

July 29, 2015

The Honorable Byron Mallott  
Lieutenant Governor  
P.O. Box 110015  
Juneau, Alaska 99811-0015

Re: *15PFVR Ballot Measure Application Review*  
AGO No. JU2015200441

Dear Lieutenant Governor Mallott:

You asked us to review an application for an initiative entitled: “An Act relating to the permanent fund dividend application and the registration of voters; and providing for an effective date” (hereafter, “15PFVR”). Because the application complies with the specific constitutional and statutory provisions governing the initiative process, we recommend that you certify the application.

**I. The proposed initiative bill.**

The bill proposed by this initiative would amend, repeal, and reenact various provisions of Alaska law to allow voters to register to vote when they apply for a permanent fund dividend (“PFD”). The bill is eleven sections long, and provides as follows:

**Section 1** would add a statement of findings and intent to the uncodified law, finding that the cornerstone of American democracy is the right to vote; the State should avoid needless bureaucratic hurdles to voting; the State currently requires individuals who wish to receive a PFD to file an application; PFD applicants who register to vote must fill out a separate application; the State can combine the PFD application with voter registration; and the State can use PFD-application data to ensure that voter registration data is current.

**Section 2** would amend AS 15.07.050(a) by adding a new option for voter registration: completing a PFD application under AS 43.23.015.

**Section 3** would amend AS 15.07.060(e) by adding a PFD application as one of the modes of initial voter registration that requires certain verification by the Division of Elections.

**Section 4** would amend AS 15.07.070(f) to clarify that a PFD application made under AS 43.23.015 that contains certain information that is also required for voter registration shall be considered a complete voter registration application and accepted under AS 15.07.070(i). PFD applications would be accepted as voter registration applications even without some information otherwise required under AS 15.07.060(5), (6), (10)-(12), including:

- a statement of previous voter registrations in other jurisdictions and the address of the previous registration;
- a declaration that the applicant will be 18 or older within 90 days after registration;
- any former names the applicant previously used to registered to vote; and
- a certification that the applicant understands a false statement may be a misdemeanor.

**Section 5** would amend AS 15.07.070 by adding a new subsection providing that the Division of Elections must register voters who submit a PFD application if the applicant includes voter registration information on that application. Specifically, the Division of Elections would cooperate with the Department of Revenue to harmonize the agencies' forms and ensure that the PFD application gives the applicant an opportunity to register to vote. After the Department of Revenue sends the application to the Division of Elections, the Division must send a notice to each applicant not already registered to vote at the address on their PFD application. The notice must describe how to decline to register to vote; how to maintain existing registration; how to register at a different address; and how to affiliate with a political party. The notice must also inform the applicant that by failing to respond, the applicant consents to cancelling voter registration in another jurisdiction. If the applicant does not decline voter registration within thirty calendar days of that notice, the PFD application will constitute a complete voter registration form. Then, if the Division finds the applicant qualified to vote, it will place the voter's name on the master register and send the voter a voter identification card. If the registration is denied, the Division shall notify the voter in writing and explain the reasons for the denial. Finally, anyone who inadvertently becomes registered under this section through a clerical error will not be found on that basis to have intended to unlawfully register to vote.

**Section 6** would amend AS 43.23.015(b) to include on the PFD application form a means for an applicant eligible to vote to register on that form.

**Section 7** would repeal and reenact AS 43.34.016 to require the Department of Revenue to adopt regulations creating a procedure for providing the Division of Elections with the mailing address of all PFD applicants, as well as records from PFD applications reflecting information required by AS 15.07.060 for each PFD applicant who is a U.S. citizen and 18 years of age, or who will be 18 years of age within 90 days of the date of the application.

**Sections 8 and 9** would amend AS 43.23.017 by amending subsection (a) and adding a new subsection (c) providing that information submitted on a PFD application that is used to register a PFD applicant to vote shall be kept confidential by the Division of Elections under AS 15.07.195.

