12178 HOUSE JUDICIARY

caregiver to supplying marijuana to only one patient (except in unusual circumstances), the bill also eases restriction in the initiative by allowing each patient to have a broader ranger of persons from which to choose caregivers and to designate a primary caregiver as well as an alternate caregiver who can take the place of the primary caregiver in that person's absence. These relaxed requirements also do not repeal the initiative.

In conclusion, in our opinion the changes to the initiative do not violate the constitution, either singly or in their totality, because they do not constitute a repeal of the initiative. Instead, the amendments appear to be a proper exercise of the legislature's broad authority to "substitute its judgment for that of the proponents of an initiative." *Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). The amendments to the initiative, though numerous, still "preserve its basic structure and purpose . . . ." *Warren v. Thomas*, 568 P.2d 400, 404 (Alaska 1977).

SB 94 has an immediate effective date if it is enacted into law.

Conclusion

The bill addresses legal concerns raised by law enforcement and the Department of Health and Social Services.

Sincerely,

for Bruce M. Botelho
Attorney General

BMB:DJG:jf

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF LAW

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May 19, 2004

The Honorable Frank H. Murkowski
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: HB 417 -- amending the definition of "project" in the act establishing the Alaska Natural Gas Development Authority
Our File: 883-04-0044

Dear Governor Murkowski:

At the request of your legislative director, we have reviewed HB 417, which expands the definition of "project" in the act establishing the Alaska Gas Development Authority ("ANGDA") to include a possible gas pipeline terminus at tidewater at a point on Cook Inlet. Before this addition, the definition of "project' included only a terminus at tidewater at a point on Prince William Sound and a spur line from Glennallen to the Southcentral gas distribution grid. This bill has an immediate effective date under AS 01.10.070(c) so, if you sign the bill into law, it would become effective at 12:01 a.m. Alaska Standard Time on the day after you took that action.

The Alaska Natural Gas Development Authority is a public corporation housed in the Department of Revenue. ANGDA was created by public initiative when voters passed Proposition 3 during the November 5, 2002 election. The establishing legislation is codified at AS 41.41.010 - AS 41.41.990. This bill amends the definition of project in AS 41.41.990(3) to read:

> (3) "project" means the gas transmission pipeline, together with all related property and facilities, to extend from the Prudhoe Bay area on the North Slope of Alaska **either** to tidewater at a point on Prince William Sound and the spur line from Glennallen to the South Central gas distribution grid **or to tidewater at a point on Cook Inlet** and includes

> planning, design, and construction of the pipeline and facilities as described in AS 41.41.010(a)(1)-(5). [Language in bold added by this bill.]

The Alaska Constitution art. XI, sec. 1 provides that the people may propose and enact laws by initiative. Although an initiated law may not be repealed by the legislature within two years of its effective date, Alaska Const. art. XI, sec. 7 provides that an initiated law may be amended at any time. The Alaska Supreme Court has stated that the legislature has broad authority to vary the terms of an initiated law after its adoption. *See Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975). The addition of a new project for ANGDA to consider is a proper exercise of that broad authority and does not constitute a repeal of the initiated legislation.

In summary, we see no legal or constitutional problems presented by this bill.

Sincerely,

for Gregg D. Renkes
Attorney General

GDR:LHH:tag

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Warren v. Boucher,Alaska 1975

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

Nov. 28, 1975.

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

Affirmed.

Erwin, J., dissented and filed opinion in which Burke, J., joined.
West Headnotes
[1] Statutes 361 ⚿301

361 Statutes
361IX Initiative
361k301 k. Initiative in General. Most Cited Cases
Constitutional provisions for determination of election contests as prescribed by law and defining �by law� as identical with �by the legislature,� gave legislature power to enact method of determining whether act and initiative provision are substantially the same, so as to void initiative. AS 15.45.210, Const. art. 5, § 3, art. 11, § 4, art. 12, § 11.

[2] Constitutional Law 92 ⚿70.1(1)

92 Constitutional Law

92III Distribution of Governmental Powers and Functions
92III(B) Judicial Powers and Functions
92k70 Encroachment on Legislature
92k70.1 In General
92k70.1(1) k. In General. Most Cited Cases

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

[3] Constitutional Law 92 ⟹80(1)

92 Constitutional Law
92III Distribution of Governmental Powers and Functions
92III(C) Executive Powers and Functions
92k78 Encroachment on Judiciary
92k80 Powers, Duties, and Acts Under Legislative Authority
92k80(1) k. In General. Most Cited Cases

Statutes 361 ⟹302

361 Statutes
361IX Initiative
361k302 k. Constitutional and Statutory Provisions. Most Cited Cases

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

[4] Constitutional Law 92 ⟹12

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k11 General Rules of Construction
92k12 k. In General. Most Cited Cases

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

[5] Statutes 361 ⟹301

361 Statutes
361IX Initiative
361k301 k. Initiative in General. Most Cited Cases

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

[6] Statutes 361 ⟹301

361 Statutes
361IX Initiative
361k301 k. Initiative in General. Most Cited Cases

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

***731** Clifford E. Warren, pro se.

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

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

*732 OPINION

CONNOR, Justice.

This case raises issues regarding the initiative procedure in Alask[illegible] [illegible]pecifically, it is concerned with the process and conditions, if any, by which enactments of the legislature can ope[illegible] to prevent an initiative from appearing on the ballot.

I.

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

Pursuant to AS 15.45.210,[FN1] the lieutenant governor, H. A. (Red) Boucher, sought to determine whether the act and the initiative were substantially the same. An opinion of [illegible] attorney general, Norman C. Gorsuch, was sent to the lieutenant governor in a letter dated June 17, 1974. The attorney general's opinion was that the measures were substantially the same and, therefore, the initiative was void. The lieutenant governor concurred and notified the initiative committee that the initiative would not appear on the ballot.

FN1. AS 15.45.210 provides:

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

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

Oral argument was heard on June 28, 1974, and the preliminary injunction was denied.

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

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

II.

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

(1) AS 15.45.210[FN2] is unconstitutional because the legislature has improperly delegated a judicial function to an executive officer;

FN2. Id.

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

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

III

Appellant strongly urges that AS 15.45.210 improperly delegates to the lieutenant governor the duty of determining, in the first instance, whether an act and an initiative are �substantially the same.� He argues that this law violates the separation of powers doctrine by vesting the construction of constitutional language in an executive officer of the state, rather than in *733 the courts.[FN3] The statute, enacted in 1960, provides:

FN3. Warren also contends that AS 15.45.210 violates Alaska Constitution, Art. III, Sec. 22:
�All executive and administrative offices, departments, and agencies of the state government and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department.�

�Determination of void petition. If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.�
Obviously, the statute was enacted to effectuate Art. XI, Sec. 4, of the Alaska Constitution. That provision states:
�Initiative Election. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.�

[1] At the outset, we note that Art. XI, Sec. 4, does not expressly confer on any branch or agency the power to determine whether an act and an initiative are �substantially the same.� However, Alaska Constitution, Art. V, Sec. 3, declares in part:
�There procedure for determining election contests, with right of appeal to the courts, shall be prescribed by law.�

Alaska Constitution, Art. XII, Sec. 11, provides, in part: �As used in this constitution, the terms �by law� and �by the legislature,� or variations of these terms, are used interchangeably when related to law making powers.�

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

[2] The legislature has expressly delegated its power in this regard to the lieutenant governor,[FN4] subject to review by the courts.[FN5] In reviewing that delegation of power, we reiterate that we are disinclined to pass judgment on the means selected by the legislature to accomplish legitimate purposes, unless such means clearly violate the Constitution. DeArmond v. Alaska State Development Corp., 376 P.2d 717, 724 (Alaska 1962).

FN4. See AS 15.45.210, n. 1, supra.

FN5. AS 15.45.240 provides:
�Any person aggrieved by a determination made by the lieutenant governor may bring an action to have the determination reviewed within 30 days of the date on which notice of the determination was given by any appropriate remedy in the superior court.�

Courts in modern times have been reluctant to declare legislation unconstitutional on the ground of improper delegation of power.[FN6] Indeed, Professor Louis L. Jaffe, in commenting on the United States Supreme Court's attitude toward such challenges, has noted:

FN6. See generally, Jaffe, An Essay on the Delegation of Legislative Power, 47 Colum.L.Rev. 359 and 561

(1947).

�The Court has given the Congress a latitude broad enough for almost any administrative experiment presently believed necessary.'FN7

FN7. Id. at 581

*734 And Professor Kenneth C. Davis has stated

� We have learned that the danger of tyranny or injustice lurks in unchecked power, not in blended power. FN8

FN8. K. Davis, Administrative Law Text s 1.08, at 25 (1972).

This does not mean that the legislature has an unlimited right to delegate its responsibilities. But where it would be impractical or cumbersome for the legislature to undertake the task in question, a limited delegation, subject to appropriate review, has been upheld.FN9

FN9. See e. g., Union Bridge Co. v. United States, 204 U.S. 364, 387, 27 S.Ct. 367, 51 L.Ed. 523 (1907); Meadowlark Farms, Inc. v. Ill. Pollution Control Bd., 17 Ill.App.3d 851, 308 N.E.2d 829, 832 (1974); Leininger v. Alger, 316 Mich. 644, 26 N.W.2d 348, 352 (1948).

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

In delegating the responsibility to the lieutenant governor,FN10 the legislature has assigned the task to the person who is in charge of administering and supervising the conduct of all state elections.FN11 In addition, the lieutenant governor performs extensive ministerial functions related to the initiative process.FN12 Thus, the legislature has delegated its authority to a logical governmental officer.

FN10. The delegation initially went to the secretary of state, but that office was supplanted by the creation of the lieutenant governor's post in 1970.

FN11. See AS 15.15.010 et seq.

FN12. See AS 15.45.010 et seq.

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

Similar non-discretionary delegations have been upheld in other jurisdictions. FN13 The Alaska legislature has expressly afforded an aggrieved party the right to judicial review.FN14 In these circumstances, we hold the delegation of power in AS 15.45.210 to be both reasonable and constitutional.

FN13. See, e. g., Adams v. Bolin, 74 Ariz. 269, 247 P.2d 617, 627-28 (1952); Hodges v. Dawdy, 104 Ark. 583, 149 S.W. 656, 658-59 (Ark.1912); Leininger v. Alger, 316 Mich. 644, 26 N.W.2d 348, 352 (1948); Schmidt v. Gronna, 68 N.D. 488, 281 N.W. 57, 60 (1938); Brazell v. Ziegler, 26 Okl. 826, 110 P. 1052 (1910); White v. Welling, 89 Utah 335, 57 P.2d 703, 705 (1936).

Cf. Union Bridge Co. v. United States, 204 U.S. 364, 385-86, 27 S.Ct. 367, 51 L.Ed. 523 (1907); Meadow Lark

Farms, Inc. v. Illinois Pollution Control Bd., 17 Ill.App.3d 851, 308 N.E.2d 829, 832 (Ill.App.1974); Joseph E. Seagrams & Sons, Inc. v. Hostetter, 45 Misc.2d 956, 258 N.Y.S.2d 442, 451 (Sup.Ct.1965).

FN14. See n. 5, supra.

IV

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

In his memorandum decision of September 6, 1974, the trial judge undertook to define the phrase �substantially the same,� as used in Article XI, Sec. 4, of the Alaska Constitution. He concluded that the phrase is broad enough to include a statute which �treats the same problem as that sought to be reached by the proposed initiative.� He then granted summary judgment for the state because he found that *735 the statute and the initiative �attempt to reach the same results, more effective election campaigns.�

In reaching his definition, the trial judge relied, in part, on commentary which accompanied the Constitutional Convention Committee's Proposal No. 3, concerning initiatives and referendums. That proposal, in pertinent part, stated:

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

The commentary, which did not refer to any specific phrase within Proposal No. 3, stated �If the legislature adopts a measure that is the subject of the initiative, the measure does not have to be submitted to the people.�

Subsequent to the introduction of Proposal No. 3, several amendments to it were made. Article XI, Sec. 4, now reads: �An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.� (emphasis added)

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

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

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

[4] Our dissenting colleagues rightly observe that the article on direct legislation was the subject of extensive debate at the constitutional convention. They read the term �substantially the same measure� as permitting legislative displacement of an initiative only within rather narrow confines. However, we find nothing in the legislative history of the article, or in the vigorous floor debates thereon, which points to an agreed upon meaning or a consciously adopted definition of what this critical language should mean. Many views were expressed by individual delegates, but these expressions do not in this instance provide a reliable guide to what the constitutional convention as a whole intended by the adoption of the phrase in question, or what it meant to the voters who ratified the constitution. In order to interpret this language we must analyze its functional relationship to other constitutional provisions. We must infer the purposes and intentions of the framers from the language of the constitution itself, with careful regard for the apparent aims which the framers had in mind.[FN15]

FN15. The dissent refers to the frustrations experienced by Alaskans under territorial government, and the deeply felt need for self government which led to convening the constitutional convention as part of the statehood movement. Nothing in that background, however, has any direct bearing on how the term �supstantially the same measure� should be interpreted.

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

It is evident that the framers wanted to avoid a constitutional system in which any and all types of law could be enacted by direct legislation. Thus they placed a number of specific restrictions upon its use. Art. XI, Sec. 4, states:

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

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

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

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

We are fortified in this understanding of the constitutional language, and the intention of the framers, by a companion provision of the constitution. Under Art. XI, Sec. 5, an initiative, once enacted, cannot be repealed by the legislature within two years of its effective date. But it may be amended at any time. Here, as with Art. XI, Sec. 4, a considerable change occurred in the constitutional convention in the language first proposed and that finally adopted. Committee Proposal No. 3 (Committee on Direct Legislation, Amendment*737 and Revision, December 9, 1955), provided:

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

The final constitutional provision states in pertinent part: �An initiated law ... is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. ...�

The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives which were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by

the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital governmental functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of an initiative.FN16

FN16. The discussions on the floor of the constitutional convention reveal a belief by a number of framers that a countervailing consideration would act as a balance against legislative arbitrariness in this respect. It was believed that the natural desire of many legislators to be re-elected, or at least to demonstrate creditable performance as public officials, would cause them to think carefully before amending an initiative out of existence, because of the effect which such action might have on the electorate in the future.

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

Turning now to the initiative and legislative act before us, it is clear that they both cover the same general subject matter. Both are aimed at the control of election campaign contributions and expenditures. The main points of similarity in the two measures are these: The amount a candidate may spend on his campaign is limited; contributions and expenditures must be reported; contributions of $100 or more under the act, and all contributions under the initiative, must be reported; the persons covered include candidates for governor, lieutenant governor, and state legislature,FN17 criminal misdemeanor penalties are imposed for the violation of the respective provisions of both measures;FN18 acceptance of anonymous contributions is prohibited; a responsible campaign treasurer must be appointed by each candidate; certain violations under each measure work a forfeiture of nomination or election; required reports must be made available for inspection by the public; and provision is made for citizen enforcement of the law, by court action under the initiative, and under the act by a complaint to the election*738 campaign commission and appeal to the supreme court.

FN17. The initiative covers all municipal elections. The act permits a municipality to exempt itself from the coverage of the law. The initiative covers candidates for Congress, while the act does not. It should be noted that candidates for federal office are regulated extensively by the federal election campaign disclosure act passed in 1972. See 2 U.S.C. ss 431-454.

FN18. AS 15.13.120(a) imposes penalties of up to one year of imprisonment or a fine up to $5,000 for violation of the act. We do not view the act, as does the dissent, as eliminating almost all individual penalties for enforcement.

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

There are certain points of contrast between the two measures. The initiative places most of the supervisory and administrative responsibilities on the lieutenant governor. The act places these functions in the election campaign commission. The initiative requires commercial advertisers to file reports of political advertising; the act does not require this. The initiative attempts to place out-of-state contributors under the jurisdiction of the Alaska courts; the act is silent on this subject.FN19 The act defines and regulates political groups formed to support or oppose a political candidacy; the initiative does not reach such groups. Under the act a $1,000 limit is placed upon individual contributions; the initiative imposes no limit. Under the initiative candidates for governor and lieutenant governor cannot use more than 40% of their expenditures for �communications media.� The act contains no such limitation.

FN19. This does not mean that out-of-state contributions go unregulated. Under the act these contributions must be reported, they may not exceed $1,000 in the aggregate per annum for any one candidate, and it is a criminal offense to accept a contribution in violation of the act. See AS 15.13.040, .070, and .120(a)(6).

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

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

The act does not place limitations on media spending, does not impose reporting requirements on media, does not require permits for media advertising, and does not provide for the reporting of surplus funds collected, in the same manner as does the initiative. But that is not to say that these subjects are unregulated. Under AS 15.13.110(d) all persons supplying services to any candidate must maintain a record of each transaction and must file appropriate reports with the commission. While the act does not limit the amount of media *739 spending, it does limit total spending by any candidate. Surplus funds will be reported under AS 15.13.110 which requires that a report shall be filed on December 31 of each year for expenditures and contributions not reported earlier in that year.

That the act contains no requirement for equal charges by media and equal time to candidates is moderated in part by applicable federal law. Under 47 U.S.C. Sec. 315(a)(2) a broadcasting licensee must afford equal opportunity to all other candidates for a given office.[FN20]

FN20. See Red Lion Broadcasting Co. v. Federal Communications Commission, 395 U.S. 367, 89 S.Ct. 1794, 23 L.Ed.2d 371 (1969), for an exposition of the fairness doctrine, which is distinct from the statutory equal time requirement.

The power of the watchdog committee to delay certification of candidates or to bring charges requiring a delay of certification has been eliminated in the act. But the act declares void the nomination or election of a condidate who violates the act, and provides for an expeditious judicial procedure to determine such cases.

Both measures control the total amount of expenditures by candidates as to primary and general elections. The specific amounts limited in each measure vary. As to the candidates for governor and lieutenant governor the amounts work out nearly the same.[FN21] As to candidates for the House the initiative limits expenditures to $6,000, while the act limits them to about $7,000. The initiative limits Senate campaign expenditures to $8,000, while the formula used under the act results in a limit of about $14,000.

FN21. The proposed initiative, Sec. 2(a)(1) limits expenditures by or on behalf of a candidate for governor or lieutenant governor to exactly $125,000. The legislative enactment, AS 15.13.070(f)(1) utilizes a formula which limits expenditures by or an behalf of a candidate for governor or lieutenant governor to �40 cents times the total population of the state according to the latest United States census figures. � The official United States Decennial Census, last taken in 1970, sets the population of the State of Alaska at 302,173. Thus candidates for governor and lieutenant governor would be restricted to expenditures of $120,869.20 under the legislative act, as compared with $125,000 under the proposed initiative.

