

November 26, 2014

The Honorable Mead Treadwell
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: *Review of Initiative Application for “An Act creating criminal penalties for public officials who regulate or legislate competitive advantages for, or direct appropriations to their business partners, their clients, their contributors, and other defined close associates and creating criminal penalties for those who succeed in profiting by inducing public officials to violate this act.”*

A.G. File No. JU2014200708

Dear Lieutenant Governor Treadwell:

You asked us to review an application for an initiative entitled: “An Act creating criminal penalties for public officials who regulate or legislate competitive advantages for, or direct appropriations to their business partners, their clients, their contributors, and other defined close associates and creating criminal penalties for those who succeed in profiting by inducing public officials to violate this act” (hereafter, “14CPO2”). 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 repeal and reenact AS 11.56.130 in Title 11 of the Alaska Statutes (Criminal Law).¹ The proposed new AS 11.56.130 would be titled “Presumptive political bribery” and consist of four sub-sections as follows:

- **11.56.130 (a)** would make it “a class A felony for public officials to regulate or legislate competitive advantages for, or direct appropriations to themselves, their business partners, their clients, immediate family, past

¹ Currently, AS 15.56.130 defines “benefit” for purposes of AS 11.56.100-130 (“Bribery and Related Offenses”).

present, or sought-after employers or contributors, including contributors to independent expenditure campaigns intended to increase the probability of their election.”

- **11.56.130 (b)** would make it “a class A felony to receive an appropriation, or secure a competitive advantage over competition for profit through regulation or statute by inducing public officials to violate (a) of this section.”
- **11.56.130 (c)** provides that “[p]resumptive political bribery shall be narrowly construed. Actions affecting legislation and/or regulations which similarly impact a broad spectrum of population, and have relatively minor fiscal impacts incidental only to implementation, are exempt. Members of deliberative bodies may absolve themselves of potential conflict by entering their conflict into the record and refraining from voting.”
- **11.56.130 (d)** provides that “[f]or purposes of applying AS 12.10 governing limitations of actions, in a prosecution under AS 11.56.130, the statute of limitations begins to run with the violation and continues to run for ten years.”

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 14CPPO initiative was filed on November 12, 2014. The sixtieth calendar day after the filing date is January 11, 2015.² 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.”

² For reasons not relevant here, you agreed to an expedited review of this application and told the sponsors you would make a certification decision within approximately thirty days, putting your due date for a decision at approximately December 12, 2014.

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.”³ Specifically, you must decide whether the application complies with “the legal procedures for placing an initiative on the ballot, and whether the initiative contains statutorily or constitutionally prohibited subjects which should not reach the ballot.”⁴

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. The prohibited subjects are making or repealing appropriations; enacting local or special legislation; dedicating revenue; and creating courts, defining their jurisdiction, or prescribing their rules.⁵

This initiative bill meets the first three requirements under AS 15.45.040. It is confined to one subject—criminalizing official corruption. The subject is expressed in the title (“An act creating criminal penalties for public officials . . .”) and the bill has the required enacting clause.

With respect to the final requirement—that the initiative bill not contain a prohibited subject—the Alaska Supreme Court has adopted a “deferential attitude toward initiatives”⁶ 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.⁷ Indeed, the court has “sought to preserve the people’s right to be heard through the initiative process wherever possible.”⁸ We have

³ Alaska Const. art. XI, § 2.

⁴ *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 87 n.7 (Alaska 1988).

⁵ AS 15.45.010; *see also* Alaska Const. art. XI, § 7 (prohibiting dedicating revenue, creating courts, defining court jurisdiction or prescribing court rules).

⁶ *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1181 (Alaska 1985).

⁷ *McAlpine*, 762 P.2d at 91; *Yute Air*, 698 P.2d at 1181.

⁸ *Pebble Ltd. P’ship ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1076 (Alaska 2009).

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.

Unless the initiative bill violates a subject matter restriction under Alaska law on the use of the initiative process or the bill is clearly unlawful under controlling authority, the bill must proceed to the ballot.⁹ 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.¹⁰ 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.”¹¹ 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 in AS 15.45.030, which provides:

The application must include the

- (1) proposed bill;

⁹ 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).

¹⁰ *Alaska Action Ctr.*, 84 P.3d at 992.

¹¹ *Id.* (internal citations and quotations omitted) (emphasis added).

- (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
- (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 that an initiative application 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 prepared a ballot-ready petition title and summary for your consideration. It is our practice to provide you with a title and summary to assist you in compliance with AS 15.45.090(2) and AS 15.45.180. 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 one section, although the statute it creates has four distinct subsections, each of which may be considered provisions of the law that are distinct from one another. Therefore, the maximum number of words in the summary may not exceed 200. There are 8 words in the title and 81 words in the following summary, which we submit for your review:

An Act Creating Criminal Penalties for Public Officials

This act would make it a Class A felony for a public official to regulate or legislate competitive advantages for, or direct appropriations to, themselves, their family, their business partners, and certain others. This act would also make it a Class A felony to profit by inducing public officials to commit such acts. The bill would construe “presumptive political bribery” narrowly. Minor fiscal impacts would not be criminalized. There is a ten year statute of limitations for prosecutions under the bill.

Should this initiative become law?

This summary has a Flesch test score of 38.95. While this is 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 15.80.005.¹²

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.

Sincerely,

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By:
Elizabeth M. Bakalar
Assistant Attorney General

EMB/ajh

¹² 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.