusual punishments inflicted. Criminal
7 administration shall be based upon the following: the need for protecting the public,
8 community condemnation of the offender, the rights of victims of crimes, restitution
9 from the offender, and the principle of reformation. The rights and protections and
10 the extent of those rights and protections afforded to ^{convicted} prisoners by this constitution
11 shall be limited to those rights and protections and the extent of those rights and
12 protections afforded to prisoners under the Constitution of the United States.

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

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 1/13/97

FURTHER: Finance

Date of 5-Day Notice: 1/30/97
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2/27/97

Judiciary Committee considered SENATE JOINT RESOLUTION NO. 3

Proposing an amendment to the Constitution of the State of Alaska limiting the rights of prisoners to those required under the Constitution of the United States.

and recommends:

- be replaced with CS SJR 3 (JUD)
- adopt previous CS ()
- attached amendmer.t(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
 same title
 new title
- House Bill:**
 same title
 technical title
 new: SCR# _____

PJM

| SIGNING DO PASS | DP | OTHER RECOMMENDATIONS | NR | DNP | AM |
|----------------------------|-------------------------------------|-----------------------|-------------------------------------|-----|----|
| <i>Mike Miller</i> | <input checked="" type="checkbox"/> | <i>[Signature]</i> | <input checked="" type="checkbox"/> | | |
| <i>Sean Parnell</i> | <input checked="" type="checkbox"/> | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| CHAIR: <i>Chris Taylor</i> | <input checked="" type="checkbox"/> | CHAIR: | | | |

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

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| Admin - Pub Def. | 2/5/97 | 0 | 0 |
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PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

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copies of SJR not 'S.

7-11-97 C.S. for

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No. 1
 Bill Version: STR 3
 (S) Publish Date: 2/27/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: "Proposing an amendment to the Constitution limiting the rights of prisoners..."
 Sponsor: Senator Donley
 Requestor: (S) Judiciary

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|------------|------------|------------|------------|------------|------------|
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|-----------------------------|------------|------------|------------|------------|------------|------------|

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|-------------------------------|------------|------------|------------|------------|------------|------------|
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|-------------------------------|------------|------------|------------|------------|------------|------------|

FUND SOURCE: (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

The resolution places before the voters of Alaska an amendment limiting the rights and protections of Alaskan prisoners against infliction of cruel and unusual punishment to those rights and protections required under the federal constitution.

There is no fiscal impact on the Public Defender Agency.

Prepared by: Barbara K. Brink, Director Phone: (907) 264-4414
 Division: Public Defender Agency Date: _____
 Approved by Commissioner: Mark Bover Date: 2/5/97
 Agency: Department of Administration

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 1/13/97

FURTHER: Finance

Date of 5-Day Notice: 1/30/97
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2/27/97

Judiciary Committee considered SENATE JOINT RESOLUTION NO. 3

Proposing an amendment to the Constitution of the State of Alaska limiting the rights of prisoners to those required under the Constitution of the United States.

and recommends:

be replaced with CS SJR 3 (TUD)

adopt previous CS ()

attached amendment(s)

adopt Letter of Intent by Committee

further referral to the Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR#

| SIGNING DO PASS | DP | OTHER RECOMMENDATIONS | NR | DNP | AM |
|-----------------------------------|-------------------------------------|-----------------------|-------------------------------------|-----|----|
| <i>Mike Miller</i> | <input checked="" type="checkbox"/> | <i>J. Miller</i> | <input checked="" type="checkbox"/> | | |
| <i>Sean Parnell</i> | <input checked="" type="checkbox"/> | | | | |
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| CHAIR: <i>Chris Taylor</i> | <input checked="" type="checkbox"/> | CHAIR: | | | |

NEW FISCAL NOTE(S):

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
| | | | |
| | | | |
| | | | |
| | | | |

PREVIOUS FISCAL NOTE(S):*

| Department | Date | Zero | Fiscal |
|-------------------------|---------------|-------------------------------------|--------|
| <i>ADMIN - PUB DEF.</i> | <i>2/5/97</i> | <input checked="" type="checkbox"/> | |
| | | | |
| | | | |
| | | | |

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

0-LS0268\F
Luckhaupt
2/25/97

CS FOR SENATE JOINT RESOLUTION NO. 3(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS DONLEY, Halford, Pearce

A RESOLUTION

1 **Proposing an amendment to the Constitution of the State of Alaska limiting the**
2 **rights and protections of prisoners to those required under the Constitution of the**
3 **United States.**

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

5 * **Section 1.** Article I, Constitution of the State of Alaska, is amended by adding a new
6 section to read:

7 **Section 25. Rights of Prisoners.** The rights and protections, and the extent
8 of those rights and protections, afforded by this constitution to prisoners convicted of
9 crimes shall be limited to those rights and protections, and the extent of those rights
10 and protections, afforded under the Constitution of the United States to prisoners
11 convicted of crimes.

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

CS FOR SENATE JOINT RESOLUTION NO. 3()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS DONLEY, Halford, Pearce

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska limiting the
2 rights of prisoners to those required under the Constitution of the United States.

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

4 * Section 1. Article I, sec. 12, Constitution of the State of Alaska, is amended to read:

5 Section 12. Criminal Administration. Excessive bail shall not be required,
6 nor excessive fines imposed, nor cruel and unusual punishments inflicted. Criminal
7 administration shall be based upon the following: the need for protecting the public,
8 community condemnation of the offender, the rights of victims of crimes, restitution
9 from the offender, and the principle of reformation. The rights and protections and
10 the extent of those rights and protections afforded to prisoners by this constitution
11 shall be limited to those rights and protections and the extent of those rights and
12 protections afforded to prisoners under the Constitution of the United States.

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

CS FOR SENATE JOINT RESOLUTION NO. 3(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS DONLEY, Halford, Pearce

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska limiting the
2 rights and protections of prisoners to those required under the Constitution of the
3 United States.

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

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9 crimes shall be limited to those rights and protections, and the extent of those rights
10 and protections, afforded under the Constitution of the United States to prisoners
11 convicted of crimes.

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

0-LS0268\B
Luckhaupt
2/21/97

CS FOR SENATE JOINT RESOLUTION NO. 3()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS DONLEY, Halford, Pearce

A RESOLUTION

1 **Proposing an amendment to the Constitution of the State of Alaska limiting the**
2 **rights and protections of prisoners to those required under the Constitution of the**
3 **United States.**

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

5 *** Section 1. Article I, Constitution of the State of Alaska, is amended by adding a new**
6 **section to read:**

7 **Section 25. Rights of Prisoners. The rights and protections, and the extent**
8 **of those rights and protections, afforded by this constitution to prisoners convicted of**
9 **crimes shall be limited to those rights and protections, and the extent of those rights**
10 **and protections, afforded under the Constitution of the United States to prisoners**
11 **convicted of crimes.**

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

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SJR 3

Revision Date: _____
 Title: "Proposing an amendment to the Constitution limiting the rights of prisoners..."
 Sponsor: Senator Donley
 Requestor: (S) Judiciary

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|------------|------------|------------|------------|------------|------------|
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|-----------------------------|------------|------------|------------|------------|------------|------------|

| | | | | | | |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|-------------------------------|------------|------------|------------|------------|------------|------------|

FUND SOURCE: (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

The resolution places before the voters of Alaska an amendment limiting the rights and protections of Alaskan prisoners against infliction of cruel and unusual punishment to those rights and protections required under the federal constitution.

There is no fiscal impact on the Public Defender Agency.

Prepared by: Barbara K. Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 2/5/97

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SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

SPONSOR STATEMENT SJR 3

LIMITING PRISONER RIGHTS UNDER THE ALASKA CONSTITUTION TO THE REQUIREMENTS OF THE U.S. CONSTITUTION

Senate Joint Resolution 3 would limit the rights of prisoners in the State of Alaska to the requirements of the U.S. Constitution. Since the Alaska Constitution is quite different from the U.S. Constitution, in some areas prisoner's rights may vary. SJR 3 adopts a single standard - the Federal standard - for determining prisoner's rights.

Current Alaska prison standards are based on Cleary, a consent decree which has resulted in expanded prisoner's rights in Alaska. The Cleary consent decree did not distinguish between Federal and State constitutional standards. SJR 3 cannot overrule Cleary since it was a consent decree. SJR 3 can, however, assure that the U.S. Constitution, and not a more protective state constitutional standard, will be the standard for future decisions on prisoner's rights in Alaska.

Additionally, pursuant to recent legal developments, the state may be able to modify or overturn the Cleary consent decree in which case the new single standard adopted by SJR 3 could be applied. There will not necessarily be an immediate impact with passage of SJR 3, but as the Federal courts allow tougher Federal prison laws the standard for Alaskan prisoners will get tougher also.

DD/jja

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648

MEMBER: Senate Finance Committee • Legislative Budget & Audit Committee
• Senate Community & Regional Affairs Committee



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

MEMORANDUM

To: Senator Robin Taylor
Chair, Senate Judiciary Committee

From: Senator Dave Donley *DD*

Re: Hearing Request for SJR 3 - Prisoner Rights

Date: January 15, 1997

I request that you schedule Senate Joint Resolution 3, relating to the rights of prisoners, for a hearing in your committee.

SJR 3 establishes that the Federal standard, the United States Constitution, would guide decisions about prisoner's rights in Alaska state prisons. The U.S. Constitutional standards would apply to future state legal decisions regarding prisoner's rights.

If you have any questions, please contact myself or James Armstrong of my staff at 465-3892.

DD/jja

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648

MEMBER: Senate Finance Committee • Legislative Budget & Audit Committee
• Senate Community & Regional Affairs Committee

Produced in House

STATE OF ICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



January 17, 1997

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Anchorage

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Fairbanks
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Steve Kalwara, Member
Juneau
Pres. Capitol City Chapter

Scott Chalin, Member
Wrangell
Pres. Wrangell Chapter

Leroy Mestas, Member
Ketchikan
Pres. First City Chapter

James See, Member
Craig
Pres. Prince of Wales Chapter

Senator Dave Donley
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Senator Donley,

On behalf of the Alaska Peace Officers Association, I would like to thank you for introducing Senate Joint Resolution 3 proposing the State Constitutional amendment limiting the rights of prisoners. At a recent meeting of the APOA State Board, we decided to unanimously support this legislation. We believe that prisons are created to incarcerate criminals and to protect society. We do believe that the federal prison system addresses these points without unnecessary frills, benefits, or privileges being afforded prisoners.