In short, the statute is not a hollow gesture toward the regulation of election campaigns. It sets up workable machinery to ensure compliance. Quite possibly the legislature felt that an election campaign commission could better handle the prescribed administrative and supervisory duties than could the lieutenant governor, and that such a commission would

be more effective than the watchdog committee contemplated by the initiative. In making such a choice the legislature would not be vitiating the aims of the initiative but making those aims more feasible of achievement.

Various other differences can be found in the two measures, but they are not significant enough to make a material difference in our decision.

Viewing the two measures as a whole we find that they accomplish the same general goals. They adopt similar, although not identical, functional techniques to accomplish those goals. The variances in detail between the measures are no more than the legislature might have accomplished through reasonable amendment had the initiative become law. Nothing is present here to suggest that the act was a subterfuge to frustrate the ability of the public to obtain consideration and enactment of a comprehensive system to regulate election campaign contributions and expenditures.FN22 No doubt other changes will be made in the law, in response to newly perceived needs and in the light of experience gained in the administration of the act. The same would be true had the initiative been placed upon the ballot and become law.

FN22. On the contrary, a number of differences between the initiative and the act can be explained by the possibility that the legislature might have regarded certain features of the initiative to be subject to constitutional attack or to be practically unworkable. We do not, however, express an opinion on the constitutionality of any of the particular provisions of either measure.

*740 [6] It is our opinion that substantial similarity exists between the two measures. The act effectively displaced the initiative. The lieutenant governor was correct in withholding the initiative from the ballot. We affirm the judgment of the superior court.

Affirmed.

ERWIN and BURKE, JJ., dissent.
ERWIN, Justice, with whom BURKE, Justice joins, dissenting.
I dissent.

The power of initiative and referendum is the basic recognition that under our republican form of government the ultimate political power exists with the people and not in some legislative body.FN1 These provisions permit the people to enact laws when the legislature refuses to act, or repeal acts of the legislature which are unpopular or unfair. Moreover, it is an additional check and balance on the governmental process because it acts upon the legislative awareness that such power exists with the people.FN2

FN1. 2 Alaska Constitutional Convention Proceedings, 931-975. See particularly the statements of Delegates Marston and Taylor, 959-961, before defeat of the motion to delete all reference to referendum in the article on 973.

FN2. Fischer, Alaska Constitutional Convention, 79-81 (University of Alaska Press, 1975).

One set of critics at the constitutional convention claimed, however, that its limitations make it less than effective as a popular tool of government. They argued that the requirement of obtaining a large number of signatures from residents in order to put the issue before the voters significantly limited the use of the initiative process in all but a few cases.FN3

FN3. Id. at 79.

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

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

majority opinion indicates.

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

... Laws proposed by the initiative shall be submitted to the voters by ballot title at an election not later than 180 days after the adjournment of the legislative session following the filing of the petition, unless the legislature enacts the measure initiated during the session.... FN4

FN4. 6 Alaska Constitutional Convention Proceedings, 19.

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

If the legislature adopts a measure that is the subject of the initiative, the measure does not have to be submitted to the people. (emphasis added) FN5

FN5. Id. at 23; 2 Alaska Constitutional Convention Proceedings, 929.

The discussion and amendment of this initiative proposal was perhaps the most extensive and hotly contested FN6 of the entire constitution, covering 7 1/2 days of proposals and conter proposals. FN7 This discussion included an extensive debate on the power to amend as being the power to amend and not the power to destroy. FN8

FN6. Fischer, supra note 2, at 79-81.

FN7. 2 Alaska Constitutional Convention Proceedings, 928-1200, 3 Alaska Constitutional Convention Proceedings, 2960-2993.

FN8. 2 Alaska Constitutional Convention Proceedings, 1173-1177.

*741 Subsequently the convention changed the proposal to provide as follows:

A referendum petition may be filed at any time. The secretary of state shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void. FN9 (emphasis added)

FN9. Section 4, Article XI, Alaska Constitution.

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

Further, the political climate of Alaska preceding, during and after the constitutional convention does not support a theory of distrust of the popular electorate of the legislation it would sponsor. Alaska's history is replete with instances of frustration to get an absentee government in Washington to deal with pressing problems. FN10 In fact, such inaction was the greatest single boost to statehood. The members of the Alaska constitutional convention understood, more than most, the necessity of the initiative process for unpopular acts for without it, the long years of struggle to achieve local control over our political destiny would have been cheapened.

FN10. Gruening, Many Battles, pp. 281-396 (Liveright 1973); Gruening, The State of Alaska, Chapter 28: �Self Government: The Quest for Statehood,� p. 460 (Random House 1954).

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

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

Seven sections have been eliminated entirely by the statute. This includes:
1. All references to United States senators and congressmen.[FN11]

FN11. Section 2 of Initiative.

2. Coverage of local elections is changed to local option.[FN12]

FN12. Section 18 of Initiative.

3. The requirement that out-of-state contributors submit themselves to Alaska jurisdiction.[FN13]

FN13. Section 13 of Initiative.

4. Almost all individual penalties for enforcement of the provisions of the act.[FN14]

FN14. Sections 7 and 19 of Initiative.

5. All subpoena or investigatory power of the watchdog committee.[FN15]

FN15. Section 4 of Initiative.

6. All limitations on media spending.[FN16]

FN16. Section 2 of Initiative.

7. All requirements for equal charges by media and for equal time to candidates.[FN17]

FN17. Section 16 of Initiative.

8. Almost all reporting requirements by media, as well as all requirements that permits be obtained before media advertising is undertaken by a candidate.[FN18]

FN18. Section 5, 6 and 15 of Initiative.

9. All requirements for the reporting and disposition of surplus funds collected.[FN19]

FN19. Section 10 of Initiative.

*742 10. Most definitions and the statement of purpose.[FN20]

FN20. Sections 1 and 20 of Initiative.

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

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

FN21. Section 2 of Initiative. The majority refers to the last decennial census of 1970 to suggest $120,000 as the figure for Governor. However, constantly new census figures are validated to show changes for federal-state revenue sharing purposes. The latest figures for 1975 make the $130,000 figure conservative.

Whereas the initiative required the disclosure of persons who contributed in excess of $50 to a candidate, the measure passed by the legislature requires only contributors of $100 or more need to be identified and reported. FN22 Moreover, every section dealing with failure to report, false reports, or perjury in reporting has been deleted, together with those provisions which provide for substantial fines for all people who refuse access to the records of a candidate. FN23 In addition, all sections permitting citizens to sue to enforce the provisions of the initiative have been eliminated. FN24

FN22. Section 9 of Initiative.

FN23. Section 7 of Initiative.

FN24. Section 19 of Initiative.

All power of the watchdog committee to delay certification fo candidates or to being charges requiring a delay of certification has been eliminated, FN25 as has the power of the court to declare the second highest vote-getter elected where expenditure violations were found. FN26

FN25. Section 3 of Initiative.

FN26. Section 19 of Initiative.

Additionally, the legislature removed most enforcement teeth by requiring that any violation found by the commission must be referred to the Attorney General for a decision of whether or not the violator would be prosecuted. FN27 The discretion to prosecute is an area of intense controversy, but such clearly depends upon factors outside the issue of whether or not a violation has occurred. FN28 Such things as the manpower of the office, the priority of work, and the seriousness of other problems FN29 can combine to make enforcement of this area somewhat improbable. To these practical problems is added a political reality which casts shadows over the decision to prosecute or not to prosecute. The Attorney General is appointed by the Governor, thus there is an unknown political factor which can effect the decision where the candidate or issue is one approved by the political party in power.

FN27. AS 15.13.120(d).

FN28. See Public Defender Agency v. Superior Court of Third Judicial District, 534 P.2d 947, 949-951 (Alaska 1974), for a discussion of the Attorney General's discretion to decline prosecution in child support cases.

FN29. Fischer, supra note 3, at 949.

While the act does not explain how the watchdog committee will obtain evidence of violations without investigative or subpoena power, the statute is clear that there is no method of delaying certification or removing a candidate who is in violation without a court proceeding. FN30 Further, any case for voiding the election filed by the Attorney General must then be heard by the Supreme Court of Alaska as an original proceeding, FN31 rather than in the normal way of all other

cases in the District or Superior Court. Since the Supreme Court must sit as five judges, it is a cumbersome body to hear fact disputes, particularly in view of its divided geographic situs and other work load. This process becomes even more cumbersome and somewhat questionable if constitutional rights of jury trial in certain cases[FN32] and *743 statutory rights [FN33] to appeal all cases to the Supreme Court are considered.

FN30. AS 15.13.120(b).

FN31. AS 15.13.120(b).

FN32. See Baker v. City of Fairbanks, 471 P.2d 386, 401-402 (Alaska 1973), for a discussion of cases where jury trial is required.

FN33. AS 22.05.010.

The initiative recognized these problems by permitting the commission and private parties to bring suit to enforce its provisions and gave to the committee investigative and subpoena power to insure compliance. The elimination of these provisions goes to the heart of the enforcement provision and leaves, to a large extent, an illusory remedy. The intiative and the measure passed by the legislature have the same title and some similar reporting requirements, but by no stretch of the imagination are they substantially the same.[FN34]

FN34. The only similar section found in AS 15.13.010-.110 provide for
(1) a monitoring committee (.020 to .030);
(2) the reporting of contributions over $100.00 (.040);
(3) the registration of groups and the appointment of a treasurer (.050 and .060);
(4) limitations of spending by candidates in various races (.070);
(5) certain reporting requirements of contributors and a schedule for candidates (.080 to .110).
Additionally, the legislature added a tax credit of $50.00 from state income tax for political contributions. Also, publication of an election pamphlet containing background information on the candidates, costing each House candidate $25.00 and each Senate candidate $50.00.

The majority attempts to excuse the need for a number of the deleted sections by noting that certain federal reporting requirements or court decisions make them unnecessary. While disregarding the proposition that federal laws can provide effective regulation for Alaska elections when all complaints must be filed in Washington, D.C., I submit that this argument misses the point. The question is not whether the provisions are wise, but whether the legislative act is substantially the same as the initiative. It is for the people to provide the decision in situations such as this because the legislature failed to act until prodded by the electorate. By their inaction the legislators simply lost their ability to challenge the utility of the provisions. Their only power was to nearly duplicate the initiative, for that is just what the words �substantially the same� mean.

The majority's final suggestion that the powers and duties referred to in several of the eliminated sections can be implied from other provisions of AS 15.13 flies in the face of two canons of construction which have been adopted in almost every jurisdiction: (1) criminal statutes are to be strictly construed, and (2) where there has been a material change in language of an act, it is presumed that the legislature intended to indicate a change in legal rights and obligations thereunder.[FN35]

FN35. See Horack, Sutherland Statutory Construction, Vol. 1, s 1930, p. 412-414 (3rd Ed 1943).

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

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

Alaska 1975.

Warren v. Boucher
543 P.2d 731

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C
Warren v. Thomas,Alaska 1977

Supreme Court of Alaska
Clifford E. WARREN, Appellant,
Frank Harris, Intervenor,
v.
Lowell THOMAS, Jr., Lieutenant Governor and the State of Alaska, Appellees.
No. 2919.

Sept. 2, 1977.

Action was brought in which plaintiff sought to prevent legislature's amendments to conflict of interest law, which was enacted by **initiative**, from becoming effective. The Superior Court, Third Judicial District, Anchorage, Eben H. Lewis, J., granted state summary judgment, and plaintiffs appealed. The Supreme Court, Connor, J., held that: (1) legislature has broad powers to amend law enacted by **initiative**, and (2) amendments did not effect a �repeal� of the initiated law in violation of state constitutional provision.

Affirmed.

West Headnotes

[1] Constitutional Law 92 ⟹12

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k11 General Rules of Construction
92k12 k. In General. Most Cited Cases

Constitutional provision should receive a reasonable and practical interpretation in accordance with common sense.

[2] Statutes 361 ⟹133

361 Statutes
361IV Amendment, Revision, and Codification
361k132 Acts Which May Be Amended
361k133 k. In General. Most Cited Cases

Legislature has broad powers to amend a law enacted by **initiative**. Const. art. 11, §§ 6, 7.

[3] Statutes 361 ⟾158

361 Statutes
361V Repeal, Suspension, Expiration, and Revival
361k158 k. Implied Repeal in General. Most Cited Cases
Implied repeal of an act is disfavored and will be limited to that which is necessary to carry out intent of legislature

[4] Statutes 361 ⟾170

361 Statutes
361V Repeal, Suspension, Expiration, and Revival
361k170 k. Re-Enactment or Revival of Ac, Repealed. Most Cited Cases
If it is reasonable to do so, provisions of a law enacted by **initiative** or portions thereof which are repealed and reenacted in a modified form are to be considered as a continuation of the original law which is to be construed with the amendments

[5] Statutes 361 ⟾164

361 Statutes
361V Repeal, Suspension, Expiration, and Revival
361k160 Implied Repeal by Act Relating to Same Subject
361k164 k. Repeal by Amendatory Act in General. Most Cited Cases
Legislature's amendments, which pertained to conflict of interest law enacted by **initiative**, which had effect of repealing certain portions of such law, which involved several language changes clarifying and rendering the initiated law more precise but which permitted such law to continue to impose substantial disclosure requirements on public officials and to effectuate electorate's intent that those in position of public trust be held to high standard of financial disclosure, did not effect a �repeal� of the initiated law in violation of state constitutional provision. AS 39.50.010 et seq., 39.50.020(b), 39.50.060(a), 39.50.070, 39.50.150, Const. art. 11, § 6

*400 Clifford E. Warren, pro se.
Rodger W. Fegues, Asst. Atty. Gen., and Avrum M. Gross, Atty. Gen., Juneau, for appellees.

Before BOOCHEVER, Chief Justice, and RABINOWITZ, CONNOR and BURKE, Justices.

OPINION

CONNOR, Justice.
This appeal concerns the 1975 amendments by the legislature to AS 39.50, Alaska's conflict of interest law which was enacted by **initiative**.

On August 27, 1974, an **initiative** entitled �An Act relating to conflict of interest of public officials� was passed by the people of Alaska. Under article XI, s 6 of the Alaska Constitution the **initiative** became effective ninety days after the election results were certified, that is, on December 11, 1974. On February 8, 1975, the legislature amended the law to provide that the disclosure statements of certain public officials were to be filed on April 1, 1975, rather than February 9, 1975. The amendment also provided that officials who left office on or after December 11, 1974, and before April 1, 1975, were *401 not required to file a statement. See Ch. 2, SLA 1975 (effective February 8, 1975). The law was amended and revised again in the spring of 1975, effective April 1. See Sec. 28, ch. 25, SLA 1975. It is entitled �An Act relating to conflict of interest; and providing for an effective date.� The amendment changed the date for filing the financial statements from April 1, 1975, to April 15, 1975. See AS 39.50.150.

Clifford E. Warren originally filed this action to challenge certain regulations passed in connection with, and revisions made to, the conflict of interest law. He subsequently filed an amended complaint seeking to prevent the 1975 amendments to the law from becoming effective. Warren then filed a motion for summary judgment seeking to have the amendments declared void. A hearing was held on April 21, 1976, and summary judgment was granted in favor of the state.[FN1] This appeal follows.

FN1. Mr. Frank Harris, a proponent of another **initiative**, intervened to challenge the legislature's power to amend an initiated statute, but has not filed an appearance on appeal.

Warren raises two important issues concerning the constitutionality of the legislature's action:

1. Whether the legislature has the power to amend a law enacted by the **initiative** procedure;

2. Whether the amendments to the **initiative** constitute a repeal of the initiated law in violation of article XI, s 6 of the Alaska Constitution.

Several additional arguments are raised but do not warrant extensive discussion.[FN2]

FN2. Warren argues that by changing the date of compliance from 60 days after the effective date of the law (February 6, 1975) to April 1, 1975, the legislature changed the effective date of the law itself. This argument lacks merit since the extension of time in which public officials must file their disclosure statements has nothing to do with the date that the **initiative** itself became law. That occurred on December 11, 1974, and was not affected by the February amendment. See Alaska Const. art. XI, s 6.

Warren also argues that a considerable number of legislators have not complied with the disclosure requirements. He was under the impression that the disclosure statements were due on the day the **initiative** became law and, therefore, when the new legislators took office on January 20, 1975, they were in noncompliance with AS 39.50. However, the disclosure statements were not due until February 9 (April 15 as amended).

Article XI, s 1, of the Alaska Constitution provides that the people of Alaska may �[illegible]ose and enact laws by the **initiative** . . . � Article XI, s 6 provides:

�If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification. Additional procedures for the **initiative** and referendum may be prescribed by law.�

[1] According to this plain language the legislature may not repeal a law passed by **initiative** for two years, but may pass an amendment at any time. We interpret this provision in accordance with the general principle of statutory construction that a constitutional provision should receive a reasonable and practical interpretation in accordance with common sense.[FN3] Cottingham v. State Board of Examiners, 134 Mont. 1, 328 P.2d 907, 915 (1968); 2A Sutherland, Statutory Construction, s 49.03 (4th *402 ed. Sands 1973).[FN4] Moreover, it has been held that in the absence of a specific restriction the legislature may **amend or repeal** a law passed by **initiative**.[FN5]

FN3. Warren correctly points out that the statements of delegates at the constitutional convention concerning the provisions for the **initiative** and referendum process have limited usefulness as interpretative aids.

In Warren v. Boucher, 543 P.2d 731, 735 (Alaska 1975), we recognized that the many views expressed by individual delegates coupled with the numerous revisions of the **initiative** and referendum articles militate against using convention minutes as interpretative guides. Moreover, there was less than a general consensus concerning the virtues of direct legislation. See V. Fischer, Alaska's Constitutional Convention 79-81 (1975).

FN4. Accord, Calif. Employment Comm'n v. Municipal Court, 62 Cal.App.2d 781, 145 P.2d 361, 363 (1944); Opinion of the Justices, 308 Mass. 619, 33 N.E.2d 275, 279 (1941); State v. Babcock, 175 Minn. 103, 220 N.W. 408, 410 (1928); see Application of Pioneer Mill Company, 53 Haw. 496, 497 P.2d 549, 552-53 (1972).

FN5. Cottingham v. State Board of Examiners, 134 Mont. 1, 328 P.2d 907, 913 (1968); Zilesch v. Polk County, 107 Or. 659, 215 P. 578, 582 (1923); cf., e.g., Staples v. Bishop, 225 Ark. 936, 286 S.W.2d 505 (1956). See also Adams v. Bolin, 74 Ariz. 269, 247 P.2d 617 (1952). See generally 6 McQuillin, The Law of Municipal Corporations s 21.03 (3d ed. 1969); Annot., 33 A.L.R.2d 1118, 1121 (1954), and cases collected

therein.

