

# MEMORANDUM

State of Alaska  
Department of Law

TO: Hon. John B. "Jack" Coghill  
Lieutenant Governor

DATE: November 30, 1993

FILE NO.: 663-94-0267

TEL. NO.: 465-3600

SUBJECT: Initiative application  
relating to the  
relocation of the  
Alaska Legislature  
or the Capital of  
Alaska

FROM: Barbara J. Blasco  
Assistant Attorney General  
Governmental Affairs Section - Juneau

## **I. Introduction and Summary**

You have asked us to review an application for an initiative relating to the relocation of the Alaska legislature or the capital of Alaska. The application and the proposed bill comply with the constitutional and statutory provisions governing the use of the initiative. Therefore, provided the required number of signatures and addresses of qualified voters have been submitted, we recommend that you certify the application and so notify the initiative committee. Preparation of the petitions may then commence in accordance with AS 15.45.090.

## II. Summary of the Proposed Bill

The bill proposed by this initiative application requires that before state money may be expended to physically relocate the capital or the legislature from the present location, the voters must approve, in a statewide election, a bond issue that includes all bondable costs to the state of the relocation "of a functional state legislature or capital to the new site over the twelve year period following such approval."<sup>3</sup> Sec. 2. This section also provides that the commission established in section 3 of the bill "shall determine all bondable costs and total costs" of relocation, including but not limited to certain specified types of costs.

Section 3 of the bill calls for the legislature to establish a commission composed of nine members (a chairperson and two members from each judicial district) appointed by the governor and confirmed by the legislature. Section 3 states that the commission is to "determine the costs required by initiatives or legislative enactments authorizing relocation of any of the present functions of state government."

Section 1 of the bill is a purpose section. It states that the purpose of the bill is to guarantee to the people their right to know and to approve in advance all costs of relocating

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<sup>3</sup> The proposed initiative is quite similar to the initiative adopted in 1978 popularly known as the "FRANK Initiative." The 1978 FRANK Initiative required that before state money could be expended to physically relocate the capital from Juneau, the voters would have to approve, in a statewide election, a bond issue which included all bondable costs of the relocation through 1992. The bondable costs were to be determined by a commission created by the legislature. In determining bondable costs, the commission was required to also determine total costs to the state. The 1978 initiative stated that its purpose was to insure that the people of Alaska would have the opportunity to make an intelligent and objective decision on relocating the capital with all pertinent data available to them concerning the costs to the state, and to insure that the costs of relocating the capital would not be incurred by the state without the approval of the electorate. In 1982, the voters rejected a ballot proposition that would have authorized the issuance of bonds to finance relocation of the capital. Upon failure of this proposition, the FRANK Initiative and all other existing legislation relating to the relocation of the capital was repealed. Sec. 1, ch. 54, SLA 1981.

the capital or the legislature; to insure that the people will have an opportunity to make an informed and objective decision on relocation; and to insure that the costs of relocation will not be incurred by the legislature without the approval of the electorate.

### **III. Analysis**

Under AS 15.45.070, the lieutenant governor is required to review an application for a proposed initiative and either "certify it or notify the initiative committee of the grounds for denial." The grounds for denial of an application are that (1) the proposed bill is not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors. AS 15.45.080.

#### **A. The Form of the Application**

The form of an initiative application is prescribed in AS 15.45.030. That statute requires that an application include (1) the proposed bill to be initiated; (2) a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; (3) the designation of an initiative committee of three sponsors who will represent all sponsors and subscribers in matters relating to the initiative; and (4) the signatures and addresses of not less than 100 qualified voters. The application meets the first three requirements. With respect to the fourth requirement, your office must determine whether the application contains the signatures and addresses of not less than 100 qualified voters.

#### **B. The Form of the Proposed Bill**

The form of a proposed initiative bill is prescribed by AS 15.45.040, which requires that (1) the bill be confined to one subject; (2) the subject be expressed in the title; (3) the enacting clause state, "Be it enacted by the People of the State of Alaska;" and (4) the bill not include prohibited subjects. The prohibited subjects--dedication of revenue, appropriations, the creation of courts or the definition of their jurisdiction, rules of court, and local or special legislation--are listed in article XI, section 7, of the Alaska Constitution and in AS 15.45.010. Constitutional amendments are also a prohibited subject. Starr v. Hagglund, 374 P.2d 316, 317 n.2 (Alaska 1962).

We conclude that the proposed initiative meets the requirements of AS 15.45.040.<sup>4</sup> However, additional comment on the subject matter limitation concerning appropriations is necessary.

The initiative may not be used to make or repeal an appropriation. Alaska Const. art. XI, § 7; AS 15.45.010. The

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<sup>4</sup> We are unable to locate an attorney general's opinion on the issue of whether the 1978 FRANK Initiative met the requirements for an initiative. However, the initiative was placed on the ballot and approved by the voters on November 7, 1978. There are several opinions concerning the FRANK Initiative and related legislation, including a lengthy opinion by Attorney General Avrum M. Gross addressing the requirement that "all bondable costs" be approved by the voters before the expenditure of any money to physically relocate the capital. 1978 Op. Att'y Gen. No. 9 (Feb 16; 663-78-0469).