**Section 10** would add a severability clause to the uncodified law.

**Section 11** would provide for an effective date of 90 days post enactment.

## **II. Analysis.**

Under AS 15.45.070, the lieutenant governor must review an application for a proposed initiative bill and within sixty calendar days of receipt either “certify it or notify the initiative committee of the grounds for denial.” The application for the 15PFVR initiative was filed on June 11, 2015. The sixtieth calendar day after the filing date is August 10, 2015. Under AS 15.45.080, certification shall only be denied if: “(1) the proposed bill to be initiated is not confined to one subject or is otherwise 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.”

### **A. Form of the proposed initiative bill.**

In evaluating an application for an initiative bill, you must determine whether the application is in the “proper form.”<sup>1</sup> Specifically, you must decide whether the application complies with “the legal procedures for placing an initiative on the ballot,

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<sup>1</sup> Alaska Const. art. XI, § 2.

and whether the initiative contains statutorily or constitutionally prohibited subjects which should not reach the ballot.”<sup>2</sup>

The form of an initiative bill is prescribed by AS 15.45.040, which requires four things: (1) that the bill be confined to one subject; (2) that the subject be expressed in the title; (3) that the bill contain an enacting clause stating: “Be it enacted by the People of the State of Alaska”; and (4) that the bill not include prohibited subjects. An initiative includes a prohibited subject when it makes or repeals appropriations; enacts local or special legislation; dedicates revenue; or creates courts, defines their jurisdiction, or prescribes their rules.<sup>3</sup>

This initiative bill meets the first three requirements under AS 15.45.040. It is confined to one subject—voter registration by PFD application. The subject is expressed in the title, and the bill has the required enacting clause.

The final requirement—that the initiative bill not contain a prohibited subject—is met as well. The Alaska Supreme Court has adopted a “deferential attitude toward initiatives”<sup>4</sup> and has consistently recognized that the constitutional and statutory provisions pertaining to the use of the initiative should be liberally construed in favor of allowing an initiative to reach the ballot.<sup>5</sup> Indeed, the court has “sought to preserve the people’s right to be heard through the initiative process wherever possible.”<sup>6</sup> We have reviewed the initiative bill with these principles in mind and conclude that it contains no prohibited subject. As such, the fourth requirement relating to the form of the initiative bill is satisfied.

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<sup>2</sup> *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 87 n.7 (Alaska 1988).

<sup>3</sup> AS 15.45.010; *see also* Alaska Const. art. XI, § 7 (prohibiting dedicating revenue, creating courts, defining court jurisdiction or prescribing court rules).

<sup>4</sup> *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1181 (Alaska 1985).

<sup>5</sup> *McAlpine*, 762 P.2d at 91; *Yute Air*, 698 P.2d at 1181.

<sup>6</sup> *Hughes v. Treadwell*, 341 P.3d 1121, 1125 (Alaska 2015); *Pebble Ltd. P’ship ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1076 (Alaska 2009).

Unless the initiative bill violates a subject matter restriction or the bill is clearly unlawful under controlling authority, the bill must proceed to the ballot.<sup>7</sup> Specifically, you may deny certification only if you determine that the initiative bill violates any of the liberally construed constitutional and statutory provisions regulating initiatives.<sup>8</sup> This initiative bill does not appear to violate any of these provisions. With respect to other concerns “grounded in general contentions that the provisions of an initiative are unconstitutional,” you may deny certification only if “controlling authority leaves *no room for argument* about its unconstitutionality.”<sup>9</sup> We find no such controlling authority and therefore recommend that the initiative be certified.