In Cottingham, supra, the Montana Supreme Court recognized that the legislature's plenary power to **amend or repeal** legislation passed by **initiative** must not contravene �an express limitation or prohibition of the Constitution of either Montana or the United States.� Id. 328 P.2d at 913. In Alaska such a limitation is contained in art. XI, s 6, with respect to the power to repeal.

[2] In Warren v. Boucher, 543 P.2d 731, 737 (Alaska 1975), we recognized that the legislature is vested with broad authority to amend laws enacted by the people through the **initiative** process. Warren, however, argues that Warren, supra, reaffirms the intent of the framers of the Alaska Constitution that the legislature may interfere with the **initiative** process by amending an initiated law only where it creates a potential danger to the operation of governmental functions.[FN6] The issue presented in that case is different than that presented here. There we were concerned with whether the legislature had short-circuited the **initiative** process by passing a law that was substantially the same as the proposed **initiative**. But, as we recognized, the legislature has broad powers to amend an **initiative**.[FN7]

FN6. There was considerable concern over whether the Alaska Constitution should contain any provisions for **initiative** and referendum. See V. Fischer, supra. In order to protect the machinery of government, certain limitations were placed upon the use of the **initiative** and referendum, see art. XI, s 7, though otherwise the citizens of Alaska and the legislature are coequal. Zilesch, supra, at 582.

FN7. We stated:

�The final constitutional provision states in pertinent part:

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

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

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

543 P.2d at 737.

[3] The central issue in the case at bar is whether the legislature has exceeded that broad power by passing an amendment which so vitiates the **initiative** as to �constitute its repeal.� Id. at 737. Warren argues that the changes are so drastic that they make a mockery of the law, that the trial court erred in concluding the legislation was merely �housekeeping,� and that the amendments to AS 39.50 amount to a repeal of the law. We disagree. �(A)n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act.� *403Meyers v. Board of Sup'rs of Los Angeles County, 110 Cal.App.2d 623, 243 P.2d 38, 42 (1952), see also W. R. Grasle Company v. Alaska Workmen's Comp. Board, 517 P.2d 999 (Alaska 1974). The implied repeal of an act is disfavored and will be limited to that which is necessary to carry out the intent of the legislature. John Hancock Mut. Life Ins. Co. v. Haworth, 68 Idaho 185, 191 P.2d 359, 363 (1948); 1A Sutherland, Statutory Construction, s 23.09 (4th ed. Sands 1972). See also 6 McQuillin, Law of Municipal Corporations s 21.09 (3d ed. 1969) (repeal of ordinances by implication disfavored). In the case at bar, one section [FN8] and two subsections [FN9] were expressly repealed in 1975 when the legislature amended the initiated law. Sec. 26, ch. 25, SLA 1975.

FN8. AS 39.50.140 (penalties for accepting bribes).

FN9. AS 39.50.040(b)(6) (duty of trustee of blind trusts to file for trustor); AS 39.50.030(e) (exemption from

compliance by Alaska Supreme Court because of profession)

[4] Other sections were impliedly repealed by virtue of inconsistent amendatory provisions [FN10] However, this does not necessarily mean that the act as a whole was repealed. When AS 39.50 was amended certain of its provisions or portions thereof were repealed and reenacted in a modified form [FN11] Where it is reasonable to do so, these provisions are considered to be a continuation of the original law which is to be construed with the amendments Green v. State, 462 P.2d 994, 1000 (Alaska 1969), 1A Sutherland, supra, s 22.33 at 191, accord, e g , Security Life and Accident Company v Heckers, 177 Colo 455, 495 P.2d 225, 227 (1972), John Hancock Mut. Life Ins Co., supra, 191 P.2d at 362

FN10. For example, under AS 39.50.060 the penalties for violations were changed from $500-$5,000 to $100-$1,000 and from a period of up to one year's imprisonment to a period of up to six months.

FN11. E g , AS 39.50.020(b).

[5] Of course there remains the question whether the amendments so emasculate the law that it is effectively repealed We conclude that they do not. There are considerable language changes, but these clarify and render the law more precise The fines for violations of the law have been reduced but the penalties are still significant See AS 39.50.060(a) and AS 39.50.070 Finally, the amended law still imposes substantial disclosure requirements on public officials and effectuates the intent of the electorate that those in a position of public trust be held to a high standard of financial disclosure.

Warren challenges the state's reliance on State v Meyers, 51 Wash.2d 454, 319 P.2d 828 (1957), in support of its argument that the amendments to AS 39.50 do not effectively repeal this law In Meyers, supra, the people of Washington passed an **initiative** providing for the redistricting of the state, using the census tract rather than the election precinct as the unit of population for the purpose of informing senatorial and legislative districts This was in an effort to cure legislative noncompliance with the constitutional provision on apportionment and to better reflect the population configuration of the state The legislature amended the **initiative** by reinstating the use of the election precinct This action was challenged as violating the state constitutional prohibition against the repeal, but not the amendment, of initiated laws On appeal the Washington Supreme Court found the amendment to be valid Defining the words �to amend� broadly, the court said that an �amendment may effectually supplant or destroy the original charter, and institute a new policy altogether � Id., 319 P.2d at 831 The dissent argued that the legislature's action emasculated the theory of the **initiative** and thwarted the constitutional process Id., 319 P.2d at 840 Nevertheless, the majority opinion concluded that the legislature properly exercised its discretion in determining that the precinct method was more suitable Id., 319 P.2d at 834

As Warren argues, there is much merit in the dissent in Meyers as to the scope of the legislature's power to amend laws enacted by **initiative**, but we are not presented with *404 a similar case The amendments to AS 39.50, which preserve its basic structure and purpose, fall far short of the drastic changes made to the apportionment scheme by the Washington legislature

For the purposes of this appeal it is unnecessary for us to decide at what point an amendment might be so drastic as to constitute a repeal of an initiated law in violation of the Alaska Constitution In this case the amendments only reduced the penalties for violation of the law and clarified some of the language We are of the opinion that such an amendment did not constitute a repeal of the initiated law

AFFIRMED

Alaska 1977
Warren v Thomas
568 P.2d 400

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C
Briefs and Other Related Documents
State v. Trust the PeopleAlaska,2005

Supreme Court of Alaska.
STATE of Alaska, Loren Leman, Lieutenant Governor, and Gregg D. Renkes, Alaska Attorney General, Appellants,
v.
TRUST THE PEOPLE, the Initiative Committee Sponsoring 03SENV, consisting of Eric Croft, Harry T. Crawford, Jr., and David Guttenberg, Appellees.
No. S-11288.

May 27, 2005.

Background: Initiative committee sought review of denial of certification by Lieutenant Governor to place proposed initiative on ballot that would have restricted governor's power to temporarily appoint United States senators. The Superior Court, Third Judicial District, Anchorage, Mark Rindner, J., ordered Lieutenant Governor to certify initiative for inclusion on ballot. The State appealed.

Holdings: The Supreme Court, Carpeneti, J., held that:

(1) proposed initiative was not �substantially the same� as legislation that addressed the same topic, and therefore proposed initiative was not void, and

(2) constitutionality of proposed initiative was not ripe for review before next election.

Affirmed.
West Headnotes
[1] Appeal and Error 30 ⚷842(1)

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k838 Questions Considered
30k842 Review Dependent on Whether Questions Are of Law or of Fact

30k842(1) k. In General Most Cited Cases

The appellate court reviews questions of state and federal constitutional law using its independent judgment

[2] Statutes 361 ⟹302

361 Statutes
361IX Initiative
361k302 k. Constitutional and Statutory Provisions. Most Cited Cases

The appellate court liberally construes state constitutional provisions that apply to the initiative process, particularly provisions concerning subject matter limitations, but liberal construction of federal constitutional provisions is not appropriate.

[3] Statutes 361 ⟹303

361 Statutes
361IX Initiative
361k303 k. Matters Subject to Initiative. Most Cited Cases

Proposed initiative that would have restricted the governor's power to temporarily appoint a United States senator was not �substantially the same� as legislation that addressed the same topic, and therefore proposed initiative was not void; proposed initiative would have completely removed from the governor all power to make temporary appointments to the office of United States Senator, and ensured that such decisions would be made by the voters, while the legislation preserved in all cases the governor's power to make such temporary appointments. Const. Art. 11, § 4.

[4] Statutes 361 ⟹303

361 Statutes
361IX Initiative
361k303 k. Matters Subject to Initiative. Most Cited Cases

A three part test is used to determine whether a proposed initiative and legislation are substantially the same, thereby rendering void the proposed petition: the court first determines the scope of the subject matter, and affords the legislature greater or lesser latitude depending on whether the subject matter is broad or narrow; the court next considers whether the general purpose of the legislation is the same as the general purpose of the initiative; and finally, the court must consider whether the means by which that purpose is effectuated are the same in both the legislation and the initiative. Const. Art. 11, § 4.

[5] Constitutional Law 92 ⟹46(1)

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k44 Determination of Constitutional Questions
92k46 Necessity of Determination
92k46(1) k. In General. Most Cited Cases

Constitutionality of proposed initiative to restrict the governor's power to temporarily appoint a United States senator, by ensuring that such decisions were left to the voters, was not ripe for review before the next election, although the State asserted that the initiative contravened the Seventeenth Amendment to the federal Constitution, providing that the legislature of any state may empower the governor to make temporary appointments of United States senator; pre-election review could be extended only to subject-matter restrictions that arose from Alaska law, and that specifically addressed the initiative process, or to proposals that were clearly unlawful under controlling authority. U.S.C.A. Const.Amend. 17.

*614 Joanne M. Grace, Assistant Attorney General, Anchorage, and Gregg D. Renkes, Attorney General, Juneau, for Appellants.
Peter J. Aschenbrenner, Aschenbrenner Law Offices, Inc., Fairbanks, and Jeffrey M. Feldman, Feldman & Orlansky, Anchorage, for Appellees.
Peter J. Maassen, Ingaldson, Maassen & Fitzgerald, Anchorage, for Amicus Curiae Alaska Public Interest Research

Group.

Before: BRYNER, Chief Justice, MATTHEWS, EASTAUGH, FABE, and CARPENETI, Justices

OPINION

CARPENETI, Justice.

I. INTRODUCTION

Because of the need for resolution of the issues raised in this case before the election, we issued our Order on August 20, 2004, with an opinion to follow. This is that opinion.FN1

FN1. The Order provided:

Trust the People, an initiative committee, submitted an initiative that proposed to determine the manner in which vacancies in Alaska's two United States Senate seats would be filled, after some delay in the certification process, Trust the People filed suit against Lieutenant Governor Loren Leman. The Lieutenant Governor eventually denied certification of the initiative, determining that the Seventeenth Amendment of the United States Constitution prohibited enactment of the proposed law by initiative. Following oral argument on the issue, Superior Court Judge Mark Rindner ruled that the constitutionality of the initiative should not be considered unless and until the voters enact the initiative into law, accordingly, he held that the Lieutenant Governor erred by denying certification of initiative and ordered him to certify the initiative. Pursuant to the superior court's order, the initiative was certified, it was subsequently placed on the ballot for the November 2004 statewide general election.

On June 5, 2004 House Bill (H.B.) 414, �An Act relating to filling a vacancy in the office of United States senator, and to the definition of �political party�, and providing for an effective date� was enacted into law. On June 15, 2004 the Lieutenant Governor removed the initiative from the ballot and the state moved to dismiss this appeal as moot on the grounds that H.B. 414 and the initiative were substantially the same, and that the initiative was therefore void under article XI, section 4 of the Alaska Constitution. Trust the People filed a separate case in superior court seeking a declaratory judgment that the proposed initiative must be placed on the November ballot. On July 8, 2004 we issued an order in which we informed the parties that we would consider the issue of substantial sameness when we considered the merits appeal involving the Seventeenth Amendment from the first superior court action. Oral argument was held before this court on July 21, 2004.

IT IS ORDERED:

1. The law enacted to supplant the initiative (HB 414) is not substantially the same as the initiative because (1) it provides that the governor will fill a senate vacancy by appointment, whereas the initiative provides that all vacancies will be filled by popular election, and (2) eliminating gubernatorial appointments from the process of filling senate vacancies is a primary objective of the initiative. Therefore, the initiative is not void, and the state's motion to dismiss this appeal as moot is DENIED.

2. Judge Rindner did not err in declining to consider whether the initiative violates the Seventeenth Amendment unless and until it is approved by the voters and in ruling that the lieutenant governor wrongfully denied certification of the initiative. The general rule is that a court should not determine the constitutionality of an initiative unless and until it is enacted. There are two exceptions to this. First, where the initiative is challenged on the basis that it does not comply with the state constitutional and statutory provisions regulating initiatives, courts are empowered to conduct pre-election review. Second, courts are also empowered to conduct pre-election review of initiatives where the initiative is clearly unconstitutional or clearly unlawful. Neither exception applies to this case. The first exception does not apply because the present challenge does not involve state constitutional and statutory provisions regulating initiatives. The second exception does not apply because the initiative is not clearly unconstitutional: whether the Seventeenth Amendment permits or precludes lawmaking by initiative with respect to filling senate vacancies presents an open and fairly debatable constitutional question. The decision of the superior court, deferring review of the initiative and directing the lieutenant governor to certify the initiative, is AFFIRMED.

3. The initiative entitled �An Act Relating to Filling a Vacancy in the Office of United States Senator� (03-SENV) shall be placed on the ballot.

4. An opinion will follow.

A citizens' group obtained sufficient signatures to place on the November 2004 ballot an initiative restricting the governor's power to temporarily appoint a United States senator. This case concerned whether the initiative should go before the voters.

*615 The Alaska Constitution provides that if the legislature enacts legislation that is �substantially the same� as a proposed initiative, the initiative is void. Because the legislature enacted legislation that addresses the same topic, the lieutenant governor removed the initiative from the ballot. This case first required us to determine whether the legislation is �substantially the same� as the initiative so as to render it void under the Alaska Constitution. We decided this question in the negative. Because we concluded that the principal purpose of the initiative is to completely remove from the governor all power to make temporary appointments to the office of United States senator, while the effect of the legislation is to preserve in all cases the governor's power to make temporary appointments to that office, we held that the legislation is not �substantially the same� as the initiative.

The Seventeenth Amendment to the United States Constitution provides that �the legislature� of any state may empower the governor to make a temporary appointment of a United States senator when a vacancy occurs in that office. The state argues that this power is reserved to the Alaska State Legislature and may not be exercised by the people through the initiative. The initiative sponsors respond that this dispute is not subject to resolution before the election; they claim that it will only be ripe for decision if the initiative passes. Thus, the case required that we determine whether pre-election review of the initiative is appropriate under our law. We decided this question also in the negative. We concluded that pre-election review may extend only to subject-matter restrictions that arise from Alaska law and that specifically address the initiative process or to proposals that are clearly unlawful under controlling authority. Because the proposed initiative meets neither of these tests, we held that it should go before the voters and that the state's Seventeenth Amendment challenge was premature.

Accordingly, we directed the lieutenant governor to place the initiative on the November ballot.

II. FACTS AND PROCEEDINGS

In Alaska the people's right to enact legislation by initiative is guaranteed by article XI of the Alaska Constitution, which states: �The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum.� [FN2] Once an application for a proposed initiative has been signed by one hundred qualified voters, it is filed with the lieutenant governor, who must certify the initiative if he finds it in the proper form.[FN3]

FN2. ALASKA CONST., art. XI, § 1. There are certain subject matter limitations on the people's power to enact initiatives. Initiatives �shall not be used to dedicate revenue, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation.� ALASKA CONST., art. XI, § 7. The proposed initiative now before the court does not implicate any of these limitations.

FN3. ALASKA CONST., art. XI, § 2.

On September 4, 2003, an initiative committee named Trust the People sought to exercise the power granted by article XI. The committee submitted an initiative application for a proposed bill entitled �An Act Relating to Filling a Vacancy in the Office of United States Senator� (03-SENV, also referred to as �the initiative�). The proposed initiative was intended to repeal former AS 15.40.010, which gave the governor the power to fill a vacancy in the office of United States senator by appointment. Under the prior law, if thirty months or less remained in a vacating senator's term, the governor's appointee would serve as senator for the remainder of the term. When the initiative was submitted, AS 15.40.010 provided:
When a vacancy occurs in the office of United States senator, the governor, at least five days after the date of the vacancy but within 30 days after the date of the vacancy, shall
(1) appoint a qualified person who, if the predecessor in office was nominated by a political party, has been, for the six months before the date of the vacancy, and is, on the date of appointment, a member of the same political party as that which nominated the predecessor in office to fill the *616 vacancy temporarily until the vacancy is filled permanently by election; and
(2) by proclamation and subject to this chapter, call a special primary election and a special election to fill the vacancy

for the remainder of the term of the predecessor in office if the predecessor's term would expire more than 30 calendar months after the date of the vacancy.[FN4]

FN4 *See* Ch 4, § 1, SLA 2002 This statute was amended on June 5, 2004 by H.B. 414. *See* Ch 50, SLA 2004.

Under the proposed initiative, all vacancies in the office of United States senator must be filled by the voters in a special election and the governor would have no power of appointment Under the proposed initiative there could be no incumbency advantage because no temporary appointment would be permitted. The procedural aspects of the special election (timing, term limits, primaries, etc.) would mirror the current method by which vacancies in the office of United States representative are filled by special election. [FN5] We set out the proposed initiative in its entirety in the margin [FN6]

FN5 *See* AS 15.40.140-.220

FN6 *Section 1* AS 15.40.140 is amended to read
Sec. 15.40.140. Condition and time of calling special election When a vacancy occurs in the office of United States senator or United States representative, the governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy occurs However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in the general election year during which a candidate to fill the office is regularly elected, the governor may not call a special election
Section 2 AS 15.40 is amended by a adding a new section to read
Sec. 15.40.165. Term of elected senator At the special election, a United States senator shall be elected to fill the remainder of the unexpired term The person elected shall take office on the date the United States Senate meets, convenes, or reconvenes following the certification of the results of the special election by the director
Section 3 AS 15.40.200 is amended to read
Sec. 15.40.200 Requirements of party petition Petitions for the nomination of candidates of political parties shall state in substance that the party desires and intends to support the named candidate for the office of United States senator or United States representative, as appropriate, at the special election and requests that the name of the candidate nominated be placed on the ballot
Section 4 AS 15.40.220 is amended to read
Sec. 15.40.220 General provisions for conduct of special election Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of the United States senator or United States representative, including provisions concerning voter qualifications, provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and municipalities, provision for notification of the election, provision for payment of election expenses, provisions regarding employees being allowed time from work to vote, provisions for the counting, reviewing, and certification of returns, provisions for the determination of the votes and of recounts, contests, and appeal, and provision for absentee voting
Section 5 AS 15.40.310 is amended to read
Sec. 15.40.310 General provisions for conduct of special election Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of the governor and lieutenant governor, including provisions concerning voter qualifications, provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities, provision for notification of the election, provision for payment of election expenses, provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns, provisions for the determination of the votes and of recounts, contests, and appeal, and provision for absentee voting
Section 6 AS 15.40.470 is amended to read
Sec. 15.40.470 General provision for conduct of special election Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of state senators, including the provisions concerning voter qualifications, provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities, provision for notification of the election, provision for payment of election expenses; provisions regarding employees being

allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

Section 7. AS 15.40.010, 15.40.050, 15.40.060, 15.40.070, 15.40.075, 15.40.130, and [ ] 15.40.135 are repealed.