We encourage you to call on us when there are hearings on this bill, so that we may testify about the need for this legislation. If you need assistance as you shepherd this bill through the legislative process, please call me at 451-5316, or our business manager, Joseph Young at 277-0515.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Corkill", is written over a horizontal line.

Michael Corkill
APOA State President

SJR

10

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SJR 10

Revision Date: _____ Dept. Affected: Office of the Governor
 Title: "Proposing Amendments to the Constitution ... BRU: Executive Operations
relating to the election and duties of the attorney general." Component: Executive Office
 Sponsor: Senators Green, Halford, Taylor
 Requester: Senate Judiciary COMPONENT SERIAL NO. 6

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|------------|------------|------------|------------|------------|--------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 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 | | | | | | ***** |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | ***** |

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|---|
| FULL-TIME | | | | | | 3 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This analysis emulates the organizational structure of the states of Washington, Oregon and Arizona. Each of these states has an elected attorney general, and each Governor has on-staff counsel to respond to general legal questions, public policy issues, internal matters, open meeting laws, ethics laws, revocation of appointments, handle extraditions and petitions, prepare administrative orders, deeds relating to the state's natural resources, etc., and to carry-out the constitutional requirements of the Governor (i.e., executive clemency, messages to the Legislature, executive orders)

The constitutional amendment proposed by this resolution would be on the ballot in 1998. If approved by the voters, the first election of an attorney general would be with the next gubernatorial election in November, 2002. Fiscal impact to Office of the Governor would begin in FY03. The fiscal analysis is attached.

Prepared by: Michael A. Nizich, Administrative Director *MN* Phone: 465-3876
 Division: Administrative Services Date: 2/25/97
 Approved by Commissioner: Jim Ayers, Chief of Staff *J. Ayers* Date: _____
 Agency: Office of the Governor

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SJR 10 fiscal analysis:

This fiscal impact in below is for illustration purposes only and is based on 1997 costs and salaries. The fiscal impact associated with an elected attorney general would not be realized until FY03, and accurate costs will need to be identified then. Additionally, if the voters approve the constitutional amendment calling for an elected attorney general, the functions and duties of the attorney general will need to be defined which may result in further fiscal impact.

This note assumes an increase in Governor's staff by three positions -- an attorney, rg. 26, a paralegal, rg. 19, and an executive secretary, rg. 14. Fiscal note further assumes existing state-owned office space would be available and does not include lease costs.

| | | |
|--------------------|------------------------------------------------------------------|---------------|
| Personal services: | three PFTs | 199.5 |
| Contractual: | comm., phones, postage, tolls courier svcs., subscripts, etc. | 18.6 |
| Supplies: | office/library supplies | 9.6 |
| Equipment: | office furniture, DP and communication equipment | <u>39.2</u> * |
| | Total first year costs: | 266.9 |

* 39.2 first year set-up costs only and not required in subsequent years.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SSSJR 10 (JUD)

Revision Date: _____
 Title: "Proposing amendments to the Constitution of the
 St. of Alaska relating to the election and duties of the Attorney
 General"
 Sponsor: Sen. Green
 Requestor: (S) JUD

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|-------------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

FUND SOURCE: (Thousands of Dollars)

| | | | | | | |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any curren. year (FY 97) cost: \$ 0.0

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

This bill changes the Alaska Attorney General from an appointed to an elected position. Other than speculation regarding impact on prosecutorial discretion, there is no impact to the Public Defender Agency.

Prepared by: Barbara K. Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 2/20/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SSSJR 101

Revision Date: _____ Dept. Affected: Department of Law
 Title: "Proposing amendments to the Constitution . . . BRU: Criminal Division/Civil Division
relating to the election and duties of the attorney general." Component: All
 Sponsor: Senator Green
 Requester: Senate Judiciary COMPONENT SERIAL NO. 2085-2092

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|------------|--------------|----------------|----------------|----------------|----------------|
| PERSONAL SERVICES | | 376.3 | 752.5 | 752.5 | 752.5 | 851.4 |
| TRAVEL | | 10.2 | 20.3 | 20.3 | 20.3 | 22.8 |
| CONTRACTUAL | | 168.3 | 336.5 | 336.5 | 336.5 | 349.8 |
| SUPPLIES | | 7.4 | 14.7 | 14.7 | 14.7 | 20.0 |
| EQUIPMENT | | 65.0 | | | | 26.0 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 627.0 | 1,124.0 | 1,124.0 | 1,124.0 | 1,270.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| FUND SOURCE | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|-----------------------------------|------------|--------------|----------------|----------------|----------------|----------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | 303.0 | 596.0 | 596.0 | 596.0 | 742.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| 1007 Other (Interagency Receipts) | | 324.0 | 528.0 | 528.0 | 528.0 | 528.0 |
| TOTAL | 0.0 | 627.0 | 1,124.0 | 1,124.0 | 1,124.0 | 1,270.0 |

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

| POSITIONS | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL-TIME | 0.0 | 10.0 | 10.0 | 10.0 | 10.0 | 14.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

SSSJR 10 proposes an amendment to the Constitution of the State of Alaska making the attorney general an elected office. Further, the proposed amendment describes the duties of the attorney general, and prohibits the governor from making a change in organization or function of a unit of the executive branch headed by the attorney general. Assuming this constitutional amendment were approved by the voters of the State of Alaska in the November 1998 general election, the first elected attorney general would take office in January 2003, FY 03. However, it appears that changes in the duties of the attorney general would take place upon passage of the amendment, as early as January 1999.

The greatest fiscal impact on the Department of Law from the proposed constitutional amendment comes from expanded duties as described in Section 28 (c). This language is broader than the language currently in AS 44.23.020 in two ways. By inclusion of the language "state public corporation", the proposed amendment appears to include the Alaska Railroad Corporation and University of Alaska as entities that the attorney general shall defend in civil actions. Both of these organizations currently maintain their own counsel.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 2/19/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/19/97
 Agency: Department of Law

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ANALYSIS CONTINUATION:

Secondly, Sec. 28 (c) requires the state "prosecute violations of State criminal law, including infractions and violations". The department is assuming that the courts would continue to allow the attorney general broad discretion over the initiation, prosecution and disposition of cases, both civil and criminal. For example, under present law, district attorneys do not appear in court for most minor traffic violations. The charging police officer presents the state's case to the judge. If this language were to cause the court to rule otherwise, the expense to the state to have district attorneys appear in every case involving a minor infraction or violation would be substantial.

However, the department cannot make a similar assumption about the addition of state corporations to its workload. The Alaska Railroad Corporation (ARRC) has on staff three full time attorneys, and expends approximately \$200.0 a year on contract outside counsel. The University has a legal staff of four attorneys. (The amount expended for University outside counsel could not be obtained in time. A revised fiscal note will be submitted when the amount is available.) The Department of Law could not absorb that caseload with existing resources. Since the Alaska Railroad Corporation is not funded with a state general fund appropriation, the department is assuming that if their legal functions were transferred to the Department of Law, they would be funded with interagency receipts from the ARRC, and the ARRC would in turn fund the reimbursable services agreement with railroad revenues. The university's legal services would be funded with general funds.

The full-time equivalent attorney cost estimates are based on the department's FY97 standard attorney cost schedule (\$127,000), which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. Case specific travel, one-time equipment purchases, and expert witness costs are included separately. Since clerical support costs, except for one-time equipment purchases are included in the rate, only PFT position authorization and one-time equipment costs of \$6.5 per legal secretary position would be required.

As an elected official, the attorney general would require assistance with constituent and press relations that existing resources would be unable to provide. A Special Assistant to the Commissioner II would be necessary for this purpose, beginning in mid-FY03.

In addition, the proposed amendment removes the governor's organizational and supervisory controls over any function or unit headed by the attorney general. These controls are normally maintained through executive branch procedural requirements imposed on other executive branch agencies by the Department of Administration and the Office of Management and Budget on behalf of the governor.

It is anticipated that the Department of Law would continue to use centrally provided services such as accounting, purchasing, leasing and supply, professional services contracting, information management, and duplicating services on a "service bureau" basis and still maintain the attorney general's functions free from the governor's supervision. Personnel administration, however, is more problematic. To use the Department of Administration's classification system would retain an element of control by the governor over the Department of Law in terms of imposing functional changes in position descriptions and duties. The department assumes it would have to do its own classifications, create and maintain position eligibility lists, and maintain a more in-depth records system for personnel than it now does. The fiscal note costs include 2 PFT Personnel Assistant I (R12) positions, and 1 PFT Administrative Clerk III (R10) positions to perform these functions.

A breakdown of all projected costs is attached.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. __ SSSJR 10

ANALYSIS CONTINUATION:

Another major cost that may eventually occur as a result of changing from an appointed to an elected attorney general will be the proliferation of special counsel on the staffs of major departments. In other states with elected attorneys general, agency counsel have been employed to give department heads a "second" opinion in controversial matters. These counsel usually do not have the authority to litigate, but they provide legal advice to department heads and submit amicus briefs in litigation affecting their department's programs. It is not unusual in these states to see four or five separate briefs filed in a single matter, in addition to the attorney general's brief, representing the varying viewpoints of different agencies. Costs for a single special counsel, including secretarial assistance, total approximately \$150,000 per year in 1997 dollars. Although it is highly speculative at this time to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, over time, it could easily exceed \$1,500,000 per fiscal year.

