



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

Department of Law

CIVIL DIVISION

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August 28, 2023

The Honorable Nancy Dahlstrom
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: *23AMLS Ballot Measure Application Review*
AGO No. 2023102270

Dear Lieutenant Governor Dahlstrom:

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

An Act increasing the Alaska minimum wage to \$13.00 per hour effective July 1, 2025, to \$14.00 per hour effective July 1, 2026, to \$15.00 per hour July 1, 2027 and to thereafter be adjusted annually for inflation; providing employees the ability to accrue up to 56 hours of paid sick leave per year if their employers have 15 employees or more; providing employees the ability to accrue up to 40 hours of paid sick leave if their employers have under 15 employees; and to prohibit employers from compelling employees to attend meetings regarding religious or political matters that are unrelated to their work. (23AMLS).

We review initiatives to ensure they meet constitutional and statutory requirements, without considering the merits of any initiative. This application and the proposed bill are in the proper form. While the proposed bill raises some constitutional concerns, it is not clearly unconstitutional under controlling authority. Therefore, we recommend that you certify the application.

I. The proposed bill

The bill proposed by this initiative has ten sections. It would increase Alaska's minimum wage, provide for paid sick leave, and allow employees to refuse communications from their employers about political or religious matters unrelated to work.

Section 1 would add a section to the uncodified law listing findings and intent. It states that increased wages, sick leave, and the right to refuse certain communications will increase workforce participation, ensure the well-being of employees and their families, cover rising costs, make Alaska competitive with other west coast states, and protect employees' constitutional rights.

Section 2 would increase the minimum wage to \$13 per hour in July 2025 and to \$14 in 2026 and \$15 in 2027. After that, the minimum wage would adjust annually for inflation.

Section 3 would increase the minimum wage to \$2 above the federal minimum wage, if necessary, and then adjust the difference annually for inflation.

Section 4 would require that employees receive at least one hour of paid sick leave for every 30 hours worked. Employers with 15 or more employees would have to allow the employees to accrue and use 56 or more hours per year, while employers with fewer employees would have to allow for 40 or more hours. Sick leave would carry over from one year to the next and employees would begin to accrue it on July 1, 2025, or on a later date when they begin employment. Employers could satisfy the sick-leave requirement by providing equivalent paid leave and they would have to reinstate a separated employee's sick leave if the employee is rehired within six months.

Section 5 would allow employees to use sick leave for themselves and their families to receive medical care and to address domestic violence, sexual assault, and stalking. Employees would have to notify their employers and limit disruption when possible. Employers could require reasonable documentation for sick leave of more than three consecutive workdays. Employers could not take adverse action against employees who use or try to use sick leave or require that employees search for or find a replacement worker.

Section 6 would explain that employers need not reimburse employees for unused sick leave; may have to provide more generous sick leave under other laws, policies, or agreements; are liable for lost wages or damages if they violate the sick-leave requirements; and must notify employees of these requirements. Employees could not waive these requirements except in clear and unambiguous terms in a collective bargaining agreement and employers who are part of multiemployer agreements could use a sick leave fund.

Section 7 would exempt from the sick leave requirements certain workers who are exempt from minimum wage requirements and covered by the federal Railroad Unemployment Insurance Act.

Section 8 would prohibit an employer from taking or threatening adverse action against an employee who refuses to receive the employer’s communications about religious or political matters that are not required by law or relevant to the workplace. Employers who did so would be liable for lost wages. Institutions of higher education, executive personnel, and bona fide religious organizations would be exempt to various degrees. Religious and political matters include whether or not to join or support a religious, political, or labor organization.

Section 9 would set an effective date of July 1, 2025.

Section 10 would provide for severability.

II. Analysis

Under AS 15.45.070, the lieutenant governor must review an initiative application within 60 calendar days of receipt and “certify it or notify the initiative committee of the grounds for denial.” The Division of Elections received the application for 23AMLS on July 5, 2023. Sixty calendar days later is September 3, 2023.

In evaluating an initiative application, the lieutenant governor must determine whether it is in the “proper form.”¹ Under AS 15.45.080, the lieutenant governor must deny certification 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.” This means the lieutenant governor 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.”² This requires consideration of both the form of the application and the form of the proposed bill.