Section 8. Effective Date. This Act takes effect January 1, 2005.

*617 After the initiative was submitted to Lieutenant Governor Loren Leman, it was referred to the Department of Law for pre-certification review. When a month passed and the initiative had not been certified, Trust the People filed a complaint against Lieutenant Governor Leman and Attorney General Gregg Renkes (�*Trust the People I*�). Trust the People alleged that Lieutenant Governor Leman and Attorney General Renkes were unlawfully delaying certification in violation of Alaska statutory and constitutional law. Trust the People sought a declaratory judgment that the lieutenant governor was required to immediately certify the initiative and prepare petitions and booklets for circulation. A hearing concerning the delay was held on October 10, 2003 before Superior Court Judge Mark Rindner. At the hearing the parties agreed that by October 27, 2003 the lieutenant governor would either certify the initiative and provide Trust the People with petition booklets as required by law or provide Trust the People with a written denial of certification. A written order concerning the parties' agreement was entered on October 13, 2003.

On October 20, 2003 the Department of Law issued an opinion stating that the initiative �is not a proper exercise of the law making power reserved to the people under Article XII, Section 11 of the Alaska Constitution.� [FN7] The Department of Law determined that, under the Seventeenth Amendment to the United States Constitution, the people do not have the power to determine by initiative the method by which vacancies in the office of U.S. senator will be filled. The Seventeenth Amendment states in full:

FN7. Article XII, section 11 of the Alaska Constitution provides:

As used in this constitution, the terms �by law� and �by the legislature,� or variations of these terms, are used interchangeably when related to the law-making powers. *Unless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI.*

(Emphasis added.)

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Concluding that the plain language of the Seventeenth Amendment vests the power to determine how to fill U.S. Senate vacancies exclusively in each state's formal representative body, the department recommended that the lieutenant governor not certify the initiative because it proposed a law that may not be enacted via the initiative process. Lieutenant Governor Leman denied certification of the initiative on October 21, 2003.

On October 30, 2003 Judge Rindner conducted a hearing regarding the denial of certification. Trust the People argued that the lieutenant governor's power to deny certification of initiatives was limited to �precise state constitutional guidelines� (presumably those set out in article XI, section 7 of the Alaska Constitution) and had therefore been improperly exercised in this case. Trust the People also argued that any question regarding the constitutionality of the initiative could be addressed through review by the courts only if and when the voters of Alaska passed the initiative. The state argued that Lieutenant Governor Leman had the power to deny certification if the initiative concerned a subject that was outside the people's initiative power, and that denial was proper in this case because under federal constitutional law, the method of filling U.S. Senate vacancies cannot be determined by initiative.

*618 Relying on our decision in *Kodiak Island Borough v. Mahoney*, [FN8] Judge Rindner ruled that the constitutionality of the proposed initiative should not be considered unless and until the Alaska voters enact the

initiative into law. Accordingly, Judge Rindner held that Lieutenant Governor Leman erred by denying certification and ordered him to certify the initiative and provide petition books to Trust the People.[FN9] Judge Rindner emphasized that he was not reaching the merits of the state's Seventeenth Amendment argument. The state appealed but did not seek a stay of the superior court's order. Trust the People circulated the petition and obtained almost 50,000 signatures. On October 30, 2003 Lieutenant Governor Leman certified the petition for inclusion on the ballot for the November 2004 statewide general election.

FN8. 71 P.3d 896 (Alaska 2003). In *Mahoney* we held that a municipal clerk,

in determining whether an initiative �would be enforceable as a matter of law,� should only reject a petition that violates any of the liberally construed statutory or constitutional restrictions on initiatives or that proposes a substantive ordinance where controlling authority establishes unconstitutionality.

Id. at 900. *See infra* discussion at Part IV B.

FN9. *Trust the People v. State of Alaska*, No. 3AN-03-12217 Ci. (Alaska Super., November 3, 2003).

Briefing for the appeal of the superior court's decision was completed by early May. On June 5, 2004 House Bill (H.B.) 414, �An Act relating to filling a vacancy in the office of United States senator, and to the definition of �political party�; and providing for an effective date�[FN10] was enacted into law without Governor Murkowski's signature.[FN11] House Bill 414 provides in pertinent part:

FN10. H.B. 414, 23rd Legis., 2d Sess. (2004).

FN11. *See* bill history for H.B. 414, available at http://www.legis. state.ak.us/basis (last visited July 27, 2004). Under the Alaska Constitution, when the legislature is not in session, the governor has twenty days to sign or veto a bill, or it will become law without his signature. ALASKA CONST. art. II, § 17. Because the governor neither signed nor vetoed H.B. 414, it became law without his signature.

Section 1. The uncodified law of the State of Alaska is amended by adding a new section to read:
LEGISLATIVE INTENT. It is the desire of this legislature that the provisions of secs. 2-8 and 10 of this Act, which are substantially similar to those proposed in an initiative petition, not be repealed for at least two years after the Act's effective date.
Section 2. AS 15.40.140 is amended to read:
Sec. 15.40.140 Condition and time of calling of special election. When a vacancy occurs in the office of ***United States senator*** or United States representative, the governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy occurs. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in ***the*** general election year ***during which a candidate to fill the office is regularly elected,*** the governor may not call a special election.
Section 3. AS 15.40 is amended by adding a new section to read:
Sec. 15.40.145. Temporary Appointment of United States Senator. When a vacancy occurs in the office of United States senator, the governor may, at least five days after the date of the vacancy but within 30 days after the date of the vacancy, appoint a qualified individual to fill the vacancy temporarily until the results of the special election called to fill the vacancy are certified. If a special election is not called for the reasons set out in AS 15.40.140, the individual shall fill the vacancy temporarily until the results of the next general election are certified.

Following passage of H.B. 414, this court on June 9 asked the parties to address whether the case was moot, or to file a motion to dismiss. On June 16 Lieutenant Governor Leman removed the initiative from the ballot. The lieutenant governor, concurring with an opinion from Attorney General Renkes, determined that the proposed initiative was void because it was �substantially similar� to H.B. 414. The state then sought to dismiss its appeal to this court, arguing that passage of H.B. 414 had rendered the appeal moot.

***619** Trust the People opposed dismissal, claiming that the proposed initiative and H.B. 414 were not substantially the same. Trust the People filed a new action in the superior court, seeking a declaratory judgment that the proposed initiative must be placed on the ballot for the statewide general election in November 2004 and requesting injunctive relief to prohibit the state from interfering with a popular vote on the initiative (�*Trust the People II* �).[FN12] Trust the People argued that Lieutenant Governor Leman's removal of the initiative from the ballot violated state statutory

and constitutional law. The state sought to stay the proceedings in *Trust the People II* pending our resolution of its appeal in *Trust the People I.* Superior Court Judge Morgan Christen denied the state's motion and ordered expedited consideration of the case. The state then filed a petition for review, seeking to reverse the superior court's denial of a stay.

FN12. *Trust the People v. Leman,* No. 3AN-04-08185 Ci.

On July 8 we issued an order granting the state's petition for a stay in *Trust the People II.* We informed both parties that we would consider the issue of mootness on an expedited basis when we considered the merits of *Trust the People I.* Oral argument was held July 21, 2004. On August 20, 2004 we issued the order set out in footnote 1.

In addition to the briefs filed by the parties to this case, the Alaska Public Interest Research Group (AKPIRG) has filed a brief as *amicus curiae.*

III. STANDARD OF REVIEW

[1][2] This appeal raises questions of both state and federal constitutional law, which we review using our independent judgment.[FN13] We liberally construe state constitutional provisions that apply to the initiative process, particularly provisions concerning subject matter limitations.[FN14] Liberal construction of federal constitutional provisions, however, is not appropriate.[FN15]

FN13. *See* State, Dep't of Revenue v. Andrade, 23 P.3d 58, 65 (Alaska 2001) (questions of law reviewed *de novo*).

FN14. *Brooks v. Wright,* 971 P.2d 1025, 1027 (Alaska 1999).

FN15. *See* *Bailey v. Alabama,* 219 U.S. 219, 239, 31 S.Ct. 145, 55 L.Ed. 191 (1911) (�[A state's] power to create presumptions is not a means of escape from [federal] constitutional restrictions.�).

IV. DISCUSSION

Resolution of this case requires consideration of two issues: (1) Is the initiative void under article XI, section 4 of the Alaska Constitution, which states that an initiative is void if the legislature passes �substantially the same� measure? (2) Should the state's Seventeenth Amendment challenge to the proposed initiative be resolved before the initiative is put on the ballot?

A. Is the Proposed Initiative Void Under Article XI, Section 4 of the Alaska Constitution Because It Is �Substantially the Same� as H.B. 414?

[3] Article XI, section 4 of the Alaska Constitution provides:

An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. *If, before the election, substantially the same measure has been enacted, the petition is void.*[FN16]

FN16. The procedure for finding an initiative void on grounds of substantial sameness is codified in AS 15.45.210:

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

The lieutenant governor's decision to remove an initiative from the ballot on this ground is subject to judicial review. AS 15.45.240.

(Emphasis added.)

The proposed initiative states in relevant part that:
*620 When a vacancy occurs in the office of United States senator or United States representative, the governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy occurs. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in the general election year during which a candidate to fill the office is regularly elected, the governor may not call a special election.

The proposed initiative would repeal the statutory provisions in AS 15.40.010 empowering the governor to make a temporary appointment to fill a senate vacancy. According to the impartial summary of the initiative prepared for the petition booklets by the lieutenant governor, the initiative �would repeal state laws by which the governor makes a temporary appointment of a Senator who serves until an election can be held.�

Following the submission of the initiative to the lieutenant governor for placement on the ballot, the Alaska legislature passed H.B. 414. In contrast to the proposed initiative, H.B. 414 retains the governor's temporary appointment power in every case in which a senate vacancy might arise. House Bill 414 states in relevant part:
When a vacancy occurs in the office of United States senator, the governor may, at least five days after the date of the vacancy but within 30 days after the date of the vacancy, appoint a qualified individual to fill the vacancy temporarily until the results of the special election called to fill the vacancy are certified. If a special election is not called for the reasons set out in AS 15.40.140, the individual shall fill the vacancy temporarily until the results of the next general election are certified.

Notwithstanding this difference, the lieutenant governor determined that the initiative and H.B. 414 are substantially the same. Accordingly, he deemed the initiative void and removed it from the ballot. The parties sharply dispute whether the initiative and the bill are in fact �substantially the same.�

The definition of �substantially the same� is not apparent from the text of the Alaska Constitution. And in *Warren v. Boucher*,[FN17] we noted that there is �nothing in the legislative history of the article, or in the vigorous floor debates thereon, which points to an agreed upon meaning or a consciously adopted definition of what this critical language should mean� or that offers any �helpful discussion of what was the intended scope of the words.� [FN18] We also noted that �the words �substantial� or �substantially� are relative, inexact terms,� whose meaning is �quite elusive.� [FN19] We therefore examined the question �against the total structure� of Alaska's constitutional system of direct legislation.[FN20]

FN17. 543 P.2d 731 (Alaska 1975).

FN18. *Id.* at 735.

FN19. *Id.* at 736.

FN20. *Id.*

[4] We noted that the original proposal of the Constitutional Convention Committee called for �[l]aws proposed by initiative [to] be submitted to the voters ... unless the legislature enacts *the measure* initiated ....� [FN21] The insertion of �substantially the same measure� in place of �the measure� demonstrated that the framers wished to allow some flexibility to the legislature.[FN22] At the same time, we noted the framers' conviction that popular enactment of legislation should not be frustrated by legislative veto.[FN23] We ultimately decided that a legislative act is �substantially the same� as the initiative it seeks to supersede if �in the main the legislative act achieves the same general purpose as the initiative [and] accomplishes that purpose by means or systems which are fairly comparable.� [FN24] We also noted that �[t]he broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative.�*621 [FN25] Thus, *Warren* developed a three-part test to determine whether a proposed initiative and legislation are substantially the same. A court must first determine the

scope of the subject matter, and afford the legislature greater or lesser latitude depending on whether the subject matter is broad or narrow; next, it must consider whether the general purpose of the legislation is the same as the general purpose of the initiative, and finally it must consider whether the means by which that purpose is effectuated are the same in both the legislation and the initiative.

FN21. *Id* at 735 (quoting Constitution Convention Committee's Proposal No. 3) (emphasis added)

FN22. *Id* at 736

FN23. *Id* at 737.

FN24. *Id* at 736

FN25. *Id*

Turning to the first part of the test, we note that the subject matter of the legislation and the initiative before us-filling senate vacancies-is narrow. It is far narrower than the subject matter of campaign finance reform that we considered in *Warren*. The legislation in *Warren* was broad and complicated, touching upon a great range of topics, including campaign spending limits, reporting of contributions and expenses, restrictions on anonymous contributions, penalties for non-compliance, the creation of an elections oversight committee to monitor elections, and several other topics.FN26 In the present case, the legislation is simple and straightforward, essentially dealing with only one substantive topic: filling of a U.S. Senate vacancy. We agree with Trust the People's assessment that �[t]he simpler and more focused a law is, the fewer details that can be adjusted without effecting a fundamental change in the measure's purpose and effect.� As such, we begin our analysis with the view that the legislature should be accorded less latitude in its attempts to �vary from the particular features of the initiative.� FN27

FN26. *Id* at 737-38

FN27. *Id* at 736

Turning to the next part of the test, we consider the general purpose of both the initiative and H.B. 414. The controversy before us differs fundamentally from the issue we addressed in *Warren*. In that case, both the initiative and the proposed legislation imposed greater controls over election contributions and expenditures, and despite some differences, it was clear that they both addressed the subject matter in similar ways.FN28 (Indeed, the dispute in *Warren* turned almost exclusively on the third part of the test, the means by which the competing versions of the law sought to vindicate their clearly common purpose of campaign finance reform.) We stated that the legislature's changes to the initiative did not �vitiate[ ] the aims of the initiative, but ma[de] those aims more feasible of achievement.� FN29 The legislature had made numerous changes to the initiative that implicated the scope of the law, its enforcement mechanisms, and other structural issues concerning the regulation of campaign finance reform. But because these changes were seen as promoting the shared goals of both the bill and the initiative, we were willing to accept the legislature's bill as �substantially the same� as its initiative counterpart, even though there were in fact differences in the texts.FN30 But we cannot find that the competing versions of the legislation before us in this case share a common purpose. Indeed, as we explain more fully below, we believe the initiative and H.B. 414 have opposite objectives.

FN28. *Id* at 737-39

FN29. *Id* at 739

FN30. *Id* at 739-40. As the dissent in *Warren* pointed out, �of the 19 separate sections of the initiative, only six are the same as the statute,� and �[s]even sections have been eliminated entirely by the statute.� *Id* at 741 (Erwin, J., dissenting)

In order to determine the respective purposes of H.B. 414 and the initiative, we look to their texts to determine

intent.[FN31] This, in turn, requires us to review the circumstances surrounding the origins of the initiative.

FN31. *See Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469, 472 (Alaska 1977).

As amended in 1998, AS 15.40.010 provided in relevant part:

When a vacancy occurs in the office of United States senator, the governor, within 30 days after the date of the vacancy, shall (1) appoint a qualified person ... to fill the vacancy temporarily until the vacancy*622 is filled permanently by election; and (2) ... call a special primary election and a special election to fill the vacancy for the remainder of the term of the predecessor in office if the predecessor's term would expire more than 30 calendar months after the date of the vacancy.[FN32]

FN32. Ch. 30, § 1, SLA 1998.

In 2002 the legislature amended the statute to restrict the governor from filling a vacancy until at least five days had passed from the date of the vacancy.[FN33] It was against this background that Trust the People formed for the purpose of changing the law by initiative. What was the intent of that initiative?

FN33. Trust the People argues that the proposed initiative arose out of voter frustration with this change in the law. According to Trust the People, the essential aims of the initiative are �to remove the appointment power from the Governor, in direct response to Governor Murkowski's appointment of his daughter to fill his own Senate seat,� and to �eliminate totally the incumbency advantage for appointed Senators never elected by the voters.� The state �does not agree with all aspects� of Trust the People's factual claims, which it argues are based on unsubstantiated opinions. Our resolution of this case does not require us to determine whether there is merit to the assertions of Trust the People.

We have previously held that in determining the meaning that voters might attach to a ballot initiative, we will look to published arguments made in connection with the initiative.[FN34] At the time of our August 20, 2004 order,[FN35] there was very little published material available because the voters' handbook has not yet been published. However, the lieutenant governor's neutral statement of the initiative's purpose, prepared pursuant to state law[FN36] for the petition booklets, was available for our review. The lieutenant governor, in his neutral statement of the purpose of the proposed initiative, wrote that the initiative �would repeal state laws by which the governor makes a temporary appointment of a Senator who serves until an election can be held.� Trust the People insists that H.B. 414 does not accomplish this purpose, but instead achieves precisely the opposite result.

FN34. *Falcon*, 570 P.2d at 472 n. 6.

FN35. *See supra* note 1.

FN36. *See* AS 15.45.180(a).

The critical difference between the proposed initiative and the bill is that while the proposed initiative precludes gubernatorial appointment of a United States senator in *each and every case of vacancy*, H.B. 414 permits the governor to make a temporary appointment pending an election to fill the vacancy in each and every case. This means that, while the proposed initiative provides that in every instance Alaska's United States Senate seats will be filled only by Alaskan voters, H.B. 414 would allow an unelected executive appointee to fill the seat for an interim period that could last as long as five months.[FN37]

FN37. House Bill 414 provides that the governor need not call a special election for U.S. senator where a vacancy occurs less than sixty days prior to the primary election in a general election year. Primary elections are generally held in the last week of August, and general elections in early November, with the results certified in late November or early December, at which point the winning candidate is sworn in as senator. Therefore, were a senatorial vacancy to occur in late June of a general election year, the governor's appointee

would serve for roughly five months, or until the end of November. *See* the State of Alaska Division of Elections website, at http://www.gov.state.ak.us/ltgov/elections/homepage.html# results.