SS SJR 10 - Cost Analysis

General Legal Services

Beginning mid-FY99

- 3 FTE Attorneys (IV, III, III) for ARRC work + \$5.0 each, direct case travel/contractual
- 1 FTE Legal Secretary I for ARRC work (equipment only)
- \$200 ARRC contract outside counsel/experts

| | | |
|-----|-------|--------------------------|
| 100 | 322.5 | |
| 200 | 8.7 | |
| 300 | 258.5 | |
| 400 | 6.3 | |
| 500 | 26.0 | |
| | 622.0 | IAR (from ARRC revenues) |

Beginning mid-FY99

- 4 FTE Attorneys for U of A work + \$5.0 each, direct case costs
- 2 FTE Legal Secretary for U of A work (equipment only)
- U of A contract work outside counsel/experts (amount unknown at time of fiscal note submittal)

| | | |
|-----|-------|----|
| 100 | 430.0 | |
| 200 | 11.6 | |
| 300 | 78.0 | |
| 400 | 8.4 | |
| 500 | 39.0 | |
| | 567.0 | GF |

Beginning mid-FY03

- 1 Special Assistant to the Attorney General II for constituent and press relations, R23A

| | | | | |
|-----|-------|----|------|----|
| 100 | 78.3 | /2 | 39.1 | |
| 200 | 5.0 | /2 | 2.5 | |
| 300 | 8.6 | /2 | 4.3 | |
| 400 | 3.3 | /2 | 1.7 | |
| 500 | 6.5 | | 6.5 | |
| | 101.7 | | 54.1 | GF |

Admin & Support

Beginning mid-FY03

- 2 Personnel Assistant I, R12A
- 1 Administrative Clerk III, R10A
- Creation and maintenance of eligibility lists, and records system maintenance.

| | | | | |
|-----|-------|----|------|----|
| 100 | 119.5 | /2 | 59.7 | |
| 200 | 0.0 | /2 | 0.0 | |
| 300 | 18.0 | /2 | 9.0 | |
| 400 | 7.2 | /2 | 3.6 | |
| 500 | 19.5 | | 19.5 | |
| | 164.2 | | 91.8 | GF |

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SSSJR 10

| | |
|------------------------------------------------------------|------------------------------------------------|
| Revision Date _____ | Dept. Affected <u>Office of the Governor</u> |
| Title <u>Const. Amdt.: Election of an Attorney General</u> | BRU <u>Elective Operations</u> |
| Sponsor <u>Senator Green, Halford, Taylor, Sharp</u> | Component <u>General and Primary Elections</u> |
| Requester <u>Senate Judiciary</u> | Component Serial No. <u>#22</u> |

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | 3.0 | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 3.0 | 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 | | 3.0 | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 3.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY97) cost: none

POSITIONS

| | | | | | |
|-----------|--|---|--|--|--|
| Full-time | | 0 | | | |
| Part-time | | 0 | | | |
| Temporary | | 0 | | | |

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

| | |
|------------------------------------------------------------------|-----------------------|
| Prepared by <u>Dana LaTour</u> <i>(Signature)</i> | Phone <u>465-5347</u> |
| Division <u>Division of Elections</u> | Date <u>2/18/97</u> |
| Approved by Co <u>LI. Governor Fran Ulmer</u> <i>(Signature)</i> | Date <u>2/18/97</u> |
| <u>Office of the Lieutenant Governor</u> | |

FISCAL NOTE

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/10/97

FURTHER:

Date of 5-Day Notice: 2/16/97
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4-27-98

Judiciary Committee considered

SS FOR SENATE JOINT RESOLUTION NO. 10

Proposing amendments to the Constitution of the State of Alaska relating to the election and the duties of the attorney general.

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR# _____

| SIGNING DO PASS | DP | OTHER RECOMMENDATIONS | NR | DNP | AM |
|------------------------------|-------------------------------------|-----------------------|----|-------------------------------------|----|
| <i>Nite Miller</i> | <input checked="" type="checkbox"/> | <i>Deane</i> | | <input checked="" type="checkbox"/> | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| CHAIR: <i>Christa Taylor</i> | <input checked="" type="checkbox"/> | CHAIR: | | | |

NEW FISCAL NOTE(S):

| Department | Date | Zero | Fiscal |
|------------------------------------------|---------------------------|----------------|------------------------------------------------|
| <i>#1 GOVERNOR/ELECTIVE OPS</i> | <i>4/24/98</i> | | <input checked="" type="checkbox"/> |
| <i>#2 LAW/CRIMINAL/CIVIL</i> | <i>4/24/98</i> | | <input checked="" type="checkbox"/> |
| <i>#3 ADMIN/PUBLIC DEFENSE</i> | <i>4/24/98</i> | <i>2/24/98</i> | <input checked="" type="checkbox"/> |
| <i>CONSUMER/EXECUTIVE OPS</i> | <i>2/24/98</i> | | <input checked="" type="checkbox"/> |
| | | | |
| | | | |

PREVIOUS FISCAL NOTE(S):*

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No. 1
 Bill Version: SSSTR10
 (S) Publish Date: 4/28/98

STATE OF ALASKA
 1998 LEGISLATIVE SESSION

| | |
|---------------------------------------------------------|----------------------------------------------|
| Revision Date (Note if correction) _____ | Dept. Affected <u>Office of the Governor</u> |
| Title <u>Const. Amend: Election of attorney general</u> | BRU <u>Elective Operations</u> |
| | Component <u>General and Primary</u> |
| Sponsor <u>Senator Taylor</u> | |
| Requester <u>Senate Judiciary Committee</u> | Component Serial No <u>#22</u> |

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | 3.0 | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 3.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| FUND SOURCE | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 3.0 | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | 3.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY98) cost: _____

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This figures includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

| | |
|-----------------------------------------------------------------|-----------------------|
| Prepared by <u>Gail Fenuniai</u> <i>Gail Fenuniai</i> | Phone <u>465-3935</u> |
| Division <u>Division of Elections</u> | Date <u>4/23/98</u> |
| Approved by <u>C. Lt. Governor Fran Ulmer</u> <i>Fran Ulmer</i> | Date <u>4/23/98</u> |
| Agency <u>Office of the Lieutenant Governor</u> | |

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FISCAL NOTE

No. 2
 Bill Version: SSJR10
 (S) Publish Date: 4/28/98

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: 4/17/97 Dept. Affected: Department of Law
 Title: "Proposing amendments to the Constitution . . . relating to the election and the duties of the attorney general." BRU: Criminal Division/Civil Division
 Sponsor: Senator Green Component: All
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2085-2092

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | ***** | ***** | ***** | ***** | ***** |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| FUND SOURCE | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | ***** | ***** | ***** | ***** | ***** |

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

| POSITIONS | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL-TIME | 0.0 | ***** | ***** | ***** | ***** | ***** |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

SSSJR 10 proposes an amendment to the Constitution of the State of Alaska making the attorney general an elected office. Further, the proposed amendment describes the duties of the attorney general, and prohibits the governor from making a change in organization or function of a unit of the executive branch headed by the attorney general. Assuming this constitutional amendment were approved by the voters of the State of Alaska in the November 1998 general election, the first elected attorney general would take office in January 2003, FY 03. However, it appears that changes in the duties of the attorney general would take place upon passage of the amendment, as early as January 1999.

The Department of Law cannot accurately quantify a fiscal impact from this resolution. However, it is clear that the impact on the state would be significant. In addition to the impacts on the Department of Law discussed below, another major cost that may eventually occur as a result of changing from an appointed to an elected attorney general will be the proliferation of special counsel on the staffs of major departments. In other

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 4/17/97
 Approved by Commissioner: Bruce M. Botelho *Bruce M. Botelho* Date: 4/17/97
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SSSJR 10
#2

ANALYSIS CONTINUATION:

states with elected attorneys general, agency counsel have been employed to give department heads a "second" opinion in controversial matters. These counsel usually do not have the authority to litigate, but they provide legal advice to department heads and submit amicus briefs in litigation affecting their department's programs. It is not unusual in these states to see four or five separate briefs filed in a single matter, in addition to the attorney general's brief, representing the varying viewpoints of different agencies. Costs for a single special counsel, including secretarial assistance, total approximately \$150,000 per year in 1997 dollars. Although it is highly speculative at this time to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, over time, it could easily exceed \$1,500,000 per fiscal year.

The greatest potential fiscal impact on the Department of Law from the proposed constitutional amendment comes from expanded duties as described in Section 28 (c). This language is broader than the language currently in AS 44.23.020 in two ways. By inclusion of the language "state public corporation", the proposed amendment appears to include the Alaska Railroad Corporation and University of Alaska as entities that the attorney general shall defend in civil actions. Both of these organizations currently maintain their own counsel.

Secondly, Sec. 28 (c) requires the state "prosecute violations of State criminal law, including infractions and violations". The department assumes that the courts would continue to allow the attorney general broad discretion over the initiation, prosecution and disposition of cases, both civil and criminal. For example, under present law, district attorneys do not appear in court for most minor traffic violations. The charging police officer presents the state's case to the judge. If this language were to cause the court to rule otherwise, the expense to the state to have district attorneys appear in every case involving a minor infraction or violation would be substantial.

However, the department cannot make a similar assumption about the addition of state corporations to its workload. The Alaska Railroad Corporation (ARRC) has on staff three full time attorneys, and currently expends approximately \$200,000 a year on contract outside counsel. The University has a legal staff of four attorneys, and estimates their annual expenditures on outside counsel varies year-to-year between approximately \$500,000 and \$1,500,000. Presumably, legal services could be provided to these agencies through reimbursable services agreements, and the Department of Law would require sufficient interagency receipt authority to take over these functions. Practically, whether there would be additional costs (or savings) in implementing such a transfer would require a more detailed analysis to determine.

In addition, the proposed amendment removes the governor's organizational and supervisory controls over any function or unit headed by the attorney general. These controls are normally maintained through executive branch procedural requirements imposed on other executive branch agencies by the Department of Administration and the Office of Management and Budget on behalf of the governor.

It is anticipated that the Department of Law would continue to use centrally provided services such as accounting, purchasing, leasing and supply, professional services contracting, information management, and duplicating services on a "service bureau" basis and still maintain the attorney general's functions free from the governor's supervision. Personnel administration, however, is more problematic. To use the Department of Administration's classification system would retain an element of control by the governor over the Department of Law in terms of imposing functional changes in position descriptions and duties. The department assumes it would have to do its own classifications, create and maintain position eligibility lists, and maintain a more in-depth records system for personnel than it now does. The department estimates it would require 2 new PFT Personnel Assistant I (R12) positions, and 1 PFT Administrative Clerk III (R10)

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SSSJR 10
#2

ANALYSIS CONTINUATION:

position, at an estimated cost of \$217,000 per year to perform these functions (using FY 98 salaries for illustration purposes).