A. Form of the application

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

- (1) proposed bill;

¹ Alaska Const. art. XI, § 2.

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

- (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 23AMLS application includes the proposed bill and the requisite statement on each signature page. It also designates an initiative committee of three sponsors, who provided their information. We understand the Division of Elections has reviewed the sponsor signatures and determined that the application contains the signatures and addresses of 138 qualified voters, which satisfies the 100-sponsor requirement.

B. Form of the proposed bill

The form of a proposed 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 bill contain an enacting clause that states, “Be it enacted by the People of the State of Alaska”; and (4) the bill include no prohibited subjects. The lieutenant governor may deny certification if a proposed bill does not meet these requirements or if “controlling authority establishes its unconstitutionality.”³ The bill proposed by 23AMLS meets the statutory requirements and is not clearly unconstitutional under controlling authority.

1. The proposed bill satisfies AS 15.45.040.

First, the bill is confined to the subject of labor standards. The minimum wage, sick leave, and employer communications provisions are all “logically related” to labor standards and contained in Title 23.⁴

³ *Kohlhaas v. State*, 147 P.3d 714, 717 (Alaska 2006) (quoting *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 (Alaska 2003)); *State v. Vote Yes for Alaska’s Fair Share*, 478 P.3d 679, 690 n.58 (Alaska 2021).

⁴ *See Meyer v. Alaskans for Better Elections*, 465 P.3d 477, 499 (Alaska 2020) (finding the single-subject rule satisfied when an initiative’s provisions were “logically related” and contained in the same title of Alaska law).

Next, the proposed bill includes the requisite enacting language and a title that expresses the subject. The title specifies the bill's changes to the minimum wage, the amount of paid sick leave, and the prohibition on mandatory employer communications, none of which are prohibited subjects. 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. Like prior minimum wage initiatives, the minimum wage provisions of the proposed bill are not prohibited subjects for an initiative,⁵ and neither are the sick leave and employer communications provisions.⁶

2. The proposed bill is not clearly unconstitutional.

In reviewing an initiative application, the lieutenant governor does not conduct a comprehensive pre-election review of the constitutionality of a proposed bill, but may reject a bill if it “proposes a substantive ordinance where controlling authority establishes its unconstitutionality.”⁷ This is a high bar; examples of clearly unconstitutional bills include a bill that would mandate school segregation based on race and a bill that would call for Alaska's secession from the United States.⁸

The minimum wage and sick leave provisions of the proposed bill are not clearly unconstitutional. Alaska law already includes a minimum wage, which has been increased by initiative before.⁹ The sick leave provisions are similar in nature and likewise do not appear to raise constitutional concerns.

The employer communications provision raises constitutional concerns, but it is not clearly unconstitutional under controlling authority. Similar provisions in other states have been challenged as unconstitutional under the First Amendment and preempted by the National Labor Relations Act (NLRA). These challenges have not produced

⁵ See, e.g., 2013 Op. Alaska Att’y Gen. (Jun. 20), 2013 WL 7154745, at *3.

⁶ See *Price v. Kenai Peninsula Borough*, 331 P.3d 356, 360 (Alaska 2014) (“If the legislation is generally applicable it is not local or special legislation, and no further inquiry is required.”).

⁷ *Kohlhaas*, 147 P.3d at 717 (quoting *Kodiak Island Borough*, 71 P.3d at 900); *Pebble Ltd. P’ship ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1077 (Alaska 2009) (permitting “pre-election review of initiatives where the initiative is clearly unconstitutional or clearly unlawful”); *State v. Tr. the People*, 113 P.3d 613, 625 n.50 (Alaska 2005); *Vote Yes for Alaska’s Fair Share*, 478 P.3d at 690 n.58.

⁸ *Kohlhaas*, 147 P.3d at 717.

