



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Department of Law

CIVIL DIVISION

P.O. Box 110300
Juneau, Alaska 99811
Main: 907.465.3600
Fax: 907.465.2520

October 26, 2021

The Honorable Kevin Meyer
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: *21RPFDF Ballot Measure Application Review*
AGO No. 2021103376

Dear Lieutenant Governor Meyer:

You asked us to review an initiative application for a proposed bill entitled:

An Act to Restore the Hammond 50-50 Plan with Historical Traditional Resident Payments Based on “35 Years of Precedent Payments.” (21RPFDF)

We review initiatives to ensure they meet all constitutional and statutory requirements, without opining on the merits of an initiative or determining precisely how it would be implemented. We recommend that you deny the 21RPFDF application because the proposed bill does not comply with the statutory provisions governing initiatives.

The proposed bill concerns the spending of the income of the Permanent Fund from the earnings reserve account. It appears to require that an amount of authorized spending from the earnings reserve account be set according to a formula, with fifty percent of the amount paid to eligible individuals in dividends and fifty percent deposited into the Constitutional Budget Reserve Fund. However, the proposed bill is not in the usual format for proposed legislation and it does not indicate which statutes it would amend or create. Indeed, it is difficult to discern which parts of the provided language are the proposed bill and which parts attempt to explain or interpret the proposed bill. Accordingly, it is unclear how this bill would be enacted into law.

More importantly, the proposed bill does not include the enacting language required by law. Having received the 21RPFDF application on August 27, 2021, the lieutenant governor must determine whether the application is in the “proper form” and

either certify or deny it by October 26, 2021.¹ As relevant here, “[t]he lieutenant governor shall deny certification upon determining in writing that . . . the proposed bill to be initiated is . . . not in the required form.”² Proposed bills must include an enacting clause that states, “Be it enacted by the People of the State of Alaska.”³

The bill proposed by 21RPFDF does not include this enacting clause. Therefore, the proposed bill is not in the required form and the application cannot be certified.⁴

Because the proposed bill does not satisfy the enacting clause requirement, we do not offer an opinion on whether it satisfies the other requirements for proposed bills. In the event the sponsors wish to file a similar application, they should be aware that proposed bills must also be confined to one subject, include a title that expresses the subject, and include no prohibited subjects.⁵ Additionally, bills may not propose “a substantive ordinance where controlling authority establishes its unconstitutionality.”⁶

Under article XI, section 7 of the Alaska Constitution and AS 15.45.010, a proposed bill may not dedicate revenue; make or repeal appropriations; create courts, define their jurisdiction, or prescribe their rules; or enact local or special legislation. A proposed bill concerning the PFD would include prohibited subjects and fail to satisfy constitutional and statutory requirements if it dedicated revenue or made or repealed appropriations.⁷

In addition to the requirements for bills proposed by initiative, initiative applications must be “substantially in the required form” and signed by a sufficient

¹ Alaska Const. art. XI, § 2; AS 15.45.070.

² AS 15.45.080.

³ AS 15.45.040(3).

⁴ See 1989 Op. Alaska Att’y Gen. (July 1), 1989 WL 266907, at *1 (recommending denial of certification in part because the proposed bill did not include the requisite enacting clause); 1986 Op. Alaska Att’y Gen. (Apr. 10), 1986 WL 81075, at *1 (same).

⁵ AS 15.45.040.

⁶ *Kohlhaas v. State, Off. of Lieutenant Governor*, 147 P.3d 714, 717 (Alaska 2006) (quoting *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 (Alaska 2003)).

⁷ See *Mallott v. Stand for Salmon*, 431 P.3d 159, 166 (Alaska 2018) (holding a proposed bill effects an appropriation when it “transfers state assets into private hands” or “infringes on the legislature’s ability to allocate resources among competing uses”).

number of qualified sponsors.⁸ Thus, applications must include the proposed bill; the signatures and identifying information of 100 or more sponsors, on signature pages that indicate the proposed bill was attached; and the designation of an initiative committee.⁹ We understand that the sponsors of 21RPF D previously submitted a similar application, which was denied because there were multiple versions of the proposed bill and insufficient signatures on any one version.¹⁰

This application includes the proposed bill and the requisite statement on each signature page.¹¹ It also designates an initiative committee of three sponsors, who provided their information. With respect to the number of qualified sponsors, we understand the Division of Elections has reviewed the sponsor signatures and determined that the application contains the signatures of 109 qualified voters. Therefore, the 21RPF D application is in the proper form, even though the bill proposed by 21RPF D is not.

We recommend that you deny this initiative application and notify the initiative committee of your decision.

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

Sincerely,

TREG R. TAYLOR
ATTORNEY GENERAL

By:

Thomas Flynn
Assistant Attorney General

⁸ AS 15.45.080.

⁹ AS 15.45.030.

¹⁰ Letter from Lieutenant Governor Kevin Meyer to Stephen Wright (Aug. 13, 2021), <https://www.elections.alaska.gov/petitions/21HPFD/AppResponse.pdf>.

¹¹ It appears the sponsors began gathering signatures on one signature page before they added the statement required by AS 15.45.030(2). We understand the Division of Elections has taken this into account when it determined the number of qualified sponsors.