As discussed in the narrative above, outside counsel costs for the University can vary widely and actual transfer of these legal service responsibilities to the Attorney General would require a more detailed analysis to identify specific costs and/or savings from the transfer. The following summarizes the potential fiscal impact to the Department of Law that we can identify at this time using the department's 1997 standard attorney cost schedule for a full-time equivalent attorney position, including standard overheads (clerical support, communications, space, supplies, data processing, etc.), and 1997 salaries and costs for non-cost schedule positions.

| | |
|-------------------------------------------------------------------------------|-------------------------|
| ARRC Legal Services Transfer (beginning mid-FY99) | |
| 3 FTE Attorneys @ \$127.0 | \$381.0 |
| Direct case costs @ \$5.0 per attorney | \$15.0 |
| 1.5 PFT Legal Secretary position authorizations | \$0.0 |
| One-time equipment purchases for new positions @ \$6.5 | \$32.5 |
| Contract outside counsel/experts @ estimated \$200.0 | <u>\$200.0</u> |
| | \$628.5 |
| | |
| University of Alaska Legal Services Transfer (beginning mid-FY99) | |
| 4 FTE Attorneys @ \$127.0 | \$508.0 |
| Direct case costs @ \$5.0 per attorney | \$20.0 |
| 2 PFT Legal Secretary position authorizations | \$0.0 |
| One-time equipment purchases for new positions @ \$6.5 | \$39.0 |
| Contract outside counsel/experts @ estimated \$500.0 to \$1,500.0 | <u>\$500.0</u> |
| | \$1,067.0 |
| | |
| Administration & Support Personnel Classification System (beginning mid-FY03) | |
| 2 Personnel Assistant I @ \$49.6 | \$99.1 |
| 1 Administrative Clerk III @ \$45.5 | \$45.5 |
| One-time equipment purchases for new positions @ \$6.5 | <u>\$19.5</u> |
| | \$164.2 |
| | |
| Total, Including One Time Equipment Purchases | \$1,859.7 |
| Less One-time items | (\$91.0) |
| | <u><u>\$1,768.7</u></u> |
| | |
| Department of Law Estimated Minimum Annual Cost | <u>\$1,768.7</u> |

FISCAL NOTE

No. 3
 Bill Version: SS SJR 10
 (S) Publish Date: 4/28/98

STATE OF ALASKA
 1998 LEGISLATIVE SESSION

| | |
|---------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| Revision Date (Note if correction) | Dept. Affected <u>Department of Law</u> |
| Title: <u>"Proposing amendments to the Constitution ... relating to the election and duties of the attorney general."</u> | BRU <u>Civil Division/Admin & Support</u> |
| Sponsor: <u>Senator Green</u> | Component <u>Transportation/New Component</u> |
| Requester: <u>Senate Judiciary</u> | Component Serial No. <u>2214/Nxxx/2164</u> |
| | <u>Administrative Services</u> |

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Personal Services | 396.2 | 792.4 | 792.4 | 792.4 | 851.4 | 910.5 |
| Travel | 9.8 | 19.6 | 19.6 | 19.6 | 19.6 | 19.6 |
| Contractual | 672.5 | 1,344.9 | 1,344.9 | 1,344.9 | 1,353.9 | 1,362.9 |
| Supplies | 6.3 | 12.6 | 12.6 | 12.6 | 16.2 | 19.8 |
| Equipment | 65.0 | | | | 19.5 | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 1,149.8 | 2,169.5 | 2,169.5 | 2,169.5 | 2,260.6 | 2,312.8 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| FUND SOURCE | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|---------------------------|----------------|----------------|----------------|----------------|----------------|----------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| 1007 Interagency Receipts | 1,149.8 | 2,169.5 | 2,169.5 | 2,169.5 | 2,260.6 | 2,312.8 |
| TOTAL | 1,149.8 | 2,169.5 | 2,169.5 | 2,169.5 | 2,260.6 | 2,312.8 |

Estimate of any current year (FY98) cost:

POSITIONS

| | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|-----------|-------|-------|-------|-------|-------|-------|
| Full-time | 9 | 9 | 9 | 9 | 12 | 12 |
| Part-time | 1 | 1 | 1 | 1 | 1 | 1 |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

SSSJR 10 proposes an amendment to the Constitution of the State of Alaska making the attorney general an elected office. Further, the proposed amendment describes the duties of the attorney general, and prohibits the governor from making a change in organization or function of a unit of the executive branch headed by the attorney general. Assuming this constitutional amendment were approved by the voters of the State of Alaska in the November 1998 general election, the first elected attorney general would take office in January 2003, FY 03. However, it appears that changes in the duties of the attorney general would take place upon passage of the amendment, as early as January 1999.

The greatest fiscal impact on the Department of Law from the proposed constitutional amendment comes from expanded duties as described in Section 28(c). This language is broader than the language currently in AS 44.23.020

| | |
|---------------------------------------------------------------------------|-----------------------|
| Prepared by <u>Joan M. Kasson</u> | Phone <u>465-5370</u> |
| Division <u>Attorney General's Office</u> | Date <u>4/24/98</u> |
| Approved by <u>Commissioner</u> <u>Bruce M. Botelho, Attorney General</u> | Date <u>4/24/98</u> |
| Agency <u>Department of Law</u> | |

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SSSJR 10
#3

ANALYSIS CONTINUATION

in two ways. By inclusion of the language "state public corporation", the proposed amendment appears to include the Alaska Railroad Corporation and University of Alaska as entities that the attorney general shall defend in civil actions. Both of these organizations currently maintain their own counsel.

Secondly, Sec. 28(c) requires the state "prosecute violations of State criminal law, including infractions and violations". The department assumes that the courts would continue to allow the attorney general broad discretion over the initiation, prosecution and disposition of cases, both civil and criminal. For example, under present law, district attorneys do not appear in court for most minor traffic violations. The charging police officer presents the state's case to the judge. If this language were to cause the court to rule otherwise, the expense to the state to have district attorneys appear in every case involving a minor infraction or violation would be substantial.

However, the department cannot make a similar assumption about the addition of state corporations to its workload. The Alaska Railroad Corporation (ARRC) has on staff three full time attorneys, and currently expends approximately \$200.0 a year on contract outside counsel. The University has a legal staff of four attorneys, and estimates their annual expenditures on outside counsel at approximately \$1 million. Presumably, legal services could be provided to these agencies through reimbursable services agreements, and the Department of Law would require sufficient interagency receipt authority to take over these functions. Practically, whether there would be additional costs (or savings) in implementing such a transfer would require a more detailed analysis to determine.

This fiscal note assumes the same staff and contractual levels as those entities currently maintain. The full-time equivalent attorney cost estimates are based on the department's FY98/99 standard attorney cost schedule (\$133,517), which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. Case specific travel, one-time equipment purchases, and expert witness and outside counsel costs are included separately. Clerical support costs, except for one-time equipment purchases, are included in the rate at an approximate ratio of one clerical support position for every three attorney positions. Position authorizations and one-time equipment costs of \$6.5 per clerical position are required.

In addition, the proposed amendment removes the governor's organizational and supervisory controls over any function or unit headed by the attorney general. These controls are normally maintained through executive branch procedural requirements imposed on other executive branch agencies by the Department of Administration and the Office of Management and Budget on behalf of the governor.

It is anticipated that the Department of Law would continue to use centrally provided services such as accounting, purchasing, leasing and supply, professional services contracting, information management, and duplicating services on a "service bureau" basis and still maintain the attorney general's functions free from the governor's supervision. Personnel administration, however, is more problematic. To use the Department of Administration's classification system would retain an element of control by the governor over the Department of Law in terms of imposing functional changes in position descriptions and duties. The department assumes it would have to do its own classifications, create and maintain position eligibility lists, and maintain a more in-depth records system for personnel than it now does. The department estimates it would require 2 new PFT Personnel Assistant I (R12) positions, and 1 PFT Administrative Clerk III (R10) position, at an estimated cost of \$162,800 per year to perform these functions (using FY 99 salaries for illustration purposes).

Although not included in this fiscal note, another major cost that may eventually occur as a result of changing from an appointed to an elected attorney general will be the proliferation of special counsel on the staffs of major departments. In other states with elected attorneys general, agency counsel have been employed to give department heads a "second" opinion in controversial matters. These counsel usually do not have the authority to litigate, but they provide legal advice to department heads and submit Amicus briefs in litigation affecting their department's programs. It is not unusual in these states to see four or five separate briefs filed in a single matter, in addition to the attorney general's brief,

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SSSJR 10
#3

ANALYSIS CONTINUATION

representing the varying viewpoints of different agencies. Costs for a single special counsel, including secretarial assistance, total approximately \$150,000 per year. Although it is highly speculative at this time to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, over time, it could easily exceed \$1,500,000 per fiscal year.

