

# MEMORANDUM

## State of Alaska Department of Law

TO: The Honorable Fran Ulmer  
Lieutenant Governor

DATE: July 20, 1999

FILE NO: 663-99-0259

TEL. NO: 465-3600

SUBJECT: Initiative Petition Regarding  
Alaska's Minimum Wage

FROM: Marjorie L. Vandor  
Assistant Attorney General  
Governmental Affairs Section

We have reviewed the application for an initiative for a proposed bill entitled "An Act to increase Alaska's minimum wage to \$6.50 per hour effective January 1, 2001, \$6.75 per hour effective January 1, 2002 and thereafter, adjusted annually for inflation." We conclude that the application meets for-form requirements of AS 15.45.030 and AS 15.45.040. Our analysis follows.

### **I. Form of the application**

We have reviewed the application for compliance with statutory form requirements. AS 15.45.030 provides:

**Form of application.** The application shall 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 and subscribers in matters relating to the initiative, and (4) the signature and addresses of not less than 100 qualified voters.

The application includes the bill to be initiated and a statement that the sponsors are qualified voters. An initiative committee of three sponsors is designated. The Division of Elections has verified that at least 100 of the voters who signed are qualified voters. And, the signature pages accompanying the application contain a statement that the proposed bill was attached at the time the sponsors and the qualified voters signed the application. Thus, all requirements of AS 15.45.030 appear to have been met.

## **II. Form of the proposed bill**

We have also reviewed the proposed bill to determine whether it meets statutory form requirements. AS 15.45.040 provides:

**Form of proposed bill.** The proposed bill shall be in the following form:

- (1) the bill shall be confined to one subject;
- (2) the subject of the bill shall be expressed in the title;
- (3) the enacting clause of the bill shall be “Be it enacted by the people of the State of Alaska”;
- (4) the bill may not include subjects restricted by AS 15.45.010.

The proposed bill is confined to one subject (i.e., minimum wage) with the subject expressed in the title, and includes the correct enacting clause. And, the proposed bill does not include any subjects restricted from enactment by initiative under the Alaska Constitution article XI, section 7, and AS 15.45.010.<sup>1</sup> Therefore, the proposed bill meets the form requirements of AS 15.45.040.

## **III. Content of the proposed bill**

The proposed initiative, attached to the application, consists of three sections. Section 1, Findings and Declaration, recites a list of reasons to raise Alaska’s minimum wage.

Section 2, Purpose Clause, restates the title of the proposed bill. Section 3 is the actual proposed law which apparently is a repeal and readoption of the current Alaska minimum wage law, AS 23.10.065(a). Section 3 of the proposed initiative states that the proposed law is an amendment to AS 23.10.065(a), and that it is adding a new subsection. However, according to the *Manual of Legislative Drafting*, published by the Legislative Affairs Agency, the drafting techniques and requirements for amending current law are not met under the version provided with this initiative application. According to the *Manual of*

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<sup>1</sup> An initiative may not be proposed to dedicate revenue, to make or repeal appropriations, to create courts, to define the jurisdiction of courts or prescribe their rules, or to enact local or special legislation.

*Legislative Drafting*, p. 15, there is a choice of three techniques for amending the statutes: (1) regular amendment; (2) repeal and reenactment of the affected section with the same coding; and (3) repeal of the affected section and enactment of a new section with different coding. Under a regular amendment, the drafter must underline in bold new language being added and bracket language to be deleted. *Id.* at 16. With this initiative, because there already exists a subsection (a) in AS 23.10.065, a “new” subsection (a) cannot be proposed as an amendment to itself. Subsection (a) must be amended under one of the three drafting techniques. If amendments to be made in a section are so numerous or complicated that underlining or bracketing would confuse a reader, the technique of “repealing and reenacting” may be used. *Id.* at 17. Under the repeal and reenact technique, section 3 of the proposed initiative would read as follows:

**Section 3.** AS 23.10.065(a) is repealed and reenacted to read:

(a) Except as otherwise provided for in law, an employer shall pay to each employee a minimum wage, as established herein, for hours worked in a pay period whether the work is measured by time, piece, commission or otherwise. An employer may not apply tips or gratuities bestowed upon employees as a credit toward payment of the minimum hourly wage required by this section. Tip credit as defined by the Fair Labor Standards Act as amended does not apply to the minimum wage established by this section. Beginning with the passage of this Act, the minimum wage shall be \$6.50 per hour effective January 1, 2001, \$6.75 per hour effective January 1, 2002 and thereafter adjusted annually for inflation. The adjustment shall be calculated each September 30, for the proceeding January--December calendar year, by the Alaska Department of Labor, using the CPI-Anchorage. Such adjustment shall take effect January 1 of the following year.

We believe that it would be less confusing for voters if the proposed law were presented as a repeal and reenactment of AS 23.10.065(a), as set out above. Use of this drafting technique to amend the law presents no substantive wording changes from the language presented with the petition. To set out the proposed amendments to AS 23.10.065(a) through the bracketing and underlining drafting technique may be considered too intrusive in the initiative process, as well as confusing to voters.

We recommend that the application be certified under AS 15.45.070, consistent with our advice respecting section 3, and the sponsors be informed that the proposed bill will be presented as a repeal and reenactment of AS 23.10.065(a) in the

initiative petition booklets for the reasons discussed above.<sup>2</sup>

#### **IV. Impartial Summary -- AS 15.45.090(2)**

We propose the following impartial summary of the initiative for inclusion in the initiative petition booklets pursuant to AS 15.45.090(2):

##### **Bill Increasing Alaska's Minimum Hourly Wage**

This bill would increase Alaska's minimum hourly wage to \$6.50 per hour starting January 1, 2001. Then, on January 1, 2002, the minimum hourly wage would increase to \$6.75 per hour. Each year thereafter, the minimum hourly wage would be adjusted by the State. The yearly adjustment would be based on inflation using the Consumer Price Index for Anchorage. Should this initiative become law?

This summary has a Flesch test score of 56.117 and thus meets the readability standards of AS 15.60.005.

Please contact me if we can be of further assistance to you on this matter.

MLV:jn

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<sup>2</sup> In our opinion, the initiative sponsors' failure to comply with Legislative drafting techniques in Section 3 is not a basis upon which you should deny certification of the application. There is no requirement in AS 15.45.030 or AS 15.45.040 that initiatives comply with the *Manual of Legislative Drafting*. We do, however, believe that the sponsors should be informed of the need to amend the lead-in language to Section 3 to avoid voter confusion.