The state argues that the initiative and the bill are �substantially the same� because they �accomplish the same general goal.� That is, �under both the act and the initiative, a special election largely replaces the appointment process, unless the relevant general election will occur soon after the vacancy.� But the state's argument does not take into consideration the two critical differences noted above between the texts of H.B. 414 and the proposed initiative: (1) H.B. 414 retains the executive appointment power in every case while the proposed initiative repeals that power entirely, which means that (2) H.B. 414 allows appointees to fill U.S. Senate seats while the initiative seeks to ensure that an unelected appointee will never represent Alaska in the U.S. Senate. We conclude that these differences are so important that it cannot be said that the proposed initiative and H.B. 414 are �substantially the same.�

*623 The state advances another argument to support its conclusion that H.B. 414 is substantially the same as the initiative. It notes that, pursuant to article XI, section 6 of the Alaska Constitution, the legislature may amend an initiative's terms at any time.[FN38] The state asserts that had the legislature not passed H.B. 414 to replace the initiative, it could just as easily have made the same changes to the law by amending the initiative once it was enacted. In *Warren*, we noted that the legislature's amendatory power is broad and, in *dicta*, we suggested that the legislature's power to supplant an initiative by enacting new legislation might be identical to its power to amend.[FN39] But the power to avoid an initiative by enacting legislation should not be equated with the power to amend an initiative enacted by the voters. While the *dicta* in *Warren v. Boucher* might be read to equate the two powers, they are not equal. This is because the Alaska Constitution contains no explicit limitation on the legislature's power to amend an initiative enacted by the voters,[FN40] but it does contain such a limitation on the legislature's power to avoid a proposed initiative. Legislation designed to avoid a vote on a proposed initiative must be �substantially the same� as the initiative.[FN41] Finally debate surrounding the adoption of article XI, section 4 reflects the framers' concern that the legislature be given only �the power to amend and not the power to destroy.�[FN42] Thus, even amendments to popularly-initiated legislation must still �effectuate [ ] the intent of the electorate,�[FN43] and an amendment that �so vitiates an act passed by initiative as to constitute its repeal� is not acceptable.[FN44]

FN38. The Constitutional Convention Committee's original proposal also stated that �[n]o law passed by initiative may be ... amended or repealed by the legislature for a period of three years,� but this too was changed to the present constitutional language that an initiated law �may not be repealed by the legislature within two years of its effective date [but] may be amended at any time....� Constitutional Convention Committee Proposal No. 3, Section 4 (Dec. 9, 1955).

FN39. *Warren v. Boucher*, 543 P.2d 731, 737 (Alaska 1975).

FN40. *See* ALASKA CONST., art. XI, § 6.

FN41. ALASKA CONST., art. XI, § 4.

FN42. *Warren*, 543 P.2d at 740 (Erwin, J., dissenting).

FN43. *Warren v. Thomas*, 568 P.2d 400, 403 (Alaska 1977) (�considerable language changes� in legislature's amendments of popularly initiated law only served to �clarify and render the law more precise,� and thus did not repeal it).

FN44. *Warren v. Boucher*, 543 P.2d at 737.

The essential inquiry, then, is whether any difference between H.B. 414 and the initiative �so vitiates� the initiative's uncontradicted general purpose as to render H.B. 414 not �substantially the same.� Trust the People asserts that, by �continu[ing] the governor's appointment power and merely expand[ing] the period during which a special election is required,� H.B. 414 �preserves� and �codifies� both the governor's appointment power and the incumbency

advantage given to his appointees when they later stand for election. According to Trust the People, the initiative and the bill thus �materially differ.� The state does not deny that this difference exists, but seeks to downplay or justify its effects, insisting that �[t]he act and the initiative do accomplish the same general goal,� and that the short-term nature of the governor's appointment power under H.B. 414 �is not significant in light of the more general goals of the initiative and the act.�

The state also argues that the legislature's modifications to the proposed initiative were necessary, because the initiative, as drafted, is ill-conceived legislation that could seriously cripple or frustrate the sound workings of government. According to the state, even a temporary vacancy in one of Alaska's United States Senate seats (which, under the initiative's framework could last as long as five months) could damage Alaska's �interests in the national government� and �make a difference in the passage of legislation important to Alaska.� The state further argues that �[f]illing senate vacancies quickly also could be a matter of national importance,� because �a terrorist attack on the Capitol could wipe out the United States Senate,� and �[t]he ability of one branch of the federal government*624 to function might depend on the states' ability to fill vacant seats quickly.� While the state raises serious policy arguments in favor of H.B. 414, they relate to the wisdom of the legislation-and thus are more properly directed to the voters considering the proposed initiative-and not to the question whether the proposed initiative and H.B. 414 are substantially the same. As has been noted, the relevant judicial inquiry �is not whether the provisions are wise, but whether the legislative act is substantially the same as the initiative.� FN45

FN45. *Id.* at 743 (Erwin, J., dissenting).

The state also contends that an appointee running for a vacant seat in a general or special election may not necessarily derive any benefits from his or her status as an incumbent, thereby minimizing the differences between H.B. 414 and the proposed initiative. The state asserts that �[a] temporary appointee who is thousands of miles from Alaska and is trying to learn how to be a senator right before the election might be at a disadvantage as against a candidate present in Alaska, garnering support and raising money.� �Indeed,� the state says, �someone wishing to permanently fill the seat might well decline to take a temporary appointment.� But had the legislature truly sought to assure that Alaska maintained competent representation in Washington while eliminating any incumbency advantage for a temporary appointee, it could have tailored H.B. 414 to forbid a governor's appointee from running for election after appointment. In fact, the legislative history indicates that such a provision was proposed and rejected.FN46 This casts considerable doubt on the state's claim that H.B. 414 is substantially the same as the proposed initiative.

FN46. The minutes of the Senate State Affairs Committee's March 18, 2004 discussion of H.B. 414 indicate that Senator Gretchen Guess proposed an amendment that would have prevented a governor's temporary senate appointment from standing for reelection in a subsequent special election. Senator Guess explained that she was �worried that the temporary appointee has an incumbency advantage,� and that this would be �at odds with the intent� of the initiative, �which is to make a clean process that is separate from an appointment.� The amendment failed.

We conclude that the intent of the proposed initiative is to strip the governor of appointment power, to ensure that occupants of Alaska's seats in the United States Senate are chosen by the voters, and to eliminate all of the perceived advantages that an incumbent appointee might receive in a special or general election to fill the vacancy. House Bill 414 preserves the power of gubernatorial appointment in every case of a vacancy, it allows vacancies in the United States Senate to be filled first by executive appointment rather than only by the voters, and it preserves potential incumbency advantages that might be conferred on the executive's appointee. Because the initiative and H.B. 414 seek to accomplish different objectives, they do not share a common purpose and they are not �substantially the same.� Accordingly, we hold that the initiative has not been voided by enactment of H.B. 414.

B. Should the Constitutionality of the Proposed Initiative Be Reviewed Before the November 2004 Election?

[5] The state argues that, even if the petition were not voided on grounds of �substantial sameness,� we should hold that it cannot be placed on the November ballot because the Seventeenth Amendment to the U.S. Constitution does not allow the proposed change to be made by initiative. Trust the People and the *amicus* respond that pre-election review of the initiative is premature and that we should only determine its constitutionality if the proposal is adopted at the

election. The state rejects this contention, arguing that pre-election judicial review is appropriate because, it claims, the initiative violates the Seventeenth Amendment. Because we conclude that pre-election judicial review may extend only to subject matter restrictions that arise from a provision of Alaska law that expressly addresses and restricts Alaska's constitutionally-established initiative process or to proposals that are clearly unlawful under controlling authority, we agree with Trust the People and the *amicus* that pre-election review is not appropriate in this case. Accordingly, we affirm *625 the decision of the superior court holding that the lieutenant governor could not engage in pre-election review of the Seventeenth Amendment issue.

As we have recognized on other occasions, �articles XI and XII are the only provisions of the Alaska Constitution that explicitly mention the initiative process.� FN47 Specifically, article XI, sec. 7, describes certain express subject matter restrictions:

FN47. *Brooks v. Wright*, 971 P.2d 1025, 1027 (Alaska 1999).

The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation.[FN48]

FN48. Alaska Const., art. XI, § 7. These restrictions are mirrored in AS 15.45.010.

Article XII, section 11, in turn, specifies that the electorate's power to legislate by initiative is always �subject to� these express restrictions; section 11 also more generally recognizes that the initiative process may be implicitly restricted by other provisions, but only if such provisions make the process �clearly inapplicable�:

Unless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI.[FN49]

FN49. Alaska Const., art. XII, § 11 (emphasis added). *See also Brooks*, 971 P.2d at 1028-29 (describing constitutional history of section 11 as indicating that its �clearly inapplicable� language meant that initiative process was inapplicable only when �55 idiots would agree that it was inapplicable�).

These provisions largely define the permissible scope of pre-election subject-matter review in Alaska.FN50 Early on, in *Boucher v. Engstrom*, FN51 we approvingly noted �the general rule that courts will refrain from giving advisory opinions on the constitutionality of statutes,� but recognized that an exception to this principle would apply �in regard to review of initiatives prior to submission to the electorate for approval.� FN52 As we expressly described it in *Boucher*, this exception applied to a limited set of challenges:

FN50. There is an additional basis for pre-election review in Alaska, not argued in the case before us. �[G]eneral contentions that the provisions of an initiative are unconstitutional� may be considered pre-election �only if �controlling authority� leaves no room for argument about its unconstitutionality.� *Alaska Action Ctr., Inc. v. Municipality of Anchorage*, 84 P.3d 989, 992 (Alaska 2004) (quoting *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 (Alaska 2003)) and *Brooks*, 971 P.2d at 1027. We provided an example of the type of clearly controlling authority that might allow a proposed initiative to be removed from the ballot: �The initiative's substance must be on the order of a proposal that would �mandat[e] local school segregation based on race� in violation of *Brown v. Bd. of Educ.* before the clerk may reject it on constitutional grounds.� *Alaska Action Ctr.*, 84 P.3d at 992 (citations omitted). In this case, the state concedes that the provisions of the proposed initiative would be �perfectly constitutional and above reproach� if enacted by the legislature.

FN51. 528 P.2d 456 (Alaska 1974) *overruled on other grounds by McAlpine v. Univ. of Alaska*, 762 P.2d 81 (Alaska 1988).

FN52. *Boucher*, 528 P.2d at 460.

This court, ... although recognizing the general limitation that only enacted legislation is subject to judicial review, [has] held that our courts are empowered to review an initiative to ascertain whether it complies with *the particular constitutional and statutory provisions regulating initiatives*.[FN53]

FN53. *Id.* (citing Walters v. Cease, 394 P.2d 670 (Alaska 1964); Starr v. Hagglund, 374 P.2d 316 (Alaska 1962)) (emphasis added).

We stressed that it was necessary to apply the exception to this set of challenges in order to enforce the meaning of the initiative process as set out in Alaska's constitution. We said:
The people for their own protection have provided that the initiative shall not be employed with respect to certain matters. Unless the courts had power to enforce those exclusions, they would be futile.[FN54]

FN54. *Id.* (quoting *Bowe v. Sec'y of the Commonwealth,* 320 Mass. 230, 69 N.E.2d 115, 128 (1946)).

In initiative cases decided since *Boucher*, we have consistently restated the language of *Boucher* that limits pre-election review to *626 cases involving compliance with �the particular constitutional and statutory provisions regulating initiatives.� [FN55] Most recently, in *Alaska Action Center, Inc. v. Municipality of Anchorage,*[FN56] referring to this type of challenge, we stressed that �[s]eparation of powers principles are not offended by this procedure, as these restrictions were devised to prevent certain questions from going before the electorate at all.� [FN57]

FN55. *See, e.g.,* *Brooks,* 971 P.2d at 1027 (quoting *Boucher*); *Alaska Action Ctr.,* 84 P.3d at 992 (quoting *Brooks* 's quotation from *Boucher*); *Whitson v. Anchorage,* 608 P.2d 759, 761-62 (Alaska 1980).

FN56. 84 P.3d 989.

FN57. *Id.* at 992.

Alaska Action Center involved a challenge to a municipal clerk's decision rejecting a proposed initiative on the ground that it provided for an appropriation, in violation of article XI, section 7, and AS 29.26.100. In deciding the claim, we expressly followed the conventional rule that an initiative may be reviewed before going to the voters to ensure compliance with �the particular constitutional and statutory provisions regulating initiatives.� [FN58] Finding that �[t]he proscriptions of AS 29.26.100 and article XI, section 7 of the Alaska Constitution are such limitations,� we concluded that pre-election review was proper.[FN59] Thus, *Alaska Action Center* simply applied the test articulated in *Boucher.* To be sure, *Alaska Action Center* distinguished this kind of reviewable �subject matter� challenge from �[o]ther challenges ... grounded in �general contentions that the provisions of an initiative are unconstitutional.� � [FN60] But this distinction simply describes a baseline for pre-election review, although it usefully points out that pre-election review of an initiative proposal usually involves a subject-matter challenge as opposed to a general claim of substantive illegality-it does not say that all subject-matter challenges must automatically qualify for full pre-election review.

FN58. *Id.*

FN59. *Id.* at 993.

FN60. *Id.* at 992 (quoting *Brooks,* 971 P.2d at 1027).

By consistently pointing out that pre-election review is needed to ensure compliance with �the particular constitutional and statutory provisions regulating initiatives�-that is, with those restrictions specifically �devised to prevent certain questions from going before the electorate�-our cases establish that pre-election review does not encompass all potential subject-matter restrictions, but extends only to the restrictions imposed by Alaska

constitutional and statutory provisions regulating the initiative process. So interpreted, our cases make pre-election review appropriate to ensure compliance with the express initiative restrictions set out in article XI, section 7. Our cases similarly allow pre-election review, under article XII, section 11, to ensure compliance with subject-matter restrictions set out in other legal provisions; but under the express terms of article XII, section 11, the scope of review would be limited to cases of obvious non-compliance-cases where the initiative process would be �clearly inapplicable.� FN61

FN61. *See, e.g., Kodiak Island Borough v. Mahoney,* 71 P.3d 896, 900 (Alaska 2003) (comparing section 11's �clearly inapplicable� requirement to stringent test applicable when executive order declares statute unconstitutic l); *Brooks,* 971 P.2d at 1029 (describing section 11's �clear idiot� test).

By contrast, the state argues that ou cases stand for the proposition that whenever the issue is whether voters can enact the law by initiative, it is appropria for pre-election review. The state thus argues for a broad rule that would allow a full range of pre-election review of all subject-matter challenges, �regardless of the source of the restriction.� In arguing that full pre-election review is appropriate for even those subject-matter challenges �not enumerated in Alaska law,� the state overlooks the limiting language noted above that we have employed in several cases.

The state argues that we reviewed the constitutionality of an initiative prior to its placement on the ballot in *Yute Air Alaska, Inc. v. McAlpine.* FN62 Challengers to the initiative in *Yute Air* argued that the initiative *627 was unconstitutional because it concerned two subjects, which violated article II, section 13 of the Alaska Constitution which requires that every bill be confined to one subject; FN63 they also argued that the initiative directed the executive to seek repeal of the Jones Act, and was thus unconstitutional because it was not a proper subject for an initiative under a icle XI, section 1 of the Alaska Constitution, which limits the use of the initiative to the enactment of laws. FN64 We resolved these questions on the merits before the initiative was placed on the ballot. FN65 The state argues that because we reviewed an initiative to determine if it violated a subject matter limitation not enumerated in article XI, section 7 of the Alaska Constitution in *Yute Air,* we should now likewise determine whether the people are restricted from enacting by initiative legislation on the subject of filling of senate vacancies before the election. But unlike the challenge raised here, which alleges that the Federal Constitution prohibits enactment by initiative, the challenge to the initiative in *Yute Air* concerned two limitations placed o. the initiative process by the Alaska Constitution. Thus, pre-election review in *Yute Air* did not violate our holding in *Boucher v. Engstrom* that such review should be limited to ascertaining whether an initiative is in c mpliance with constitutional provisions that regulate legislative enactment via initiative. FN66

FN62. 698 P.2d 1173 (A a 1985).

FN63. *Id.* at 1175.

FN64. *Id.*

FN65. *Id.* at 1177.

FN66. 528 P.2d 456, 460 (Alaska 1974).

The state also relies on *Alaskans for Legislative Reform v. State,* FN67 in which an initiative that would have imposed term limits on legislators was denied a place on the ballot. We note at the outset that no party in that case opposed pre-election review. As Judge Shortell noted in his opinion (adopted by this court), the issue was not raised at the trial level because �both parties [had] the intention of obtaining pre-election dispositive review.� FN68 It appears that there was no consideration by any court at any level of the question whether pre-election review was proper. Second, to the extent that *Alaskans for Legislative Reform* supports pre-election review of claims that a term limits initiative is unconstitutional, it appears to have been overruled by *Kodiak Island Borough v. Mahoney,* FN69 where we declined to allow pre-election review of a term-limits proposal. FN70 Finally, since Judge Shortell ordered the initiative removed from the ballot, the case was clearly ripe for immediate review, FN71 indeed, the only way for this court to avoid pre-election review would have been to declare *sua sponte* that Judge Shortell erred in addressing the constitutional

issue.

FN67. 887 P.2d 960 (Alaska 1994).

FN68. *Id.* at 962 n. 6.

FN69. 71 P.3d 896 (Alaska 2003).

FN70. *Id.* at 897.

FN71. *Alaskans for Legislative Reform,* 887 P.2d at 966.

The state also relies on *Brooks v. Wright,*[FN72] arguing that it raised a subject-matter claim that was subject to pre-election review. But for present purposes, it is crucial to take account of the exact nature of the claim raised in *Brooks.* The case involved an initiative proposing to ban all use of wolf snares. The challengers alleged that article VIII of the Alaska Constitution did not allow the initiative process to be used for game management purposes because the language of that constitutional provision and the provision's grant of trustee-like powers to the state implicitly gave the legislature exclusive authority to manage Alaska's natural resources.[FN73] But while basing their pre-election challenge on this constitutional theory, the initiative's opponents did not actually seek review of their article VIII claim, as such. Instead, they argued more narrowly that the implied subject-matter restriction imposed by article VIII violated the �clearly inapplicable� test of article XII, section 11: �under Article XII, the initiative process is �clearly inapplicable� to resource management *628 decisions[.]�[FN74] So asserted, the challenge in *Brooks* did more than claim a �subject matter� restriction embedded in article VIII; it further asserted that this restriction implicated one of the Alaska Constitution's �particular� provisions governing the proper scope of initiatives: article XII.

FN72. 971 P.2d 1025 (Alaska 1999).

FN73. *Id.* at 1027-29.