Cost Analysis

Civil Division BRU, Transportation Component

Beginning mid-FY99

- 3 FTE Attorneys for ARRC work + \$5.0 each direct case costs (DCC)
- 1 FTE Legal Secretary for ARRC work (equipment only)
- \$200.0 ARRC contract outside counsel and experts (DCC)

| | Per Position Cost | FTE | In-House | DCC | TOTAL |
|-------------------|-------------------|-----|----------------|----------------|----------------|
| 100 | \$113.2 | x 3 | \$339.6 | | \$339.6 |
| 200 | \$0.3 | x 3 | \$0.9 | \$7.5 | \$8.4 |
| 300 | \$18.2 | x 2 | \$54.6 | \$207.5 | \$262.1 |
| 400 | \$1.8 | x 3 | \$5.4 | | \$5.4 |
| 500 | \$6.5 | x 4 | \$26.0 | | \$26.0 |
| Total ARRC | \$140.0 | | \$426.5 | \$215.0 | \$641.5 |

Civil Division BRU, New University Component

- 4 FTE Attorneys for U of A work + \$5.0 each direct case costs
- 1.5 FTE Legal Secretary for U of A work (equipment only)
- \$1,000.0 U of A contract outside counsel and experts

| | Per Position Cost | FTE | In-House | DCC | TOTAL |
|---------------------|-------------------|-----|----------------|------------------|------------------|
| 100 | \$113.2 | x 4 | \$452.8 | | \$452.8 |
| 200 | \$0.3 | x 4 | \$1.2 | \$10.0 | \$11.2 |
| 300 | \$18.2 | x 4 | \$72.8 | \$1,010.0 | \$1,082.8 |
| 400 | \$1.8 | x 4 | \$7.2 | | \$7.2 |
| 500 | \$6.5 | x 6 | \$39.0 | | \$39.0 |
| Total U of A | \$140.0 | | \$573.0 | \$1,020.0 | \$1,593.0 |

Administration and Support BRU, Administrative Services Division Component

Beginning mid-FY03

- 2 Personnel Assistant I, Range 12A
- 1 Administrative Clerk III, Range 10A

| | Per PA I Cost | FTE | PA I | AC III | TOTAL |
|--------------|---------------|-----|----------------|---------------|----------------|
| 100 | \$40.8 | x 2 | \$81.7 | \$36.4 | \$118.1 |
| 200 | \$0.0 | x 2 | \$0.0 | \$0.0 | \$0.0 |
| 300 | \$6.0 | x 2 | \$12.0 | \$6.0 | \$18.0 |
| 400 | \$2.4 | x 2 | \$4.8 | \$2.4 | \$7.2 |
| 500 | \$6.5 | x 2 | \$13.0 | \$6.5 | \$19.5 |
| Total | \$55.7 | | \$111.5 | \$51.3 | \$162.8 |

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SSSJR 10 (JUD)

Revision Date: _____
 Title: "Proposing amendments to the Constitution of the
St. of Alaska relating to the election and duties of the Attorney
General"
 Sponsor: Sen. Green
 Requestor: (S) JUD

Department Affected: Administration
 BRU: Legal and Advocacy Services
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

FUND SOURCE: (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

THIS BILL CHANGES THE ALASKA ATTORNEY GENERAL FROM AN APPOINTED TO AN ELECTED POSITION. OTHER THAN SPECULATION REGARDING IMPACT ON PROSECUTORIAL DISCRETION, THERE IS NO IMPACT TO THE PUBLIC DEFENDER AGENCY.

Prepared by: Barbara K. Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 4/29/98

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SSSJR 10 (JUD)

Revision Date: _____
 Title: "Proposing amendments to the Constitution of the
St. of Alaska relating to the election and duties of the Attorney
General"
 Sponsor: Sen. Green
 Requestor: (S) JUD

Department Affected: Administration
 BR#: Legal and Advocacy Services
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|------------|------------|------------|------------|------------|------------|
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|-----------------------------|------------|------------|------------|------------|------------|------------|

| | | | | | | |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|-------------------------------|------------|------------|------------|------------|------------|------------|

FUND SOURCE:

(Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

THIS BILL CHANGES THE ALASKA ATTORNEY GENERAL FROM AN APPOINTED TO AN ELECTED POSITION. OTHER THAN SPECULATION REGARDING IMPACT ON PROSECUTORIAL DISCRETION, THERE IS NO IMPACT TO THE PUBLIC DEFENDER AGENCY.

Prepared by: Barbara K. Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Bover
 Agency: Department of Administration

Date: 4/29/98

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/10/97

FURTHER:

Date of 5-Day Notice: 2/16/97
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4-27-98

Judiciary Committee considered

SS FOR SENATE JOINT RESOLUTION NO. 10

Proposing amendments to the Constitution of the State of Alaska relating to the election and the duties of the attorney general.

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR# _____

| SIGNING DO PASS | DP | OTHER RECOMMENDATIONS | NR | DNP | AM |
|-----------------------------|-------------------------------------|-----------------------|----|-------------------------------------|----|
| <i>Mike Miller</i> | <input checked="" type="checkbox"/> | <i>Deane</i> | | <input checked="" type="checkbox"/> | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| CHAIR: <i>Adrian Taylor</i> | <input checked="" type="checkbox"/> | CHAIR: | | | |

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

| | | | |
|-----------------------------------|--------------------|------------------------------------------------|------------------------------------------------|
| #1 GOVERNOR/ELECTIVE OPS | 4/10/98 | | <input checked="" type="checkbox"/> |
| #2 LAW/CRIMINAL-CIVIL | 4/24/98 | | <input checked="" type="checkbox"/> |
| #3 ADMIN/PUBLIC DEFENSE | 2/6/97 | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| GOVERNOR/EXECUTIVE OPS | 2/10/97 | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| | | | |
| | | | |

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

| | | | |
|--|--|--|--|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SSSJR 10

Revision Date: 4/17/97 Dept. Affected: Department of Law
 Title: "Proposing amendments to the Constitution . . . relating to the election and the duties of the attorney general." BRU: Criminal Division/Civil Division
 Sponsor: Senator Green Component: All
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2085-2092

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | ***** | ***** | ***** | ***** | ***** |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| FUND SOURCE | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | ***** | ***** | ***** | ***** | ***** |

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

| POSITIONS | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL-TIME | 0.0 | ***** | ***** | ***** | ***** | ***** |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

SSSJR 10 proposes an amendment to the Constitution of the State of Alaska making the attorney general an elected office. Further, the proposed amendment describes the duties of the attorney general, and prohibits the governor from making a change in organization or function of a unit of the executive branch headed by the attorney general. Assuming this constitutional amendment were approved by the voters of the State of Alaska in the November 1998 general election, the first elected attorney general would take office in January 2003, FY 03. However, it appears that changes in the duties of the attorney general would take place upon passage of the amendment, as early as January 1999.

The Department of Law cannot accurately quantify a fiscal impact from this resolution. However, it is clear that the impact on the state would be significant. In addition to the impacts on the Department of Law discussed below, another major cost that may eventually occur as a result of changing from an appointed to an elected attorney general will be the proliferation of special counsel on the staffs of major departments. In other

Prepared by: Joan M. Kasson *Joan M. Kasson*
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho *Bruce M. Botelho*
 Agency: Department of Law

Phone: 465-5370
 Date: 4/17/97
 Date: 4/17/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SSSJR 10

ANALYSIS CONTINUATION:

states with elected attorneys general, agency counsel have been employed to give department heads a "second" opinion in controversial matters. These counsel usually do not have the authority to litigate, but they provide legal advice to department heads and submit amicus briefs in litigation affecting their department's programs. It is not unusual in these states to see four or five separate briefs filed in a single matter, in addition to the attorney general's brief, representing the varying viewpoints of different agencies. Costs for a single special counsel, including secretarial assistance, total approximately \$150,000 per year in 1997 dollars. Although it is highly speculative at this time to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, over time, it could easily exceed \$1,500,000 per fiscal year.

The greatest potential fiscal impact on the Department of Law from the proposed constitutional amendment comes from expanded duties as described in Section 28 (c). This language is broader than the language currently in AS 44.23.020 in two ways. By inclusion of the language "state public corporation", the proposed amendment appears to include the Alaska Railroad Corporation and University of Alaska as entities that the attorney general shall defend in civil actions. Both of these organizations currently maintain their own counsel.

Secondly, Sec. 28 (c) requires the state "prosecute violations of State criminal law, including infractions and violations". The department assumes that the courts would continue to allow the attorney general broad discretion over the initiation, prosecution and disposition of cases, both civil and criminal. For example, under present law, district attorneys do not appear in court for most minor traffic violations. The charging police officer presents the state's case to the judge. If this language were to cause the court to rule otherwise, the expense to the state to have district attorneys appear in every case involving a minor infraction or violation would be substantial.

However, the department cannot make a similar assumption about the addition of state corporations to its workload. The Alaska Railroad Corporation (ARRC) has on staff three full time attorneys, and currently expends approximately \$200,000 a year on contract outside counsel. The University has a legal staff of four attorneys, and estimates their annual expenditures on outside counsel varies year-to-year between approximately \$500,000 and \$1,500,000. Presumably, legal services could be provided to these agencies through reimbursable services agreements, and the Department of Law would require sufficient interagency receipt authority to take over these functions. Practically, whether there would be additional costs (or savings) in implementing such a transfer would require a more detailed analysis to determine.

In addition, the proposed amendment removes the governor's organizational and supervisory controls over any function or unit headed by the attorney general. These controls are normally maintained through executive branch procedural requirements imposed on other executive branch agencies by the Department of Administration and the Office of Management and Budget on behalf of the governor.

It is anticipated that the Department of Law would continue to use centrally provided services such as accounting, purchasing, leasing and supply, professional services contracting, information management, and ~~judicial services~~ on a "service bureau" basis and still maintain the attorney general's functions free from the governor's supervision. Personnel administration, however, is more problematic. To use the Department of Administration's classification system would retain an element of control by the governor over the Department of Law in terms of imposing functional changes in position descriptions and duties. The department assumes it would have to do its own classifications, create and maintain position eligibility lists, and maintain a more in-depth records system for personnel than it now does. The department estimates it would require 2 new PFT Personnel Assistant I (R12) positions, and 1 PFT Administrative Clerk III (R10)

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SSSJR 10

ANALYSIS CONTINUATION:

position, at an estimated cost of \$217,000 per year to perform these functions (using FY 98 salaries for illustration purposes).