### **B. Form of the application.**

The form of an initiative application is prescribed by AS 15.45.030, which provides that the application must include the

- (1) proposed bill;
- (2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and

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<sup>7</sup> See, e.g., *State v. Trust the People*, 113 P.3d 613, 624 (Alaska 2005); see also *Alaska Action Ctr., Inc. v. Municipality of Anchorage*, 84 P.3d 989, 992 (Alaska 2004) (“The executive officer may only reject the measure if controlling authority leaves no room for argument about its unconstitutionality. The initiative’s substance must be on the order of a proposal that would mandate local school segregation based on race in violation of *Brown v. Board of Education* before the clerk may reject it on constitutional grounds. And absent controlling authority, the court should not decide this type of challenge until the initiative has been enacted by the voters.”) (internal citations and quotations omitted). The lieutenant governor and a municipal clerk have analogous roles in certifying state and municipal initiatives. *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 898 (Alaska 2003).

<sup>8</sup> *Alaska Action Ctr.*, 84 P.3d at 992.

<sup>9</sup> *Id.* (internal citations and quotations omitted) (emphasis added).

- (3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

The application on its face meets the first and third requirements, as well as the latter portion of the second requirement regarding the statement on the signature page. With respect to the first clause of the second requirement, we understand that the Division of Elections has determined that the application contains the signatures and addresses of not fewer than 100 qualified voters.

### **C. Number of qualified sponsors.**

As noted above, AS 15.45.030(2) requires an initiative application to contain the signatures and addresses of not fewer than 100 qualified voters. We understand that the Division of Elections has determined that this application meets that requirement.

### **III. Proposed ballot and petition summary.**

We have prepared a ballot-ready petition title and summary to assist you in complying with AS 15.45.090(2) and AS 15.45.180, as is our practice. Under AS 15.45.180, the title of an initiative is limited to twenty-five words and the body of the summary is limited to the number of sections in the proposed law multiplied by fifty. "Section" in AS 15.45.180 is defined as "a provision of the proposed law that is distinct from other provisions in purpose or subject matter." Alaska Statute 15.45.180 requires that the ballot proposition "give a true and impartial summary of the proposed law."

This bill has eleven sections. Therefore, the maximum number of words in the summary may not exceed 550. There are sixteen words in the title and 168 words in the following summary, which we submit for your consideration:

#### **An Act Allowing Qualified Individuals to Register to Vote When Applying for a Permanent Fund Dividend.**

This act would instruct the Division of Elections to register a qualified Alaskan to vote when applying for the permanent fund dividend (PFD). If a person registers to vote for the first time through a PFD application, the Division of Elections would compare the person's information to state

records to ensure that the person is an eligible voter. The Division of Elections would let the citizen know if he or she has been added to the state registration list, or if the person's current voting address does not match the one provided on the PFD form. In that case, the person could change their voter registration address. The notice also would allow an applicant to request removal from the registration list. Thus, using the data from the PFD form, the Division of Elections would register a qualified Alaskan to vote unless he or she opts out. The notice would also allow a person to register with a political party. Voter information is already confidential under existing state law.

Should this initiative become law?

This summary has a Flesch Test score of 51.95. While this is slightly below the target readability score of 60, the Alaska Supreme Court has upheld ballot summaries scoring as low as 33.8, and we therefore believe the summary satisfies the target readability standards of AS 15.80.005.<sup>10</sup>

#### **IV. Conclusion.**

The proposed bill and application are in the proper form and the application complies with the constitutional and statutory provisions governing the use of the initiative. We therefore recommend that you certify the initiative application and notify the initiative committee of your decision. You may then begin to prepare petitions in accordance with AS 15.45.090.

Please contact us if we can be of further assistance in this matter.

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<sup>10</sup> Under AS 15.80.005(b), "The policy of the state is to prepare a neutral summary that is scored at approximately 60." This office has previously recommended a proposed ballot summary with a Flesch test score as low as 33.8 for a complicated ballot initiative. That summary was upheld verbatim by the Alaska Supreme Court. *See* 2007 Op. Att'y Gen. (Oct. 17; 663-07-0179); *Pebble*, 215 P.3d at 1082-84.

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Sincerely,

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