⁹ See 2013 Op. Alaska Att’y Gen. (Jun. 20) at *1.

controlling authority, such as a decision from the U.S. Supreme Court or Ninth Circuit Court of Appeals, clearly holding that provisions like this are unconstitutional.¹⁰

Because no controlling authority establishes the unconstitutionality of any of the proposed bill's provisions, it should be approved.¹¹

III. Proposed ballot title and summary

We have prepared a ballot title and summary to assist you in complying with AS 15.45.090 and AS 15.45.180, as is this office's standard practice. Under AS 15.45.090(a)(2), petitions for a certified initiative must include "an impartial summary of the subject matter of the bill." Under AS 15.45.180(a), the lieutenant governor may also have to prepare a ballot proposition, including a "true and impartial summary of the proposed law," and a ballot title. The ballot title must "indicate the general subject of the proposition" in 25 words or less, and the word count of the summary must be less than 50 times the number of sections in the proposed bill.¹² The proposition must adhere to the readability policy described in AS 15.80.005 and ask whether the proposed bill should become law.¹³

¹⁰ In Oregon, the National Labor Relations Board and other plaintiffs challenged that state's similar employer communications law as preempted under the NLRA or unconstitutional under the First Amendment, but their claims were dismissed for lack of standing and ripeness. *Associated Oregon Indus. v. Avakian*, No. CV 09-1494-MO, 2010 WL 1838661, at *1 (D. Or. May 6, 2010); *Nat'l Lab. Rels. Bd. v. Oregon*, No. 6:20-CV-00203-MK, 2020 WL 5994997, at *1 (D. Or. Oct. 9, 2020); *Nat'l Lab. Rels. Bd. v. Oregon*, No. 6:20-CV-00203-MK, 2021 WL 4433161, at *4 (D. Or. Sept. 27, 2021), *appeal dismissed*, No. 21-35988, 2022 WL 1720939 (9th Cir. Jan. 18, 2022). In Wisconsin, plaintiffs challenged that state's law and the parties agreed to a stipulation. Stipulation, *Metro. Milwaukee Ass'n of Commerce v. Doyle*, No. 2:10-cv-00760-CNC (E.D. Wis. Nov. 4, 2010). In Connecticut, plaintiffs also challenged that state's law and while the court found they have standing, it has not ruled on the merits. *See* Complaint, *Chamber of Commerce v. Bartolomeo*, No. 3:22-cv-1373 (D. Ct. Nov. 1, 2022).

¹¹ Notably, the July 1, 2025 effective date in the proposed bill could only be operative if it is 90 or more days after the election results adopting the initiative are certified. Alaska Const. art. XI, § 6; AS 15.45.220; 2003 Op. Alaska Att'y Gen. (Aug. 25), 2003 WL 23506867, at *1.

¹² AS 15.45.180(a). "Section" here means "a provision of the proposed law that is distinct from other provisions in purpose or subject matter." *Id.*

¹³ AS 15.45.180(b).

The bill proposed by 23AMLS has ten sections, which would allow a summary of up to 500 words. Below is a ballot title with 19 words and a summary with 146 words. Using the readability formula described in AS 15.80.005(c), the summary has a score of 66.5, which exceeds the target score of 60. We submit this ballot title and summary for your consideration:

An Act Increasing the Minimum Wage, Requiring Paid Sick Leave, and Prohibiting Mandatory Meetings about Religious or Political Issues

This act would increase the minimum wage to \$13 per hour in 2025, \$14 per hour in 2026, and \$15 per hour in 2027. The minimum wage would increase with inflation after that. The minimum wage would always be at least \$2 above the federal minimum wage.

This act would also require paid sick leave for many employees. Smaller employers would allow 40 or more hours of sick leave per year. Larger employers would allow 56 or more hours. Sick leave would carry over to the next year.

This act would prohibit employers from making their employees attend meetings about religious or political issues. These issues include whether or not to join or support a religious, political, or labor organization. Some employers would be exempt and all employers could still communicate about issues required by law or related to the workplace.

Should this initiative become law?

IV. Conclusion

This initiative application is in the proper form. Both the application and the proposed bill comply 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 a petition under AS 15.45.090.

Please contact us if we can further assist you on this matter.

Lieutenant Governor Nancy Dahlstrom
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Sincerely,

TREG TAYLOR
ATTORNEY GENERAL

By: _____
Thomas S. Flynn
Assistant Attorney General