As discussed in the narrative above, outside counsel costs for the University can vary widely and actual transfer of these legal service responsibilities to the Attorney General would require a more detailed analysis to identify specific costs and/or savings from the transfer. The following summarizes the potential fiscal impact to the Department of Law that we can identify at this time using the department's 1997 standard attorney cost schedule for a full-time equivalent attorney position, including standard overheads (clerical support, communications, space, supplies, data processing, etc.), and 1997 salaries and costs for non-cost schedule positions.

| | |
|-------------------------------------------------------------------------------|-------------------------|
| ARRC Legal Services Transfer (beginning mid-FY99) | |
| 3 FTE Attorneys @ \$127.0 | \$381.0 |
| Direct case costs @ \$5.0 per attorney | \$15.0 |
| 1.5 PFT Legal Secretary position authorizations | \$0.0 |
| One-time equipment purchases for new positions @ \$6.5 | \$32.5 |
| Contract outside counsel/experts @ estimated \$200.0 | \$200.0 |
| | <u>\$628.5</u> |
| | |
| University of Alaska Legal Services Transfer (beginning mid-FY99) | |
| 4 FTE Attorneys @ \$127.0 | \$508.0 |
| Direct case costs @ \$5.0 per attorney | \$20.0 |
| 2 PFT Legal Secretary position authorizations | \$0.0 |
| One-time equipment purchases for new positions @ \$6.5 | \$39.0 |
| Contract outside counsel/experts @ estimated \$500.0 to \$1,500.0 | \$500.0 |
| | <u>\$1,067.0</u> |
| | |
| Administration & Support Personnel Classification System (beginning mid-FY03) | |
| 2 Personnel Assistant I @ \$49.6 | \$99.1 |
| 1 Administrative Clerk III @ \$45.5 | \$45.5 |
| One-time equipment purchases for new positions @ \$6.5 | \$19.5 |
| | <u>\$164.2</u> |
| | |
| Total, Including One Time Equipment Purchases | \$1,859.7 |
| Less One-time items | (\$91.0) |
| | <u><u>\$1,768.7</u></u> |
| Department of Law Estimated Minimum Annual Cost | \$1,768.7 |

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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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) 451-2811
FAX: (907) 451-2846
- P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

February 19, 1997

Honorable Robin Taylor
Senator
Alaska State Legislature
State Capitol Room 30
Juneau, Alaska 99801-1182

Re: SSSJR 10 - Proposing a constitutional
amendment to elect the attorney general

Dear Senator Taylor:

I am sending this memorandum for the record to accompany my testimony on SSSJR 10 (proposing a constitutional amendment to elect the attorney general). I obtained a copy of the packet prepared by Senator Green, and believe that she and her staff should be complimented for the thorough research they have conducted of the past history of similar proposals in earlier legislatures.

In order to ensure that all of the debate at the constitutional convention is before the Judiciary Committee, I have attached a copy of the debate for the committee files. The debate includes discussion of whether to have elected officers other than the governor and lieutenant governor (then secretary of state), and specifically whether to elect an attorney general. Two strong points were made in favor of the concept of an appointed attorney general. The first point concerned the nature of the office of attorney general. Those in favor of an elected attorney general characterized the office as the "attorney for the people." In that connection, it was argued that the attorney general needed a franchise to office granted by the people rather than by the governor. This concept was strongly refuted by delegate McLaughlin when he said:

The blunt fact is that there is a general misconception as to the function of the attorney general. The attorney general is a lawyer and his opinion is the equivalent of any other lawyer's. It can be attacked. Any recommendation he makes, if acted upon, can always be attacked in the courts by private citizens. His opinion is worth the paper it is written upon. It's impressive upon the state and the officials are bound by it until some irate taxpayer attacks it and the actions taken under the authority of it, and the courts can promptly overrule it.

Minutes of the Alaska Constitution Convention at 2196.

The attorney general is the governor's chief legal advisor. In this capacity, he advises not only the executives, but the principal department heads and state agencies under the governor's supervision. By enjoying the confidence of the governor, the public interest is benefited by a consolidated law office that is both efficient and economical.

The second point made related to accountability of the government to the people. Convention delegates were prepared to make drastic changes from the diffused form of government provided through the Territory of Alaska. You will recall that many basic state responsibilities were under federal agency jurisdiction. The governor, collector of customs, adjutant general, U.S. marshal, judges, district attorneys, and other officials were federal appointees. To dilute the authority of these federally appointed officials, the territorial legislature provided for a number of locally elected officials including the attorney general, treasurer, highway engineer, and commissioner of labor. As a result of this fragmentation of authority, no single officer was accountable for the performance of government. The rationale for a minimum number of elected officials was expressed by Delegate Lundborg as follows:

We in our committee felt that it would be the wishes of the majority of the Convention to have a strong executive. By that we did not mean a dictator, one who would get into power and be the absolute power in the state, but one who through appointive powers would be able to select his co-workers down through the various offices so that when the state's functions would be successful, we could say that we had a good governor, and when they would not be successful we would know who to blame and could vote accordingly at the next election.

Minutes of the Constitutional Convention at 2217. I submit that these reasons have continued viability over 40 years after they were expressed.

I offer the following comments concerning specific provisions of the resolution:

(1) The Judiciary Committee should carefully consider sec. 2, which prohibits the governor from reorganizing the Office of the Attorney General. This would leave organization of the office entirely up to the attorney general and to a lesser degree, the legislature, which can influence organization by prescribing certain duties by law. This insulation of the attorney general may be desirable to preserve independence, but it may also create a wall between the governor and his lawyer that cannot be crossed. This could cause the governor to establish separate counsel within the Office of Governor and other principal departments.

(2) Section 5 of the resolution provides that the legislature may prescribe additional qualifications for the Office of the Attorney General. Proposed sec. 28(a). This provision is

exceedingly broad, and tends to hand to the legislature a power that is not given for other statewide officeholders. This provision needs some discussion in committee to develop the intent of the sponsor.

(3) Section 5 also contains a provision that will fundamentally alter the responsibilities of the attorney general. In proposed sec. 28(c), the attorney general is required to defend the state, state agencies, public corporations, or a state public enterprise. No mention is made of the power of the attorney general to bring suits on behalf of the state. This omission should be remedied. If the legislature fails to prescribe other non-litigation related duties for the attorney general, the office will devolve into an agency exclusively engaged in litigation on behalf of public agencies. This would be similar to the U.S. Department of Justice, which may have the unintended effect of hastening the establishment of agency counsel in the various principal departments who would be responsible for general advice to agencies not involving litigation.

(4) The resolution may have the unintended effect of expanding the powers of the attorney general concerning representation of public entities in civil matters. The list of entities to be represented by the elected attorney general mentioned in sec. 28 (c) could be interpreted to include state special service areas, and state chartered corporations not currently represented in litigation by the Office of the Attorney General. For example, the Alaska Railroad Corporation and the University of Alaska are typically represented by separate counsel.

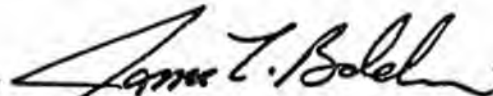
(5) The requirement to defend violations of state criminal law including infractions and violations may have the unintended effect of shifting to the attorney general the burden of prosecuting motor vehicle, traffic and other minor offenses charged by municipal peace officers. This would have a significant fiscal effect on the budget of the Office of the Attorney General.

The department has prepared and will separately submit a fiscal note outlining the increased appropriations needed to implement the resolutions.

Thank -you for the opportunity to comment on the resolution.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

Bv 

James L. Baldwin
Assistant Attorney General

1979

ALASKA CONSTITUTIONAL CONVENTION

January 13, 1956

FIFTY-SECOND DAY

2007

been the function of all secretaries of state and that is the implication of the title. It is a broad general policy-making situation and also a program-arranging situation, and it is second in command to the governor. Now I think that you could either make that office as effective or as ineffective as the legislature and the governor desire it to be, but in the concept of the strong executive, we had the concept of a strong efficient second-in-command.

BUCKALL.W: One more question. Don't you feel that you would get a better secretary of state if the governor was allowed to appoint the secretary of state subject to approval by the senate?

V. RIVERS: Well, Mr. President, there we come back again to that problem of just how strong should a strong executive be. Theory and the ideal say that the strong executive should be a governor elected with the appointive power of all other officials. That has, we believed in the Committee or some of us did, there are exceptions, that that had a disadvantage in that there was no particular individual known to the people who had been exposed to the elective process being prepared to succeed to the governor, and we also felt that the people wanted an expression in the matter of just more than one individual as their elected representative. We also felt that an elected representative would make a better second-in-command in the absence or the death of the governor, that he would have then been elected by the popular will. So whether I believe or not that the lieutenant governor should be appointed -- personally, my stand was against just the one single elective head of government, the governor.

2070

HELLENTHAL: I hesitate to talk on this because I think this is a wonderful enactment, and this is the only amendment that I have to offer to the entire matter, but I think it is basic. Now, therefore, I should like the indulgence of the delegates. Now, at the outset I favor a strong executive, never an absolute executive, and I don't think that the amendment would call for an absolute executive. I favor that the attorney general be appointed, that all other department heads be appointed, and I have no other amendment to offer. I do not intend to follow this up, to use this as a play to get the attorney general elected, no. I believe in a strong executive. Now, this proposed proposal has many implications. Mr. Buckalew used the word "deal" several times, and the political implications are not encouraging in this proposal.

PRESIDENT EGAN: Do you mean in this section?

HELLENTHAL: In the committee section, yes. I dispute the fact that the secretary of state would be elected by the people, which was stressed. It would not be exactly by the people. It would be a package deal. You would have to take him along with the governor, kind of a "buddy" system in the state, and the people would have nothing to do other than to elect their delegates at a caucus to the political convention, which would choose the "buddy", and I don't think that is very good. I don't think that is very good at all. Another point is this: It is a unique plan. Only one state in the entire United States seems to favor this system. Now, seven or eight, it is true, elect their secretary of state, but the "buddy" system is only found in one state. Now, why not just simply, and I don't think language is even necessary in the constitution, why don't we just let our governor hire someone to help him and fire him when he does not want him. Let him hire such other administrative assistants as he wants. What is wrong with that? It is conceivable that these pals might split up some time, that has happened before in politics, and go in different directions. Then where would we be? I don't particularly like this amendment, rather this section, and I don't think the alternative is despotism. I think that if we permit the governor to hire his assistants that we will secure

efficiency; we will eliminate a tendency towards a rather undesirable political scheming process, and I think that we will bring about much better government.

PRESIDENT EGAN: Is there anyone else who has not been heard who wishes to be heard? Mr. Harris.

HARRIS: Being on the Committee that helped devise this plan, that we are now working over, we took quite a few things into consideration before adopting this particular plan. In the first place, under our apportionment article, which we knew something of before we adopted this plan, there has to be some succession.