Alaska Supreme Court has reviewed and defined what constitutes an impermissible appropriation by initiative. City of Fairbanks v. Fairbanks Convention and Visitors Bureau, 818 P.2d 1153 (Alaska 1991); McAlpine v. University of Alaska, 762 P.2d 81 (Alaska 1988); Alaska Conservative Political Action Comm. v. Municipality of Anchorage, 745 P.2d 936 (Alaska 1987); Thomas v. Bailey, 595 P.2d 1 (Alaska 1979).

This initiative provides that prior to the expenditure of state money to relocate the capital or the legislature from the present location, the voters must approve a bond issue that includes "all bondable costs" to the state of relocation of the capital or the legislature over the twelve-year period following such approval. It also states in the purpose section that a purpose of the initiative is to guarantee to the people their right to know and to "approve in advance all costs" of relocating the capital or the legislature.

The initiative's requirement of voter approval of a bond issue does not constitute an appropriation. The Alaska Supreme Court considered the distinction between a bond authorization and an appropriation in Thomas v. Rosen, 569 P.2d 793, 797 (Alaska 1977). In Rosen, the court was faced with the question of whether the governor's exercise of the item veto with respect to a general obligation bond authorization was unconstitutional because a bond authorization was not an "appropriation." The court held that general obligation bond authorizations do not qualify as appropriations under article II, section 15, of the Alaska Constitution, which empowers the governor to use his power of veto to "strike or reduce items in appropriation bills." Therefore, the governor's exercise of the veto power violated separation of powers. In reaching this conclusion, the court found a variety of distinctions between state debt financing and other appropriations from public revenues.

Section 2 of the proposed initiative provides that the voters must approve a bond issue that includes "all bondable costs" of relocation of the legislature or the capital. The people clearly have the authority to approve the incurrence of state debt for capital improvements. Alaska Const. art. IX, § 8. This bill does not appropriate any funds for this purpose<sup>5</sup> nor

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<sup>5</sup> The proposed bill does not contain any appropriation language. However, even if it did, that would not necessarily make the bill an "appropriation." The act at issue in Rosen

does it "designate the use of state assets in a manner that is executable, mandatory, and reasonably definite with no further legislative action." McAlpine v. University of Alaska, 762 P. 2d at 91. Thus, this section of the proposed bill does not cause the initiative to make an appropriation.

The statement in section 1 that one of the purposes of the bill is to guarantee to the people their right to know and "approve in advance all costs of relocation" also does not constitute an appropriation. This language is problematic only in that it indicates an intent to have the people approve "all costs," which could include costs covered by a legislative appropriation for an item not covered by a bond issue. Items funded by appropriation are not subject to approval by initiative or referendum. However, the inclusion of this language does not cause this initiative to make an appropriation. See McAlpine, 762 P.2d at 91. Whether this language would be effective to require submittal of legislative appropriations to the voters is a question of implementation that may have to be addressed at a later time, but does not constitute grounds for denial of certification of the application.

In addition, section 1 is the purpose section of the bill; the mandatory requirements concerning voter approval are in section 2. Section 2 provides that prior to the expenditure of state money to relocate the capital or the legislature, the voters must approve "all bondable costs to the State"; it does not require voter approval of "all cost" or "total costs." In fact, Section 2 specifically distinguishes between "bondable costs" and "total costs" when it states that the commission is to determine both of these types of costs.

Finally, this interpretation of the proposed bill is consistent with the Alaska Supreme Court's mandate that "the people's right of initiative should be liberally construed." McAlpine, 762 P.2d at 91. If an initiative can be interpreted in a manner consistent with the constitution, that interpretation must prevail. Boucher v. Engstrom, 528 P.2d 456, 462 (Alaska

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contained language indicating that in the event of voter approval for the issuance of the bonds, funds were to be "appropriated" out of the general fund to carry out the provisions of the act. The court determined that this language did not make the act an appropriation. 569 P.2d at 797.

1974).<sup>6</sup>

#### **IV. Impartial Summary of the Proposed Bill**

AS 15.45.090(2) requires that the initiative petitions include an impartial summary of the subject matter of the bill. We recommend the following for purposes of the impartial summary:

"An Act relating to the relocation of the Alaska Legislature or Capital of Alaska"

This bill, if passed, would require that before state money may be expended to relocate physically the capital or the legislature from the present location, the voters must approve, in a statewide election, a bond issue that includes all bondable costs to the state of the relocation of a functional state legislature or capital to the new site over the twelve-year period following such approval. It would also require that the total costs of relocation be determined. Bondable costs and total costs include: moving personnel and offices to the relocation site; planning, building, furnishing, using, and financing facilities at least equal to those provided by the present capital city; and the social, economic, and environmental costs to the present and relocation sites. The bill would establish a nine-member commission, appointed by the governor and confirmed by the legislature, to determine all bondable costs and total costs.

#### **V. Conclusion**

For the reasons discussed above, we recommend that you certify the initiative application and so notify the initiative committee. Please contact us if we can be of further assistance.

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<sup>6</sup> Section 3 of the proposed bill provides that the members of the commission are appointed by the governor "and confirmed by the legislature." The members of this commission would not be subject to confirmation under article III, section 26, of the Alaska Constitution. Thus, the legislative confirmation requirement may run afoul of the separation of powers doctrine because the legislature would be interfering with an executive function. Even assuming it does, however, this is not a basis for denying certification of the application.

Hon. John B. "Jack" Coghill  
Lieutenant Governor  
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cc: Joseph Swanson, Director  
Division of Elections