FN74. *Id.*

Our opinion in *Brooks* resolved the constitutional claim by applying article XII, section 11's �clearly inapplicable� test. Our opinion acknowledged that �[p]re-election review of challenges to ballot initiatives is limited to ascertaining �whether [the initiative] complies with the particular constitutional and statutory provisions regulating initiatives'�[FN75] and that �[a]rticles XI and XII are the only provisions of the Alaska Constitution that explicitly mention the initiative process.�[FN76] After noting that the challengers did not claim a violation of �one of the enumerated Article XI limitations,� we took pains to point out that they argued, instead, that the initiative process was � �clearly inapplicable� to resource management decisions� under article XII.[FN77] We then applied the article XII standard and concluded that neither prong of the challengers' claim that article VIII impliedly restricted using the initiative process to ban wolf snares was sufficiently persuasive to establish that the proposed wolf snare ban was � �clearly inapplicable� to the initiative process under Article XII.�[FN78]

FN75. *Id.* at 1027 (citing *Boucher,* 528 P.2d at 460).

FN76. *Id.*

FN77. *Id.*

FN78. *Id.* at 1030, 1033.

Brooks thus based its ruling on the article VIII issue by using article XII's �clearly inapplicable� standard. By so

doing, it treated the claim as a permissible pre-election challenge under the narrow rule enunciated in *Boucher*, which, as already mentioned, expressly limits the scope of pre-election review to �particular constitutional [or] statutory provisions regulating initiatives.� Thus, *Brooks* strongly supports the rule that when an alleged subject-matter violation hinges on an implied constitutional restriction outside the specific restrictions enumerated in article XI, section 7-as the challenge did in *Brooks*-it is eligible for pre-election review only if it meets article XII, section 11's �clearly inapplicable� test.

The state also relies on *Whitson v. Anchorage*.FN79 But that case supports the conclusion that pre-election review is not appropriate here. In *Whitson*, the Municipality of Anchorage challenged an initiative in court before submitting it to the voters. The municipality contended that, if enacted, the proposed initiative would violate provisions of state law implicitly limiting the electorate's right to enact an ordinance on the topic covered by the proposed initiative.FN80 In opposing this challenge, the initiative's proponents argued that the challenge was premature and could not be decided before the election. But we disagreed, specifically concluding that the provision qualified for pre-election review because it �plainly ... would conflict� with state law and was �in clear conflict with a state statute.�FN81 *Whitson* thus illustrates an application of the clear �controlling authority� exception to the general rule against pre-enactment review that we referred to in *Alaska Action Center*.FN82

FN79. 608 P.2d 759 (Alaska 1980).

FN80. *Id.* at 761.

FN81. *Id.* at 761-62.

FN82. 84 P.3d 989, 992 (Alaska 2004). *See* discussion *supra* note 50.

In sum, a narrow interpretation of the permissible scope of pre-election review is faithful to our case law,FN83 is supported by the strong policies that generally disfavor advisory opinions, and is justified by the limited purpose of pre-election review-to protect the Alaska Constitution's express provisions defining the initiative process.FN84 Because the *629 subject matter at issue here-filling senate vacancies-is not specifically barred from the initiative process under article XI, section 7, nor �clearly inapplicable� under article XII, section 11, nor is its resolution clear under controlling authority, we conclude that the proposed initiative meets the test for submission to the voters. Its ultimate compliance with the Seventeenth Amendment falls outside the proper scope of the lieutenant governor's pre-election review.

FN83. *See, e.g.*, *Brooks*, 971 P.2d at 1027 (quoting *Boucher*, 528 P.2d at 460 *overruled on other grounds by McAlpine v. Univ. of Alaska*, 762 P.2d 81 (Alaska 1988)); *Alaska Action Ctr.*, 84 P.3d at 992 (quoting *Brooks*'s quotation from *Boucher*.)

FN84. *Boucher*, 528 P.2d at 460. *See also Citizens for Tort Reform v. McAlpine*, 810 P.2d 162, 168-70 (Alaska 1991).

V. CONCLUSION

Because H.B. 414 is not �substantially the same� as 03SENV, the initiative is not void under the Alaska Constitution. Because the state's Seventeenth Amendment argument does not involve a subject-matter restriction arising from a provision of Alaska law that expressly addresses and restricts Alaska's constitutionally-established initiative process or a proposal that is clearly unlawful under controlling authority, we AFFIRMED the superior court's decision to deny pre-election review of the Seventeenth Amendment issue.

For these reasons, we directed the lieutenant governor to place Trust the People's initiative, 03SENV, on the general election ballot.

Alaska,2005.

State v. Trust the People
113 P.3d 613

Briefs and Other Related Documents (Back to top)

- � 2004 WL 4908352 (Appellate Brief) State's Reply Brief (May 3, 2004)
- � 2004 WL 4908350 (Appellate Brief) Brief of Appellees (Apr. 19, 2004)
- � 2004 WL 4908351 (Appellate Brief) Brief of Amicus Curiae Alaska Public Interest Research Group (Apr. 1, 2004)
- � 2004 WL 4908349 (Appellate Brief) State's Appellant Brief (Feb. 2, 2004)

END OF DOCUMENT

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HB
220

ALASKA STATE LEGISLATURE

While in Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4968
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While in Anchorage
716 West 4th Avenue
Anchorage, Alaska 99501
(907) 269-0117
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REPRESENTATIVE BOB BUCH

Representative_Bob_Buch@legis.state.ak.us

Sponsor Statement

HB 220
An Act prohibiting computer-assisted remote hunting

This bill would outlaw computer assisted remote hunting in Alaska. This practice began in Texas in 2005 when an entrepreneur offered "hunters" the ability to shoot big game on his land via remote control technology.

Computerized hunting—or internet hunting, as it is sometimes called— enables a person anywhere in the world to hunt big game from the comfort of their homes. Through the use of the internet, a computer can be hooked up to a webcam and rifle mounted on a remote control rig. The "hunter" is able to control the aiming and firing of the rifle from their keypad and to make a kill with the click of a mouse.

Currently, twenty five states have passed legislation to ban internet hunting. Nine other states have legislation pending to outlaw it as well.

HB 220 has three important provisions. First, it would prohibit individuals from engaging in internet hunting in Alaska. It would also prohibit anyone from providing services or operating facilities in the state to enable computerized hunting activities. Finally, it would make sure that future technology designed to assist the legitimate needs of handicapped or disabled hunters would not be subject to the ban created in the bill.

I urge your support of HB 220.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701

Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Brian Kane

Fax #: 2029 Number of pages including cover: 1

From: Jane Pierson

Date: April 13, 2007

Re: Final for CSHB220 25-LS0795\E

Jerry,

Please go final on the above-referenced CS.

Thank you.

HOUSE COMMITTEE REPO[illegible]

(7)
Date Referred to Committee: April 3, 2007 **FURTHER REFERRALS: Finance**

Date of Committee Action: April 13, 2007

The JUDICIARY Committee considered: **HB 220**

HOUSE BILL NO. 220 **BAN COMPUTER-ASSISTED REMOTE HUNTING**

"An Act prohibiting computer-assisted remote hunting."

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB220 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR ______ **[✓] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to ___________ Committee
[ ] Letter of Intent ___________ Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES (*Assigned by Chief Clerk's Office)

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DPS				✓

PREVIOUS FISCAL NOTES

List by Dept(s):	FN#	Fiscal	Indet.	Zero
DFG				✓
DPS				✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
[signature]	Gruenberg	✓			
[signature]	LYNN	X			
[signature]	SAMUELS	X			
[signature]	Holmes	X			
Chair: [signature]	RAMRAS	X			
Chair:					

25-LS0795\E
Kane
4/11/07

CS FOR HOUSE BILL NO. 220( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BUCH, Gatto, Fairclough, Thomas, Neuman, Crawford, Wilson, Seaton, Foster, Samuels, Stoltze, Holmes

A BILL

FOR AN ACT ENTITLED

1 **"An Act prohibiting computer-assisted remote hunting."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** AS 16.05 is amended by adding a new section to read:

4 **Sec. 16.05.797. Computer-assisted remote hunting prohibited.** (a) A person
5 may not engage in computer-assisted remote hunting or provide or operate a facility
6 for computer assisted remote hunting in the state. This subsection applies to any
7 person engaged in computer-assisted remote hunting if the game or any device,
8 equipment, or software used for computer-assisted remote hunting is located in the
9 state.

10 (b) This section does not apply to a person with physical disabilities using
11 equipment or devices designed to assist with the disability while present in the field
12 and meaningfully participating in the act of hunting under regulations adopted by the
13 Board of Game.

14 (c) In this section,

15 (1) "computer-assisted remote hunting" means the use of a computer or

1 any other device, equipment, or software to remotely control the aiming and discharge
2 of a firearm, bow and arrow, or any other weapon used to hunt any game bird, game
3 animal, or fur-bearing animal while not in the physical presence of the animal;
4 (2) "facility" means real property and improvements on the real
5 property associated with computer-assisted remote hunting.
6 (d) A person who violates (a) of this section is, upon conviction, guilty of a
7 class A misdemeanor. If a violation is continuing in nature, each day the violation
8 continues constitutes a separate offense.

Alaska State Legislature

While in Session
State Capitol
Juneau, Alaska 99801-1182
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While in Anchorage
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Anchorage, Alaska 99501
(907) 269-0117
Fax: (907) 269-0119

Representative Bob Buch

Representative_Bob_Buch@legis.state.ak.us

Date: April 11, 2007

To: Representative Jay Ramras
Chair, House Judiciary Committee

From: Representative Bob Buch
Alaska State Legislature

Re: HB 220

Dear Rep. Ramras:

The Dept. of Fish and Game has requested a clarification in the language of HB 220, in particular to Section 1 which pertains to persons with physical disabilities (AS 16.05.797(b)). Consequently, I am submitting the enclosed CS to the Judiciary Committee for consideration at your hearing on Friday April 13th.

Brian Kane in Legislative Legal Services worked with the Kevin Saxy, a Fish and Game attorney in the Dept of Law, to draft the enclosed language. This change was made to address problems in the field that the Division of Wildlife Conservation has experienced with disabled hunters trying to get around the law by "hunting" from their hospital beds. The new language makes it abundantly clear that hunters must go into the field to hunt, and that they must do so in accordance with the regulations adopted by the Board of Game.

A representative from the Dept. will be available at Friday's meeting to answer any questions that the committee might have about this.

Thank you,

R.L. Buch

Representative Bob Buch
Alaska State Legislature
House District 27

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB220CS(RES)-DPS-AWT-4-12-07
Bill Version: CSHB 220 (RES)
() Publish Date:

Revision Date/Time : CORRECTED 4/12/2007 9:02

Dept. Affected: Public Safety
RDU: Alaska State Troopers
Component: Alaska Wildlife Troopers
Component No. 2746

Title: "An Act prohibiting computer-assisted remote hunting."
Sponsor: Representative Buch
Requester: House Judiciary

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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						
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 (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

CSHB 220 (RES) is an act prohibiting computer assisted remote hunting in Alaska. It would also prohibit anyone from providing services or operating facilities in the state to enable computerized hunting activities.

This committee substitute changed the penalties for violation of this act and reorganized the sections in the bill.

Passage of this legislation will have no fiscal impact on the Department of Public Safety.

Prepared by: Lt. Rodney Dial
Phone 907-247-4480
Division: Division of Alaska State Troopers
Date/Time 4/12/07 9:02 AM
Approved by: Commissioner Walt Monegan
Date 4/12/2007
Agency: Department of Public Safety

(Revised 9/18/2006 OMB)

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB220-DFG-DWC-03-30-07
Bill Version: HB 220
() Publish Date:

Revision Date/Time (Note if correction):
Title: Ban Computer-Assisted Remote Hunting
Sponsor: Representatives Buch, Gatto, Fairclough
Requester: House Resources Committee

Dept. Affected: Fish and Game
RDU: Wildlife Conservation
Component: Wildlife Conservation
Component No. 473

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: [ ]

POSITIONS

POSITIONS						
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Passage of this bill would not have any fiscal impact on the Department of Fish and Game.

Prepared by: Matt Robus — Phone 465-4191
Division: Wildlife Conservation — Date/Time 03/30/07 2:00 p.m.
Approved by: Denby Lloyd — Date 3/30/2007
Agency: Department of Fish and Game

(Revised 9/18/2006 OMB)

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 27, 2007

SUBJECT: Sectional summary of HB 220 (Work Order No. 25-LS0795\A)

TO: Representative Bob Buch
Attn: Deborah Brevoort

FROM: Brian J. Kane BJK
Legislative Counsel

You have requested a sectional summary of HB 220, a bill prohibiting computer-assisted remote hunting.

Please note that a sectional summary of a bill is not an authoritative interpretation of a bill. The bill itself is the best statement of its contents.

Section 1 of the bill adds a new section to AS 16.43 prohibiting computer-assisted remote hunting.

Subsection (a) prohibits the hunting activity and states to whom this section applies.

Subsection (b) states that a person in violation of this section is guilty of a class A misdemeanor and punishable, upon conviction, for a fine of up to $500 for each offense.

Subsection (c) states that this section does not apply to persons with physical disabilities using equipment or devices designed to assist with the disability while engaged in the act of hunting.

Subsection (d) provides definitions for "computer-assisted remote hunting" and "facility."

BJK:ljw
07-165.ljw

MEMORANDUM

TO: Alaska House Resources Committee
FROM: Matt Robus,
Director, Division of Wildlife Conservation,
Alaska Department of Fish and Game
RE: House Bill 220, "Ban Computer-Assisted Remote Hunting"
DATE: April 2, 2007

The Division of Wildlife Conservation in the Alaska Department of Fish and Game (ADF&G) is charged, among other things, with the management of hunting and trapping in Alaska. The regulations governing hunting are written by the Alaska Board of Game, a body appointed by the Governor. The Board has instituted numerous regulations meant to encourage hunter ethics and the concept of fair-chase hunting in this state. House Bill 220 proposes to outlaw an activity that has not yet been introduced in Alaska, but that our agency believes should not be brought to our state.

ADF&G agrees with the motivation behind this bill. Computer-assisted remote hunting is not fair-chase hunting; it is not sport. It runs counter to the long history and tradition of hunting wild animals in the state of Alaska.

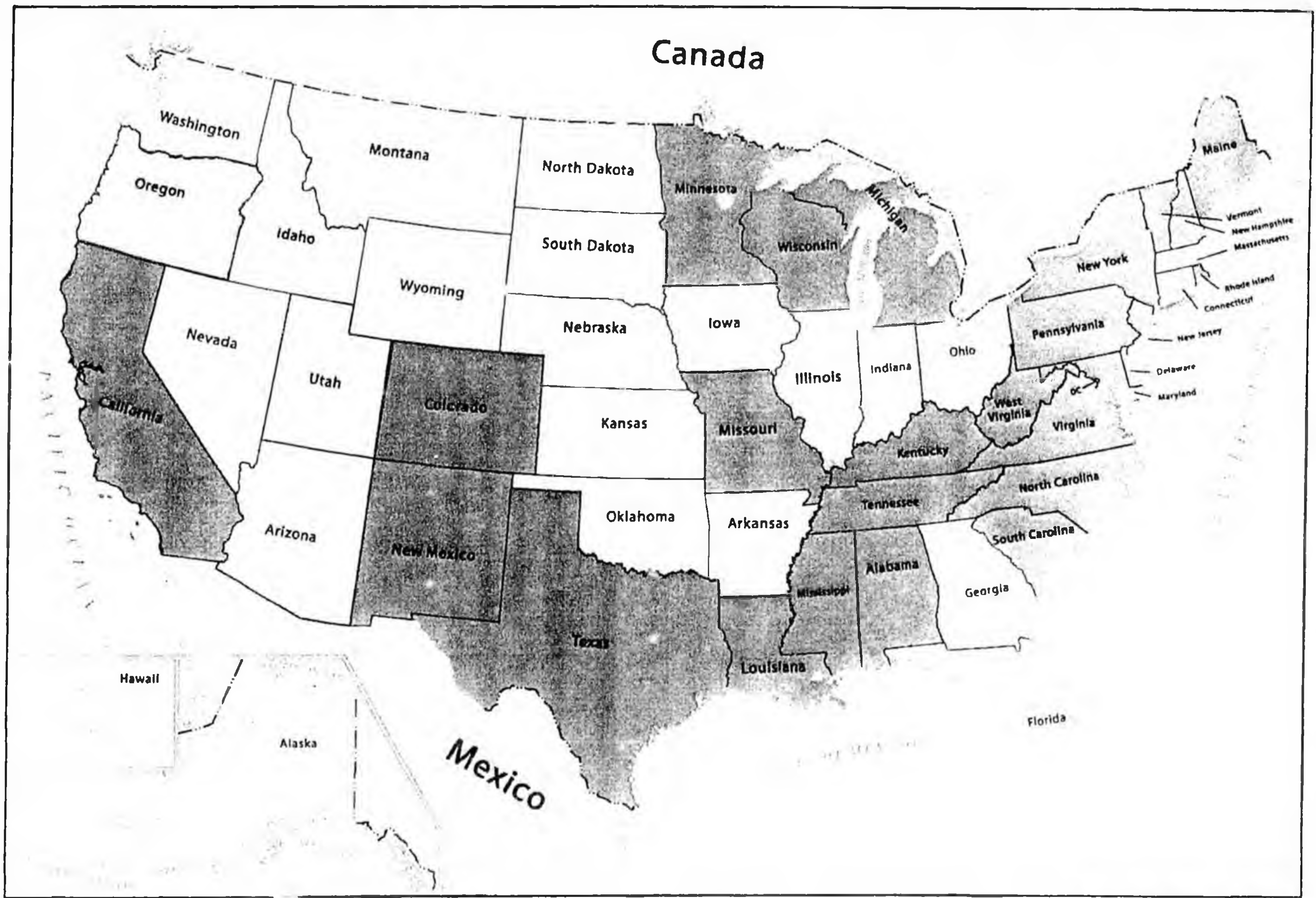
Section (c) of House Bill 220 addresses the availability of hunting opportunities to people with physical disabilities. The Division of Wildlife Conservation has an active outreach effort to make hunting accessible to all people, to specially accomodate those with physical disabilities. We have a number of programs in place to help hunters get out in the field and enjoy real hunting experiences regardless of their physical abilities. We do not believe that computer-assisted remote hunting is a true hunting experience, nor do we believe that it provides such an experience to people with disabilities.

Internet Hunting Bans

25 states where bills have been signed into law or regulations adopted

9 states where bills are pending in 2007

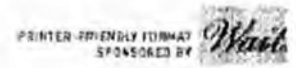
As of 03/01/2007



THE HUMANE SOCIETY OF THE UNITED STATES

2100 L Street, NW | Washington, DC 20002 | (20 52-1100

The New York Times
nytimes.com



March 11, 2007

Should Killing Be Merely a Mouse Click Away?