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NORDALE: Mr. President, I feel too that this should be given a little more thought, but I would like to say this: When we started, and I think the Committee members will agree with me, we were quite pleased with New Jersey because we felt it was a modern constitution and in New Jersey the governor is the only elected official. No other official is mentioned, I believe, except for perhaps a limitation on his being removed from office or something of that sort. But feeling that perhaps there were people in Alaska who felt that they wanted to elect the lieutenant governor or the succeeding officer, we introduced this idea of having two people who would run together, and so we devised this particular system to try to keep from weakening the governor and still please the people who might want to vote for his successor.

NORDALE: Mr. President, I seem to be doing a lot of the talking. One of the reasons we called this particular official a secretary of state was that we did not want to have a lieutenant governor sitting and doing nothing. Now if you don't let the legislature prescribe something for him to do, he is going to be, in effect, a lieutenant governor, and the legislature could very well set up a department under somebody who is not called a secretary of state who would do all the work that a secretary of state normally does, and we would be right back with a lieutenant governor that most states are saddled with.

McLAUGHLIN: Mr. President, I'm in favor of Mr. Buckalew's motion to strike that on the theory that if we are going to have a strong executive, I believe that the executive should not be burdened with a crown prince who substantially would be dictated by the

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body that runs or supports the governor. Normally, that second-in-command is someone who is picked, not because of ability, but because of political considerations. He inevitably will come from a different part of the state, or

appeal to that class of voters which the candidate for governor does not appeal to. It's a history of the Vice Presidency, and I suspect it would be the history here. We would not have as a successor a strong secretary of state; he would make a poor governor largely because the consideration of his selection would be political. On the other hand, I believe that the governor has a right, after election, to appoint him; I also believe in conformity. I also believe that if we are going to have an elective governor that he should appoint every member of his cabinet, and that includes the attorney general. That is, you give him the power, if you vote for him and him alone, and not on the basis of the man who is supporting him, I believe that you will get an independent strong governor. And if you give him the power to appoint all of his cabinet, then in effect what you have done, you make him run on his record, but if we are going to talk about a strong executive and then dilute the thing by permitting every other cabinet member to run, you haven't got a strong executive at all, and apparently many of the decisions that we made here prior to this have been based upon the assumption that we should have a strong executive. I will vote for Mr. Buckalew's amendment on the theory that it will make the executive strong.

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ALASKA CONSTITUTIONAL CONVENTION

January 14, 1956

FIFTY-THIRD DAY

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it appeared that, at least the feeling was drawn out th
(original copy illegible) whole proposal had almost been
wrecked. I believe that (original copy illegible) tion can be
changed so it will be acceptable and for tha (original copy
illegible) I would like to have the reconsideration at this
time with (original copy illegible) possible amendment
afterwards if the section is retained.

PRESIDENT EGAN: Is there further discussion? Section 6 is
now before us once more. Mr. Boswell.

BOSWELL: I would like to trace the evolution of this
particular article through the Committee. Our first decision
was, should we have a lieutenant governor? We decided that
was a luxury which we could not afford in this new state. So
our second decision was to try to set up a working successor
to the governor, and it seemed a logical choice would be the
secretary of state. Our third decision was regarding the
election, whether this secretary of state should be elected or
appointed, and we felt it would be a little more democratic,

more acceptable to the public, give them more to say, if he were elected. Then the question was, how can we elect a secretary of state and be certain he would be compatible with the governor and be of the same party as the governor. I asked Mr. Cooper this question on his previous amendment, how he could expect this elected secretary of state to be of the same party and he could not answer. I realized I was tossing him a curve at the time because we could not answer it; so that was why we came up with this particular section and we decided then that we could accomplish the purpose we were after by nominating the secretary of state and the governor separately and pairing them to run in the final election so that we would at least be certain that they would be of the same political party, and I think that is the important thing on it. It would be obvious to all that if we had a governor of one party and a secretary of state of another party that they could not only not work together, but there would be terrific confusion if that secretary of state ever succeeded to the governor. I think when the people of Alaska have this opportunity to nominate a secretary of state and realize the important position that he holds, they are going to be very careful of the man they nominate, and I don't think he will be the type of man that Mr. Buckalew would have us think he would be. Now if you think the Committee approach has been illogical or if you want to "buy a pig in a poke", support Mr. Buckalew's amendment. If not, I think the committee proposal has merit.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: I seconded Mr. Buckalew's motion and I have always felt that Section 6, as worded for the reasons that we stated yesterday, injects an undesirable element in our constitutional government, and as far as a "pig in a poke", and I want to direct my remarks solely to that. There is an amendment on the desk

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which reads as follows: "That Section 6 be stricken and the following substituted: 'There shall be a secretary of state who shall have the same qualifications as the governor. He shall be appointed by the governor. He shall perform such duties as may be delegated to him by the governor. He shall

perform such administrative functions as are prescribed by law'." The amendment goes on and deletes the words "person elected" in line 12 of Section 7, and that is all there is to it. Now that amendment prescribes a constitutional secretary of state. The reason for that is so that the order of succession is preserved. It makes him an appointee of the governor, so the objection as to political faith is immediately removed. He will be of the same political party. It makes him a working secretary of state, because as far as executive duties are concerned the governor may delegate some to him. Administrative duties which of course do not infringe upon the executive may be prescribed by law. That avoids any conflict between a secretary of state working contrary to his governor, so this amendment preserves the order of succession exactly as it was in the original proposal, except only that the secretary of state is an appointive official, but the order of succession is preserved. Everything of the original proposal is preserved, and it is not "a pig in a poke". There are other equally, I think, desirable alternatives. There is no magic about this thing. It is very simple. In answer to Mr. Marston's statement, I am quite sure by 12 noon we will be all through with this thing. We could adopt many healthy proposals in that time, too, all of them better than the present Section 6. I have talked to other people who have equally sound alternative methods, none of which require huddles or delay, very simple, very clear and generally unobjectionable, so I say that if we do reconsider this matter, there are sound alternates and I do think though, that the present section or the section that was submitted to us must be improved.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, it appears to me that the only difference between Mr. Hellenthal's proposal as he has talked about it here, and the committee proposal is the point as to whether the secretary of state is going to be elected or whether he is going to be appointed. I am afraid we are going to get ourselves in a box here if we vote on the motion to reconsider. I am afraid we may be foreclosing the possibility of considering Mr. Hellenthal's amendment. I am wondering if it might not be more orderly to hold the matter of the reconsideration until after we have heard Mr. Hellenthal's

amendment. I am afraid we will be in the same position we were in yesterday where we struck certain language and then we had to have an amendment to put the same language back in. As it now stands, we have stricken Section 6. If we take the motion to reconsider and if that

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motion to reconsider is against Mr. Buckalew's amendment, we will be in the position then of having failed to strike the section and then we have another motion come along to strike the section over again. It seems to me that the primary question at the minute is whether the body does or does not want an elective secretary of state.

PRESIDENT EGAN: Mr. Londborg.

LONGBORG: Mr. President, I would like to speak another word for the committee proposal as we drew it up. As I see the difference in the remarks now of Mr. Hellenthal and his would-be secretary of state, and the one that the Committee provided for, is this, of a time element as far as when the governor picks his partner. In other words, has the Committee made it possible that the governor would have a perfectly compatible working partner; he would choose that man or the party would work together and pick that man before the election, or if the law so provided, he may be picked in the primary to be the running partner of the successful nominee of the primary for governor. Now, as I see it, the pressure that is going to come upon the governor in selecting a secretary of state will be just the same as the pressure if he were to pick him before he was elected as governor. This man that will be selected as secretary of state after the governor is elected, will be a man who can take over the governor's office for a period of three or three and one-half years, maybe even more should the governor die. You can be sure there is going to be just as much pressure on the governor to attach on to him somebody the people don't want but somebody to whom the party owes a debt; but if you have the secretary of state as just a working man and not succeeding to the governor's chair, that would be a different thing, but if he is to fall in line for the governorship, then we stand the chance of having a person become governor for a period of one. two, three, three and one-half, and a day short of four years. The people would as

a whole perhaps reject just because of some pressures put upon the governor to put that man in as his secretary of state. I think the fair way to the people would be to have that man along with the governor on the general election ticket. Then if we don't feel that the governor chose wisely or the party chose wisely, they can both be rejected. The people have a choice. I can see that the strong executive would be one that would just pick all of his own men and those he doesn't want, he just throws away, but I think there are going to be pressures upon him in the selections, and that is one pressure that can be revealed before we take the whole "poke". We are going to know what we are getting and they can be accepted or rejected as a team.

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becoming governor? For your information Mr. Rivers, I'll give you the names. Thomas Dewey, Alfred E. Smith, Herbert Lehman and Franklin Delano Roosevelt.

PRESIDENT EGAN: Mr. Armstrong, would you take the Chair?
(Mr. Armstrong took the chair at this time.)

EGAN: Mr. Chairman, I would like to say that I realize that the Committee on the Executive has put in a lot of days, a lot of hours, just simply a lot of time on this particular question. What they have come up with they feel is the best that is possible. I know that and give them every credit and I have respect for their feelings, but I have not been completely in favor of this type of provision at any time since it was under Committee discussion. I am opposed to having the man who would be next in line in succession to the governorship not actually elected in some manner by the people of the new state. I would like to say as to that that I also have that feeling with relation to the Vice Presidency of the United States, that I am not in agreement with that particular means that we now use and have used all along through our history in providing for the Vice President of the United States. This feeling does not conflict at all with my feeling

on the national level relative to that question. I feel that as Mr. Victor Rivers has stated, that if such an amendment -- I voted for the deletion of Section 6 -- with that feeling in mind, that actually a secretary of state won't be running for any office. The people won't have one thing to say about who shall be secretary of state under Section 6 as I read it. Someone will choose that particular man and he will become as Section 6 reads, "the governor of the State of Alaska." Now, if as Mr. Victor Rivers has stated, he will offer an amendment that will definitely guarantee to the people of Alaska that the man who will become secretary of state will be elected by the people in a primary election, then I would agree with going along with Section 6 if I knew that that particular amendment was going to be offered, and that we were going to have a chance to vote upon that. I also don't agree with the line of succession, with the secretary of state being appointed. I can see no reason why we should not have Section 6 as it is as well as accepting an amendment that would allow the governor to pick his own successor. I am not any more in agreement with that than I am with Section 6 as it is written now. In thinking this over, I am also not in agreement with having an amendment produced that will let the direct line of succession go from the governor, say in the manner that was suggested, that the secretary of state if the governor died, would call the legislators into session and then they would select the governor. I am not in agreement with that because the people do not elect the representatives to the legislatures and their senators with the idea that one of their number will become the governor of Alaska. I think that the best idea so

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far that I have heard is this particular proposal that we nominate, at least give the people some choice in the matter, it will be a real choice. Let them nominate the man who will run in the package with the candidates for governor in the general election. I think that that would be a proper means of allowing the people to elect their governor and also the successor to the governor. I would go along wholeheartedly with such a proposed amendment. That is my feeling on this question, and if I knew that that amendment was going to be adopted, I would then vote against the motion to strike Section 6 from the proposal.

Another thing is that the voters become apathetic as time goes on and pretty soon you

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have a small percentage of people electing your officials, whoever they may be. One reason I don't think we should be too fearful of the governor's making a bad appointment is that we are giving him the authority to make all the other appointments. The secretary of state is actually an administrative official, really. Normally he has a lot of administrative functions, just as our present Secretary of Alaska has. He does not have to necessarily have the qualities that would make him a good governor, although he should be in very close touch with the governor as he would be under our thinking here, so that in the event of an emergency the executive department would continue to run smoothly when the governor was absent. So there is a good deal to be said on both sides, and so it seems to me it does boil down to just one thing, do we want the people to elect this man or do we want him appointed?

GRAY: I'll speak once and forever more on this subject. To me, I feel that the Committee's plan is the best. We are talking about one thing, we are talking about the governor and his successor. The probability of a successor is possible but

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in general we can assume that the elected governor will carry out his term. There is a great deal of emphasis placed on the secretary of state becoming the governor. Now what we are talking about is efficiency in the state government, and we are selecting our man by the voice of the people and they are selected on a popularity basis with efficiency as a second regard. We try to get the most efficient man that is popular. In the Committee plan I do believe that you will receive the most efficient secretary of state, because if he is selected and if he is unpopular, it will be a detriment to the man running as governor. I believe like Mr. Nerland, I believe that in selecting a secretary of state we must select him for popularity but primarily for efficiency, which is the purpose of the whole executive department.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. President, I support the Buckalew amendment and in turn the proposed amendment which Mr. Hellenthal is trying to submit. I feel that this issue is entirely a political issue within parties. I can see that under the particular system that we have here that we are just trying to pull a veil over the voters' eyes as to allowing them to elect a secretary of state because it ties them too closely to the governor. I could see that in a political convention that this Section 6, as written, would enable a party to set up a fairly strong piece of political machinery. I can't see where the primary election would do so good because we all know there are factions in political parties, and you know that from time to time in our past history we have had very strong feelings and splits in both major parties in Alaska, so I can see where we would have a strong man of one faction running for secretary of state and a strong man of the other faction running for governor, and if they were tied together

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in the general election it would not give you your Utopia of a strong executive. I feel that by appointing, that your governor-elect or your governor that becomes elected, would be more or less the leading figure of the political party that gained control of our government, and feel that to this end he should have the prerogative of choosing his own cabinet or major officials.

NORDALE: Mr. President, I think that Mr. Davis put his finger on the problem when he said it was a matter of do we want to elect a secretary of state or do we want to appoint him. I am not too sure just how strong my convictions are, but I would like to say this, that one of the problems that has faced most of the states, and I think one of the reasons why there has been a swing away from elected officials is that for one thing, as the years go by the ballots become cluttered with elected officials. Of course, ours does not look as if it would be in much danger, except we do have our election of senators, representatives, and at least three members of Congress to elect plus initiatives and referendum and all that sort of thing, but the swing toward the appointment of officials has been to keep some sort of coordination in government. Any man elected by the people is pretty independent, and that is why you have a lack of coordination in government where you have a lot of elected officials.

SWEENEY: I just wanted to say that I want to have a secretary of state elected. I want him compatible with the governor. I want him nominated in the primary and I want him teamed with the governor in the general election. That is all I want, and I do not believe that it is destroying the strong executive. To talk about splinters in either party, I think if you did happen to get one from one faction or one from another, it might be just the thing that would cement your party, and I hope you vote down the Buckalew amendment.

AWES: I have an amendment, Mr. President.

PRESIDENT EGAN: You may present your amendment, Miss Awes.
The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Line 18, page 2, strike the words 'secretary of state' and substitute 'lieutenant governor'; line 21, strike from 'and' through word 'governor' ending on line 2, page 3; line 2, page 3, strike 'secretary of state' and substitute 'lieutenant governor'; lines 4, and 5, page 3, strike words 'secretary of state' on both lines and in each case substitute 'lieutenant governor'."

AWES: I move the adoption of the amendment.

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PRESIDENT EGAN: Miss Awes moves the adoption of the proposed amendment.

BUCKALEW: I second the motion.

AWES: Some of the delegates here were perhaps surprised at the amendment thinking that the idea of a lieutenant governor had been completely buried. That is what bothered me. I am afraid that the idea of a lieutenant governor was buried perhaps too soon. The only argument I have heard is that the lieutenant governor does not play too important a role and it costs money; therefore we should do away with him. Yes, it does cost something to have a lieutenant governor; you have to pay him a salary; you have a few extra lines on the ballot; you have to provide an extra room in the statehouse. When you come down to it, it costs only a drop in the bucket for the total cost of running a state. Therefore, I think the question is not what does he cost, but does he serve a purpose? I think he would serve one very real purpose. I

agree we should elect a successor to the governor. I think Alaskans have been so fed up in the last 50 or 75 years with appointive governors that they don't want to hear the word again. However, it bothers me considerably to elect the secretary of state. I don't think we should put over what some people call a package deal and give the people the form of electing a secretary of state without the choice. On the other hand, to elect the secretary of state independently, we know there are not only different parties in Alaska but there is a lot of factionalism in the parties, and if you get a lieutenant governor who is of a different faction than the governor, because he isn't too effective while serving as lieutenant governor it would not make too much difference, but the secretary of state is right-hand man to the governor, and if you get a secretary of state who is of a different party or of a different faction in the same party, he can hamstring the governor and make our whole government ineffective for the whole four years he is in office, and I think the fact that we want a strong executive makes the problem even more pressing, and therefore I suggest that we consider or reconsider, as the case may be, the idea of having a lieutenant governor in the State of Alaska.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Miss Awes be adopted by the Convention?" Mr. McLaughlin.

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McLAUGHLIN: I am a bit confused. Would the secretary read the section as it would read if it were amended.

PRESIDENT EGAN: Would the secretary read the section as it would read if it were amended.

CHIEF CLERK: "There shall be a lieutenant governor who shall have the same qualifications as the governor. He shall be nominated in the manner provided by law for nominating candidates for other elective offices. He shall be elected at the same time and for the same term as the governor. The candidate for lieutenant governor who runs jointly with a successful candidate for governor shall be elected lieutenant governor. The lieutenant governor shall perform such duties

as may be prescribed by law and as may be delegated to him by the governor."

PRESIDENT EGAN: Mr. Riley.

RILEY: I would like to address one question to Miss Awes. In distinguishing between the two titles did you mean to distinguish between duties in your discussion, Miss Awes?

AWES: Yes, I did. I was proposing a lieutenant governor in the traditional sense and then have the usual appointment of secretary of state by the governor to perform the duties of a secretary of state.

CHIEF CLERK: "There shall be a secretary of state who shall have the same qualifications as the governor. New material. "He shall be nominated in the manner provided by law for nominating candidates for other elective offices. He shall be elected at the same time and for the same term as the governor and the procedure prescribed by law." Delete the word "election". "The procedure prescribed by law for general elections shall provide that the electors in casting their vote for governor shall also be deemed to be casting their vote for the candidate for secretary of state shown on the ballot as running jointly with the respective candidate for governor. The candidate for secretary of state who runs jointly with the successful candidate for governor shall be elected secretary of state. The secretary of state shall perform such duties as may be prescribed by law and as may be delegated to him by the governor."

PRESIDENT EGAN: The Chair feels that the question that was asked by Mr. Kilcher was, are there any other necessary amendments to the following sections in order to make them conform completely with Section 6 as it is now written. Is that right?

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signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there amendments to Section 14? Mr. Barr.

BARR: Mr. President, I have an amendment to insert after Section 13. It is on the Secretary's desk.

PRESIDENT EGAN: Between Section 13 and Section 14?

BARR: Yes, it will be a new Section 14.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Page 6, line 16, after Section 13, insert a new Section 14, and renumber the following sections accordingly:
"An Attorney General shall be elected at the same time and in the same manner as the Governor, and his term of office shall be four years. He shall be the chief law officer of the State, shall represent the State in all courts of law, and shall see that all laws are uniformly and adequately enforced throughout the State. He shall be legal advisor to the Legislature and all State officers, and shall perform such other duties as may be prescribed by law. He shall be responsible to the Governor and the Legislature for the faithful performance of his duties. The Attorney General shall receive for his services a compensation fixed by the Legislature which shall not be increased or diminished during his term of office. He shall devote his full time to his office and shall not receive any salary, fees or other compensation from any other source. In case of vacancy in the office of Attorney General for any cause, the Governor shall appoint his successor to complete the term of office with the consent of a majority of both Houses of the Legislature in joint session assembled, or, when not in session, a poll of the members may be taken by mail by the President of the Senate and Speaker of the House."

PRESIDENT EGAN: What is your pleasure, Mr. Barr?

BARR: I move the adoption of this amendment.

PRESIDENT EGAN: Mr. Barr moves the adoption of the amendment. Is there a second to the motion?

KNIGHT: I'll second the motion.

PRESIDENT EGAN: Mr. Knight seconds the motion. The amendment is open for discussion. Mr. Barr.

BARR: Mr. President, as this is rather a long amendment --