By THE ASSOCIATED PRESS

Slouched at a computer, the hunter perks up as a 12-point buck eases into view on his screen. Maneuvering his mouse, he swivels the rifle and focuses the cross hairs. With a click of the mouse, the rifle fires a bullet, mortally wounding the deer.

Call it hunting by remote control. And though it is still more concept than trend, lawmakers in several states have set their sights on stopping the practice in its tracks.

Illinois State Representative Dan Reitz has proposed banning such hunting in his state, saying that such ready, aim, click kills, or the prospect of them, push the ethical envelope and violate the spirit of fair-chase hunts.

"I just think it's wrong," Reitz said, adding that the use of such technology — which features a Web camera and a .22-caliber rifle atop a remote-controlled rig — would "give all sportsmen a black eye."

Technology that enables people to stalk online and kill real prey has alarmed hunters and lawmakers intent on pre-emptively blocking the practice. About two dozen states already have outlawed the method, which the Humane Society of the United States calls pay-per-view slaughter.

"The animal s no chance," Arkansas State Senator Ruth Whitaker said earlier this year while introducing a measure that calls for banning potential cyberhunting in her state.

"There's no challenge for you — except knowing how to use a computer and push a button," she said. "You never left your tufted sofa. What's sportsmanlike about that?"

The issue emerged in early 2005, when an entrepreneur from Texas, John Lockwood, set up a Web site that allowed subscribing hunters with a high-speed computer connection to shoot antelope, wild pigs and other game on his 220-acre San Antonio spread via remote control — from anywhere. Lockwood offered to send the animals' heads to subscribers.

During a demonstration, a friend of Lockwood's used a computer 45 miles away to shoot a wild hog as it fed at Lockwood's ranch. But, according to news reports, he only wounded the animal. Lockwood, who was on site, finished the kill.

Lockwood's venture barely got started before Texas lawmakers shot it down. Since then, other states have hustled to get something on their books barring the practice.

Even die-hard hunters are opposed, saying that shooting an animal via computer is not sporting and does not require the element of fair chase in conventional hunting through forest, field or marsh. Some states

have posed similar objections to hunting big game in captivity as trophies.

"We believe sick ideas have a bad way of spreading, so we want to make sure we nip this in the bud and ban it in all 50 states," Michael Markarian, executive vice president of the Humane Society, said of cyberhunting. The group is also pressing for a federal ban.

Pro-hunting groups, including Safari Club International and the National Rifle Association, also oppose remote-control hunting.

Gary Harpole, an Illinois hunter who figures he has killed 100 deer, most with a bow, said the practice "takes away from what hunting really is all about: getting outdoors, experiencing nature."

"To me, 90 percent of hunting is the experience, 10 percent is the harvest," said Harpole, who runs a hunter's lodge at his rural home. Bagging a buck by computer, he said, "is a lazy way of hunting."

But Lockwood has said the technology could help people with disabilities or perhaps servicemen overseas shoot game. And an attendant in the blind with the remote-controlled rifle can override any unsafe or unethical shots.

Lockwood could not be reached for this article, but he said last year that legislatures banning the practice had "no clue what they're passing laws against."

"Ever since we stopped running after our prey and killing with our hands, we've evolved by distancing ourselves further and further from the game and making it more and more efficient for whatever reason we want to take it," he said.

Reitz is not swayed by such arguments. "There's a lot of opportunities out there for people with disabilities," he said. "I just think this is a bad way to do it."

His bill, which was referred to an Illinois House rules committee on Feb. 22, would amend the state's wildlife code to bar a person from operating, providing, selling, using or offering "any computer software or service that allows a person not physically present at the hunt site to remotely control a weapon that could be used to take wildlife by remote operation."

Use of such equipment would be a misdemeanor punishable by up to six months in jail and $1,500 in fines. Those who provided the software or services would face a misdemeanor carrying a possible 364 days in jail and $2,500 in fines.

Missouri already has such a ban on the books, last year adopting an administrative rule specifying that "wildlife may be taken only in the immediate physical presence of the taker and may not be taken by use of computer-assisted remote hunting devices."

Bill Heatherly, the Missouri Department of Conservation's wildlife programs supervisor, said he never imagined the need for such a measure despite the sport's astounding technological leaps since man first chucked rocks to kill dinner.

"I've been telling people I'm starting to understand how my father must have felt in his later years," he said. "Certainly, I didn't imagine this."

ALASKA
PROFESSIONAL HUNTERS ASSOCIATION, INC.

HC60 Box 299C • Copper Center, AK 99573
Phone: 907-822-3755 • FAX: 907-822-3752
Email: office@alaskaprohunter.org www.alaskaprohunter.org

March 27, 2007

Honorable Bob Buch
State of Alaska House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Re: HB 220

Dear Representative Buch,

On behalf of Alaska Professional Hunters Association, I am writing to offer support of HB 220. As an organization representing Alaska's guiding profession, we are committed to fair chase hunting practices and ethical standards of conduct.

True hunting is a problem solving exercise which involves planning along with knowledge of the specie being pursued and its habitat. A hunter must be prepared to cope with all the elements of nature common to outdoor activities especially in the wild places of Alaska. Hunting is a real life drama which can involve doubt, frustration, anxiety, discovery, great physical and mental challenge, joy and disappointment. The outcome of this process is by no means assured.

Organizing the killing of an animal via cyberspace and robotics is not "hunting". Absent the above mentioned elements, this activity constitutes nothing more than the mechanical slaughter of an animal over the internet. We find this practice unacceptable and urge the Legislature to outlaw it in the State of Alaska.

Thank You for you initiative in this regard and please let me know if I can be of further assistance.

Sincerely,
Joe Klutsch
Joe Klutsch - President - APHA

Jill A. Buckley, Esq.
Senior Director, Legislative Services
& Mediation Training
P.O. Box 48
Pismo Beach, CA 93448

jillb@aspca.org
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fax 805-474-9740
www.aspca.org

March 28, 2007

Representative Robert Buch FAX: 907-465-2040
State Capitol
Juneau, AK 99801-1182

Letter in Support of HB 220, Banning Computer-Assisted Remote Hunting

Dear Representative Buch:

On behalf of the American Society for the Prevention of Cruelty to Animals (ASPCA) and our 1700 Alaska members and donors, I am writing to express strong support for HB 220 to ban computer-assisted remote hunting.

As you are no doubt aware, the necessity for this bill came about as a result of reports in 2005 that a Texas rancher had plans to operate a business via the internet whereby individuals would be able to point and shoot a rifle via remote control, from their own personal computers allowing for the killing of animals in what amounts to a video-monitored canned hunt. Since then, many states have outlawed this so-called "sport".

At the time the story broke, ASPCA President Edwin J. Sayres stated that "Promoting the killing of animals via the Internet and marketing hunting as a video game is absolutely despicable." Legitimate hunters do not consider this to be "fair" sport.

Thank you very much for considering this important humane issue.

Sincerely,

Jill A. Buckley, Esq.

THE HUMANE SOCIETY OF THE UNITED STATES

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Re: Testimony in Support of House Bill 220

Dear Members of the Alaska State Legislature:

On behalf of the The Humane Society of the United States (HSUS) and our over 17,000 members and constituents in Alaska, I submit this testimony in support of House Bill 220, which would prohibit engaging in Internet hunting or operating an Internet hunting facility in the state.

H.B. 220 was introduced in reaction to the development of a click and shoot mechanism that operates like an Internet computer game. This operation based in Texas – Live-Shot.com – allowed clients to point and shoot a rifle via remote control. Live-shot.com was linked to a platform with a rifle and camera that could be remotely aimed at animals in what amounts to a video-monitored canned hunt. While Texas passed legislation banning Internet hunting in 2005, effectively stopping this activity on Live-Shot.com, an internet hunting system could be started or accessed virtually anywhere across the country – including Alaska. Unfortunately, sick ideas have a tendency to spread. Furthermore, the operator of Live-Shot.com stated in a December 5, 2006 article in the Arizona Republic that "Internet hunting may go offshore," clearly indicating his desire to continue to pursue remote-control hunting.

Internet hunting is unethical and unsporting. It doesn't take a very strict definition of 'sportsmanship' to see that this practice, if allowed to proceed, would violate every ethical standard that hunters profess. It involves no hunting skill whatsoever, and distances the hunter entirely from the act of killing, denying animals any of the 'respect' that hunters avow they feel for their prey. This pay-per-view slaughter has garnered strong opposition from The National Rifle Association and the Safari Club International, as well as animal welfare proponents.

This activity also poses serious safety concerns. Allowing anyone who logs into a website to fire a weapon into a hunting preserve is a danger to anything that crosses the gun's path—including non-target wildlife as well as people.

Since the inception of Internet hunting, 26 states have passed preemptive legislation or regulations banning this egregious activity. Nine states, including Alaska, are considering legislation in the 2007 session. Most states have taken or are taking action to prevent the activity in their state. I encourage Alaska to do the same.

Thank you for the opportunity to comment on remote control and Internet hunting in Alaska. We urge your support of this important legislation. Thank you.

Sincerely,

Dave Pauli
Northern Rockies Regional Director
490 North 31st Street, Suite 215
Billings, MT 59101

THE HUMANE SOCIETY OF THE UNITED STATES

OFFICERS
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Re: **Testimony in Support of House Bill 220**

Dear Members of the Alaska State Legislature:

On behalf of the The Humane Society of the United States (HSUS) and our over 17,000 members and constituents in Alaska, I submit this testimony in support of House Bill 220, which wou d prohibit engaging in Internet hunting or operating an Internet hunting facility in the state.

H.B. 220 was introduced in reaction to the development of a click and shoot mechanism that operates like an Internet computer game. This operation based in Texas – Live-Shot.com – allowed clients to point and shoot a rifle via remote control. Live-shot.com was linked to a platform with a rifle and camera that could be remotely aimed at animals in what amounts to a video-monitored canned hunt. While Texas passed legislation banning Internet hunting in 2005, effectively stopping this activity on Live-Shot.com, an internet hunting system could be started or accessed virtually anywhere across the country – including Alaska. Unfortunately, sick ideas have a tendency to spread. Furthermore, the operator of Live-Shot.com stated in a December 5, 2006 article in the Arizona Republic that "Internet hunting may go offshore," clearly indicating his desire to continue to pursue remote-control hunting.

Internet hunting is unethical and unsporting. It doesn't take a very strict definition of 'sportsmanship' to see that this practice, if allowed to proceed, would violate every ethical standard that hunters profess. It involves no hunting skill whatsoever, and distances the hunter entirely from the act of killing, denying animals any of the 'respect' that hunters avow they feel for their prey. This pay-per-view slaughter has garnered strong opposition from The National Rifle Association and the Safari Club International, as well as animal welfare proponents.

This activity also poses serious safety concerns. Allowing anyone who logs into a website to fire a weapon into a hunting preserve is a danger to anything that crosses the gun's path—including non-target wildlife as well as people.

Since the inception of Internet hunting, 26 states have passed preemptive legislation or regulations banning this egregious activity. Nine states, including Alaska, are considering legislation in the 2007 session. Most states have taken or are taking action to prevent the activity in their state. I encourage Alaska to do the same.

Thank you for the opportunity to comment on remote control and Internet hunting in Alaska. We urge your support of this important legislation. Thank you.

Sincerely,

Dave Pauli
Northern Rockies Regional Director
490 North 31st Street, Suite 215
Billings, MT 59101

HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

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Rep. Lindsey Holmes
Room 405
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MEMORANDUM

Date: April 16, 2007

To: Representative Kevin Meyer
Co-Chairman House Finance Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File HB220(JUD)

Attached are the following documents for the referral file for HB220(JUD):

- CSHB220(JUD) 25-LS0795\M
- Sponsor Statement
- Memo from Representative Buch re: changes in CS
- Fiscal Notes
  - DPS – 0
  - F&G – 0
- House Judiciary Committee Report
- CSHB220(RES) 25-LS0795\C
- Sectional
- HB220 25-LS0795\A
- Support

HB
227

HOUSE COMMITTEE REPO

(11)
Date Referred to Committee: April 26, 2007 **FURTHER REFERRALS: Finance**

Date of Committee Action: May 4, 2007

The JUDICIARY Committee considered: **HB 227**

HOUSE BILL NO. 227 **UNIFORM MONEY SERVICES ACT**

"An Act relating to the Uniform Money Services Act, to money transmission services, and to currency exchange services; and providing for an effective date."

Recommends it be replaced with [ ] HCS *or* [√] CS *for* HB227 (JUD)
***For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR*____** **[√] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to ___________Committee
[ ] Letter of Intent__________Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
CED	1	√		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
[signature]	Gruenberg	√			
[signature]	Lynn	X			
[signature]	Dahlstrom	X			
[signature]	Holmes	X			
Chair: [signature]	Ramras	X			
Chair:					

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
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Representative_Jay_Ramras@legis.state.ak.us

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Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Leg. Legal

Fax #: 2029 Number of pages including cover: 2

From: Jane Pierson

Date: May 4, 2007

Re: CSHB200 \E

Would you please go final on a HJUD CS for the above-referenced bill, with the attached amendment?

ADOPTED

25-LS0814\E.1
Bannister
4/27/07

#1

AMENDMENT

Rep. Ramras

OFFERED IN THE HOUSE

TO: CSHB 227(L&C)

1 Page 28, line 14, following the first occurrence of "that":
2 Insert "(A)"
3
4 Page 28, line 15, following "loans;":
5 Insert "or
6 (B) engages in credit card operations and maintains only one
7 office that accepts deposits, does not accept demand deposits or deposits that
8 the depositor may use for payments to third parties, does not accept a savings
9 or time deposit less than $100,000, and does not engage in the business of
10 making commercial loans;"

ADOPT

25-LS0814\E.1
Bannister
4/27/07

AMENDMENT #1

Rep. Ramras

OFFERED IN THE HOUSE
TO: CSHB 227(L&C)

1 Page 28, line 14, following the first occurrence of "that":
2 Insert "(A)"
3
4 Page 28, line 15, following "loans;":
5 Insert "or
6 (B) engages in credit card operations and maintains only one
7 office that accepts deposits, does not accept demand deposits or deposits that
8 the depositor may use for payments to third parties, does not accept a savings
9 or time deposit less than $100,000, and does not engage in the business of
10 making commercial loans;"

L

Representative Beth Kerttula

House Minority Leader

House Bill 227

Uniform Money Services Act

Sponsor Statement

House Bill 227 protects the public by strengthening the money services industry through enhanced regulatory structure for money transmitters and currency exchangers. The bill guarantees consumers certain information before they buy a money transfer, gives them a place to make complaints, and ensures money Alaskans send will be delivered if a money services business (MSB) gets into financial trouble.

HB 227 establishes a two-tiered system of licenses. A money transmitter license allows a person to both transmit money and exchange currency. A currency exchange license allows only currency exchange. License fees will cover the cost of regulation, and investigations will be funded by the industry.

The federal government identified MSBs as susceptible to use for money laundering and terrorist financing. The vast majority of MSBs are legitimate and work very hard to prevent criminals from using their businesses. HB 227 was suggested by the industry and is based on a model act by the National Conference of Commissioners on Uniform State Laws. The industry believes this basic regulation bill will prevent use of MSB services for criminal activities and help law enforcement weed out the rare exception.

I respectfully ask for your support of House Bill 227.

Alaska State Legislature ✧ District 3 ✧ Juneau
State Capitol ✧ Juneau, Alaska 99801-1182 ✧ (907) 465-4766 ✧ Fax (907) 465-4748
E-mail: Rep.Beth.Kerttula@legis.state.ak.us ✧ www.kerttula.net

Representative Beth Kerttula

House Minority Leader

MEMORANDUM

April 26, 2007

To: Representative Jay Ramras, Chair
House Judiciary Committee

From: Representative Beth Kerttula

Re: Sectional Analysis, HB 227

Because HB 227 adds significant new sections to the Alaska statutes, this sectional analysis differs from the traditional format. In addition to discussing the bill by section, it will briefly describe each new section of law created by Sec. 1.

This sectional analysis describes the House Labor & Commerce Committee CS presented for the committee's consideration.

HB 227 enacts the Uniform Money Services Act, drafted by the National Conference of Commissioners on Uniform State Laws. While the NCCUSL model act also regulates the business of check casing, HB 227 does not.

Sec. 1 of the bill creates a new Chapter 55 in Article six of the Alaska Statutes: the Alaska Uniform Money Services Act:

Article One of the chapter regulates the practice of money transmission.

Section 101 of AS 06.55, requires any individual or business that provides money transmission services to have a license. This license allows provision of both money transmission and currency exchange. This license is not transferable.

Section 102 lays out the requirements to apply for a money transmitter license.

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State Capitol ✧ Juneau, Alaska 99801-1182 ✧ (907) 465-4766 ✧ Fax (907) 465-4748
E-mail: Rep.Beth.Kerttula@legis.state.ak.us ✧ www.kerttula.net

Section 103 allows a money transmitter or currency exchanger licensed in another state to hold a license in Alaska if the other state has enacted the Uniform Money Services Act, or other licensing laws approved by the department. These applicants must pay the appropriate fees. The section sets a deadline for the department to make a decision, which can be extended for cause. A money services business licensed under this section is subject to all the reporting and compliance requirements of the Alaska act. An applicant under this section may appeal a denial.

Section 104 lays out security requirements to protect the public from a money transmitter bankruptcy. The department has the flexibility to accept certain assets in lieu of a bond. A security pledged to meet this requirement will ensure money orders or stored value obligations outstanding at the time of bankruptcy are honored.

Section 105 requires the department to investigate an applicant for a money transmission license. It sets a deadline for the department to make a decision, which can be extended for cause. The department may conduct an on-site investigation at the applicant's cost. An applicant may appeal a denial. This section does not apply to an initial license application under section 103.

Section 106 requires a licensed money transmitter to submit an annual report along with a license renewal fee. The section spells out the information required in the report and establishes late fees. The department may extend the renewal date for good cause.

Section 107 requires a money transmitter to maintain a net worth of at least $25,000.

Article Two of the chapter regulates the practice of currency exchange.

Section 201 requires any individual or business that provides currency exchange services and is not licensed under article 1, or an authorized delegate of a licensee, to have a currency exchange license. These licenses are not transferable. An exception is made if less than five percent of total revenues come from currency exchange.

Section 202 lays out the requirements to apply for a currency exchange license.

Section 203 requires the department to investigate an applicant for a currency exchange license. It sets a deadline for the department to make a decision, which can be extended for cause. The department may conduct an on-site investigation at the applicant's cost. An applicant may appeal a denial.

Section 204 requires a licensed currency exchanger to submit a biennial report along with a biennial license renewal fee. The section spells out the information required in the report, and establishes late fees. The department may extend the renewal date for good cause.

Article Three of the chapter governs authorized delegates.

Section 301 describes the relationship between a licensee and an authorized delegate. The contract between licensee and authorized delegate must require the authorized delegate to follow the laws governing money service businesses. An authorized delegate must remit money to the licensee according to the contract. An authorized delegate holds money in trust for the licensee. This section also requires the department to notify an authorized delegate when the license under which they operate is suspended, revoked, or not renewed. It prohibits an authorized delegate from providing money services beyond what is permitted to the licensee on whose behalf the authorized delegate operates unless the authorized delegate holds its own money transmission license. It prohibits the use of subdelegates.

Section 302 prohibits an authorized delegate from providing money services for anyone not licensed under the act.

Article Four of the chapter describes the department's investigation and enforcement authority.

Section 401 establishes the notice the department must give a money services licensee before an annual examination, and the circumstances under which the department can examine a licensee without notice. A licensee bears the reasonable cost of an examination. Information from examinations is confidential.

Section 402 lets the department cooperate with other states' money services regulators for joint investigations and enforcement activities.

Section 403 lays out when a licensee must make reports beyond the license renewal report. These include quarterly reports, material changes in license application information, and criminal charges and convictions, among others.

Section 404 specifies what must occur when a licensee has a change of control, including deadlines for reporting to the department. The department is given a deadline for deciding whether to approve a change of control. This section makes clear that a public sale of securities does not constitute a change of control, and allows a person to ask the department's to determine in advance whether a business transaction would constitute a change of control.

Section 405 lists the records a licensee must maintain for a period of three years, and lets the department include other records by regulation. These records must be available for inspection by the department.

Section 406 requires licensees and authorized delegates to file federally mandated money laundering, suspicious activity, and other reports with the Alaska Department of Law. This requirement is satisfied by timely filing of these reports with the federal government, as long as the federal authorities continue their current information sharing with state law enforcement.

Section 407 exempts records collected and reports prepared by the department under this act from disclosure under the Public Records Act, and lets the department share information with other government agencies that agree to protect the confidentiality of the information. The department may release a list of licensees, as well as aggregated financial data.

Article Five of the chapter describes certain investments a licensee may make.

Section 501 requires a licensee to maintain permissible investments at least equal to the face value of outstanding obligations. Investments are held in trust for the benefit of the purchasers and holders of the licensee's outstanding obligations.

Section 502 lists permissible investments. While some categories of investment are unlimited, the section sets maximum proportions of certain other investments a licensee may hold as allowable investments. The department has the power to add to the list by regulation.

Article Six of the chapter governs enforcement.

Section 601 describes the circumstances under which the department may revoke or suspend a money services license, place a licensee in receivership, or order a licensee to revoke an authorized delegate's designation.

Section 602 describes the circumstances under which the department may suspend or revoke an authorized delegate's designation.

Section 603 provides rules under which the department may issue a 'cease and desist' order to a licensee or authorized delegate in order to protect the public, and provides for judicial relief.

Section 604 allows enforcement matters to be settled using a consent decree.

Section 605 permits the department to issue civil fines for violations of statute, regulation, or orders under this act. It sets a maximum daily fine.

Section 606 establishes criminal penalties for intentionally falsifying records under this act, among other things. It also makes engaging in money services without the appropriate license a class A misdemeanor or class C felony, depending on how much is transmitted in a 30-day period.

Section 607 allows the department to issue an order to show cause against anyone providing money services without a license. It allows the department to petition the Superior Court for a restraining order, and lets a person subjected to such an order appeal to the superior court for relief. An order to cease and desist expires in 10 days unless the department commences administrative action under the act.

Article Seven of the chapter governs administrative proceedings.

Section 701 specifies that administrative proceedings under the act are subject to the Administrative Procedure Act, but the Office of Administrative Hearings shall conduct hearings.

Section 702 provides a due process right to a hearing for a licensee or authorized delegate who is the subject of a suspension, revocation, or other administrative sanction, subject to other provisions of the act. An applicant whose application is denied is also entitled to a hearing.

Section 703 gives the department the power to administer oaths and issue subpoenas, compel the attendance of witnesses and production of documents in conjunction with an investigation under the act. The department may ask the superior court to compel a person to obey its subpoenas.

Article Eight of the chapter lays out miscellaneous provisions.

Section 801 instructs those who administratively apply or judicially construe the act to do so with an eye toward uniformity among the states that adopt the Uniform Money Services Act.

Section 802 excludes some entities that may transmit money or exchange currency from regulation under the act. These include governments, banks, and others, including federally regulated brokers and commodity exchanges to the extent the money transfer or exchange is incidental to their primary business.

Section 810 requires licensees and authorized delegates to post a notice in plain view of the public, giving the address and telephone number of the department in case of consumer complaints.

Section 820 sets an upper limit of ten days for a licensed money transmitter or an authorized delegate to make the funds available to the intended recipient, unless the licensee or authorized delegate has reason to believe the transmission involves criminal activity or the customer orders a faster or slower service.

Section 830 requires a licensed money transmitter or currency exchanger, or an authorized delegate, to give the customer a receipt listing the amount presented, the fees, and the terms of exchange, if the transmission will be redeemed in a foreign currency.

Section 840 requires a licensed money transmitter or an authorized delegate to give a refund unless the money has already been transmitted, the licensee has reason to believe a crime is involved in transmitting or refunding the money, or the licensee is otherwise barred by law from making a refund.

Section 850 instructs the department to set fees and investigation charges that equal the department's actual costs in regulating and investigating money services licensees. These fees will be set by regulation under the Administrative Procedure Act and must be reviewed every year.

Section 890 defines certain terms as they are used only in sections 820-840.

Article Nine of the chapter lays out general provisions.

Section 990 defines terms used in the act.

Section 995 gives the act a short title: the Alaska Uniform Money Services Act.

Sec. 2 of the bill applies the act to money services provided after July 1, 2008. This will allow businesses adequate time to get licensed and give the department time to investigate applicants and issue licenses.

Sec. 3 allows the department to promulgate regulations and have them in place before the licensure requirements of the act go into effect.

Sec. 4 lets the department begin work on regulations immediately.

Sec. 5 makes the licensure and other requirements of Section 1 effective July 1, 2008.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB227-COM-BS-04-19-07
Bill Version: HB 227
() Publish Date:

Revision Date/Time (Note if correction):
Title: Uniform Money Services Act
Sponsor: Kerttula
Requester: House Labor & Commerce

Dept. Affected: Commerce
RDU: Banking & Securities (536)
Component: Banking & Securities
Component No. 2808

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	46.5	46.5	46.5	46.5	46.5	46.5
Travel	2.5	2.5	2.5	2.5	2.5	2.5
Contractual	28.0	28.0	28.0	28.0	28.0	28.0
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	2.0	2.0	2.0	2.0	2.0	2.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**80.0**	**80.0**	**80.0**	**80.0**	**80.0**	**80.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (1156)	**80.0**	**80.0**	**80.0**	**80.0**	**80.0**	**80.0**

FUND SOURCE (Thousands of Dollars)

Fund Source	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services	80.0	80.0	80.0	80.0	80.0	80.0
TOTAL	80.0	80.0	80.0	80.0	80.0	80.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: [ ]

POSITIONS

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Full-time						
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This legislation would require the licensing and regulation of entities involved with the transmission of money or currency exchanges. The division estimates there will be about 40 businesses subject to licensure and examination each year under the bill. The division assumes that many of the money transmitter businesses operating in the state will be subject to dual licensure as they are affiliated with a large national money transmitter company, such as Western Union. Alaska currently does not regulate this industry. The division anticipates the need for the addition of one-half of a new Investigator II position to carry out regulatory duties mandated by the Act, such as, licensing, complaint investigations and conducting on-site examinations. Travel funds would cover cost of the travel associated with examinations and training. Contractual expenses include funds for the Department of Law to draft legal documents, represent the division at administrative hearings resulting from license revocations/disciplinary actions, and enforcement orders.

Prepared by: Mark Davis, Director
Division: Banking and Securities
Phone 907.269.8144
Date/Time 4/19/07 5:41 PM

Approved by: Emil Notti, Commissioner
Agency: Commerce, Community, and Economic Development
Date 4/19/2007

STATE OF ALASKA
2007 LEGISLATIVE SESSION

BILL NO. HB 227

ANALYSIS CONTINUATION

Revenue: The division estimates this legislation would generate $80.0 in each of the first two years due to the initial licensing of an estimated 40 licensees at $2.0 per licensee. In years 3 and 4, it is estimated there will be an increase in the number of licensees from 40 to 50. In years 5 and 6, it is estimated there will be an increase in the number of licensees from 50 to 60. Because this legislation would require the department to establish fee levels so that the total amount of fees collected would approximately equal total regulatory costs, licensing fees would be expected to drop after the first two years.

Major Changes in HB 227

- Cleared up ambiguous language in the model act that could have been interpreted as allowing money transmitters "approved" to operate in Alaska by virtue of licensure in another Uniform Act state (06.55.103) to escape certain fees and reports by:
  - Making these transmitters licensees under the Alaska act
  - Subjecting them to the same fees as other licensees
  - Requiring the same renewal and ongoing reports as other licensees.
- Ensures money transmitters licensed in Alaska by virtue of licensure in another Uniform Act state (06.55.103) are entitled to a hearing if their application for initial licensure in Alaska is denied.
- Strengthened consumer protections by:
  - Requiring a notice posted at each location money services are provided telling consumers where they can make complaints (06.55.810)
  - Setting an upper limit on the time allowed for transmission of 10 days, unless the consumer orders a faster service (06.55.820)
  - Guaranteeing the consumer a receipt listing all fees and the terms of exchange, if a money transmission involves a foreign currency (06.55.830)
  - Guaranteeing the consumer a refund if the money has not yet been delivered. (06.55.840)

One change is requested in the House Judiciary Committee:

- In response to the recent United States Supreme Court decision in *Waters v. Wachovia*, the amendment would reinstate 'credit card banks' to the bill's definition of "bank." This effectively exempts such institutions from the bill, in keeping with the high court's decision.

Alaska Bankers Association
P.O. Box 100720 • Anchorage, Alaska 99510-0720 • 907-777-3011 • Fax 907-777-3029

April 12, 2007

Honorable Kim Elton
Alaska Senate
State Capitol, Room 506
Juneau, AK 99801-1182

Re: SB 116 – Uniform Money Services Act

Dear Senator Elton:

On behalf of the members of the Alaska Bankers Association, I would like to express our support for enactment of SB 116.

Our members all routinely deal with Money Service Bureaus (MSBs). Our regulators have identified MSBs as potential instrumentalities for money laundering and terrorist financing. At the direction of our regulators we must take special precautions and follow specified procedures when dealing with MSBs. Regulating MSBs in the manner prescribed by SB 116 will assist our members in satisfying regulatory requirements respecting transactions with MSBs imposed on our members.

Furthermore, we believe that the same regulation of MSBs will provide needed consumer protection for our many of our customers who also engage in transactions with MSBs.

If it would be helpful for our members to otherwise express support for SB 116 please let me know.

Sincerely yours,

David A. Lawer, President
Alaska Bankers Association

Senior Vice President & General Counsel
First National Bank Alaska

The National Money Transmitters Association, Inc.

12 Welwyn Road, Suite C
Great Neck, NY 11021
tel (516) 829-2742
fax (516) 706-0203
www.nmta.us

March 19, 2007

Senator Johnny Ellis
Labor & Commerce Committee Chair
State Capitol
Juneau, AK 99801
Fax (907) 465-2529
Sen.Johnny.Ellis@legis.state.ak.us

By mail, email and fax (1 page)

Re: Request for a Hearing on the proposed Uniform Money Services Act (SB 116)

Dear Senator Ellis:

The NMTA was founded in 1999 to defend the rights and the very survival of the state-licensed remittance companies of the United States. Currently, we have 44 member companies that, in the aggregate, handle over $19 billion a year in migrant worker remittances.

When a transmitter lives in a state that has no license requirement, the NMTA relaxes its rules if he seems OK. One of our money transmitter members, Mr. Allyn Moore, a resident of Alaska, has been shut out of the banking system on 'anti-money laundering compliance grounds.' This was not due to any failing on his part, but because the Federal government says that all money services businesses are high-risk.

Without banking facilities, Mr. Moore is out of business, so he would like Alaska to pass a money transmitter law. What does state licensing of money services businesses have to do with Mr. Moore getting his bank account back?

The first step on the road to recognition for small-to-mid-size money transmitters like Mr. Moore, is getting a state license. Since, in 1994, the US Congress decided to leave the regulation of money services businesses to the individual states, there is no federal certification available. We are very grateful to Senator Kim Elton, who introduced the subject Uniform Money Services Act, for his assistance in taking this first step.

The banking crisis we are going through is of immediate concern, but forty-seven states have decided to regulate money transmission or check selling for other compelling reasons:

- To protect the consumer and instill public confidence in the industry
- To assure transparency and disclosure in price and service
- To assure the safety and soundness of the supervised firms
- For the prevention and detection of financial crime

For all these reasons, we ask that you hold a hearing as soon as possible on the need for regulation of the Money Services Industry in Alaska and the need to bank these businesses. The NMTA supports SB 116, and urges its passage as soon as possible.

Please call me with any questions you may have, and thank you for your attention. The NMTA stands ready to help in any way we can.

Sincerely,

David Landsman

David Landsman
Executive Director

cc: Mr. Jesse Kiehl

email: david@nmta.us
cellular: (917) 921-9529

A ALASKA LASKA PUBLIC INTEREST RES. ALASKA PUBLIC INTEREST RESEARCH
PO Box 101093 ♦ Anchorage, Alaska 99510-1093 ♦ Ph: (907) 278-3661 ♦ Fax: (907) 278-9300 ♦ email: akpirg@akpirg.org

AkPIRG Supports SB 116 – UNIFORM MONEY SERVICES ACT

To: Senate Labor and Commerce Committee

Dear Committee Members:

On behalf of the Alaska Public Interest Research Group (AkPIRG) and our 1,000 Alaskan members, I am writing you to urge your support for Senate Bill 116 – Uniform Money Services Act. This act will protect Alaskan consumers and those in Alaska who use money transfer services.

The bill will require any individual or business that provides money transmission services to have a license. This license allows provision of both money transmission and currency exchange. This will bring Alaska in line with other states who have adopted a uniform standard.

The bill will not only establish a the criteria for operating in Alaska, but will set up security requirements to protect the public from a money transmitter bankruptcy. In addition, a licensed money transmitter will be required to submit an annual report along with their license renewal fee. Thus, the State can keep better track of these businesses, and when necessary investigate and enforce the laws.

Legitimate money transmission businesses in Alaska are in favor of this legislation and want to see it passed so that disreputable ones will not be able to compete. This bill is good for consumers in Alaska and will bring us in line with other states who have adopted these uniform rules.

Thank you for your support of SB 116.

Sincerely,

Steve Cleary

Steve Cleary
AkPIRG Director

Teleconference Order Form   FAX TO 465-2864

Sponsor and/or Committee Name			Date
House Finance			
Start/End Time	**Chairing site**	**Juneau Room**	**Testimony**
1:30 pm	Capitol	519	Yes ✓ No __ Invitational __
Contact Person and	**Phone Number**	**Other sites may add?**	**Testimony Limit**
		Yes	

Subject of meeting and/or Bills on agenda
HB 227, Uniform Money Services Act

Sites - LIOs		Sites - Offnets	Phone #
Anchorage		1 Washington, DC caller	
Barrow		1 New York caller	
Bethel			
Cordova			
Delta Junction			
Dillingham			
Fairbanks			
Glennallen			
Homer			
Juneau			
Kenai			
Ketchikan			
Kodiak			
Kotzebue			
Matsu			
Nome			
Petersburg			
Seward			
Sitka			
Tok			
Valdez			
Wrangell			

Notes

HB
255

HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
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Rep. Max Gruenberg
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Rep. Lindsey Holmes
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MEMORANDUM

Date: March 11, 2008

To: Representative Kevin Meyer
Co-Chair House Finance Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Referral File for HB255

Attached please find the following documents, which constitute the referral file for HB255.

- Sponsor Statement
- CSHB255(JUD) (25-LS0914\O)
- Analysis of the changes
- Flow chart of the dual sentencing process
- HB255 (25-LS0914\C)
- Sectional Analysis for version \C
- Fiscal Notes
    - COR
    - HSS
    - ADM- OPA
    - ADM – PDA
    - LAW
- Bill History
- Relevant Statutes
- *In the Matter of the Welfare of: J.L.P., Child*
- Support
- HJUD Committee Report

ALASKA STATE LEGISLATURE

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House
District 28

Sponsor Statement
Draft CS House Bill 255 ( )

Currently, Alaska's dual sentencing law provides that a juvenile can receive both a juvenile system order and have an adult sentence pronounced only for a very narrow range of offenses. A youth must be at least 16 years old and either have committed a felony against a person and also been previously adjudicated for a felony against a person; or have committed Sex Abuse of a Minor in the Second Degree. This narrow range of eligibility has led to Alaska's dual sentencing law being used very rarely. The Alaska Division of Juvenile Justice has recorded only five cases of the dual sentencing law being used in the past 10 years.

CS HB 255 broadens the kinds of offenses that can allow a juvenile to be eligible for dual sentencing, and does not require that the juvenile be previously adjudicated for a serious offense, as is current law. This bill also creates the ability to hold dual-sentenced juveniles under supervision or custody longer than is currently allowed. Requiring these juveniles to remain on probation or under custody for an additional year will help improve public safety and will serve to motivate these juveniles to remain crime-free—or else risk having an adult sentence imposed.

The new proposal allows for a dual-sentenced youth to be placed on supervised probation up to their 20th birthday, instead of up to their 19th birthday. Other juveniles can be maintained under juvenile jurisdiction to age 20 only if the DHSS request this of a court, and both the court and the juvenile agree to the extended jurisdiction.

The new proposal also clarifies the process under which a dual-sentenced juvenile who fails in the juvenile system can be transferred to an adult facility. Under the CS, the transfer can be made once the Department files a petition to impose the adult sentence, and the juvenile can be maintained in the adult facility pending resolution of this petition. This will help ensure that recalcitrant, dangerous juveniles are not being maintained in a juvenile facility alongside younger, less dangerous juveniles.

Ultimately, this CS creates a safe expansion of the dual sentencing law by removing the requirement that a juvenile who commits certain B felonies must have been previously adjudicated for a serious felony charge before they can be eligible. The bill creates a means through which juveniles who commit serious assaults, sex offenses, arson, drugs and weapons crimes can be held accountable longer and more effectively than is currently allowed, and motivates them to change their law-breaking behavior before they become adults.

About 50 more juveniles a year would become eligible for dual sentencing under this change. Use of dual sentencing would remain up to the discretion of the DHSS and the District Attorney. The Division of Juvenile Justice estimates that 12-24 juveniles a year would be referred for dual sentencing under the proposed bill.