THE STATE of ALASKA
GOVERNOR MICHAEL J. DUNLEAVY

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February 14, 2025

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

Re: *24ESEG Ballot Measure Application Review*
AGO No. 2025200007

Dear Lieutenant Governor Dahlstrom:

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

> An Act to repeal a nonpartisan and open top four primary election system and ranked-choice general election system; and to reestablish a partisan political primary and change necessary and related appointment procedures; reestablish special runoff elections; and repeal and amend independent expenditure group requirements. (24ESEG).

We review initiatives to ensure they meet all constitutional and statutory requirements, without considering the merits of any initiative. Like 22AKHE, an initiative that failed to pass in the 2024 general election, this initiative would in effect reverse many provisions of 19AKBE, an initiative that passed in the 2020 general election. Because this initiative is like these previous initiatives, the application is in the proper form, and both the proposed bill and the application comply with the constitutional and statutory provisions governing initiatives, we recommend that you certify this application.

I. The proposed bill

The bill proposed by this initiative has 91 sections. Precisely what the bill would change is not entirely clear because it does not follow the usual format for proposed legislation, where text to be added is bold and underlined, text to be deleted is in brackets

and all capital letters, and statutes are not simply "reenacted."[1] Nevertheless, we have done our best to understand the intent of each section as though it followed the legislative drafting conventions. If this initiative were to pass, the Revisor of Statutes would have the authority to consolidate the proposed bill into the Alaska Statutes without changing the meaning of any law.[2]

The proposed bill appears to be a repeal of most of 19AKBE. It would eliminate open, non-partisan primary elections and ranked-choice general elections, reinstate partisan primaries and single-choice general elections, and also reverse several changes to campaign finance disclosure requirements.

Section 1 purports to amend AS 15.10.120(c) but includes both the text deleted and added by 19AKBE without any indication what would be deleted or added by the proposed bill. We suspect the sponsors intended to reinstate the previous requirements for election board members. If so, the election supervisor would appoint one nominee from the political party of which the governor is a member and one nominee from the political party that received the second largest number of votes for governor.

Section 2 would reverse 19AKBE's changes to the poll watcher statute by allowing candidates not representing political parties to appoint one poll watcher. It would also make conforming changes to account for the return of special runoff elections.

Section 3 would reinstate the requirements for certain appointees to the Alaska Public Offices Commission. As before 19AKBE, the governor would appoint two members of each of the two political parties whose candidate for governor received the highest number of votes.

Section 4 would repeal AS 15.13.040(s), the statute that defines "director" and "officer" as those words appear in AS 15.13.040(e).

Section 5 would repeal AS 15.13.070(g), which limits contributions to a joint campaign for governor and lieutenant governor to $1,000 annually for an individual and $2,000 annually for a group.

Section 6 would amend AS 15.13.074(b) to remove limits and disclosure requirements relating to dark money and true sources.

Section 7 would make conforming changes necessitated by the return of partisan primaries.

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1 *See* AS 24.08.060(a); *Manual of Legislative Drafting*, 18-19 (2023).

2 *See* AS 01.05.031.

Section 8 would remove the requirement that the paid-for-by disclaimers in a broadcast, cable, satellite, internet, or other digital communication.

Section 9 would repeal AS 15.13.090(g), the subsection requiring an additional disclaimer on certain advertisements funded by an outside-funded entity.

Section 10 would make conforming changes necessitated by the reenactment of the nominating petition process.

Section 11 would repeal AS 15.13.110(k), the disclosure requirement for certain contributions that exceed $2,000 annually.

Section 12 would amend AS 15.13.390(a) to remove fines for certain disclosure violations.

Section 13 would not change existing law.

Section 14 would make conforming changes necessitated by the reversion back to a partisan primary system.

Section 15 intends to amend the definition of "expenditure," codified at AS 15.13.400(7), not (6). The definition would expressly exclude "goods or services which are ordinarily available to the general public at no charge." This does not reverse a change made by 19AKBE.

Section 16 would repeal AS 15.13.400(18), the definition of "publicly funded entity" and AS 15.13.400(19), the definition of "true source" as those terms are used in AS 15.13.

Section 17 purports to repeal AS 15.15.005, but this statute does not exist. 19AKBE identified a section providing for nonpartisan, open primaries as AS 15.15.005, but that section is now codified at AS 15.15.025.

Section 18 would repeal AS 15.15.025, providing for nonpartisan, open primaries.

Section 19 purports to amend AS 15.15.030(5) but also includes both the text deleted and added by 19AKBE. Presumably, this section would reinstate the party designation requirements, where a candidate's party affiliation, if any, would be placed after the candidate's name on the ballot.

Section 20 would repeal AS 15.15.030(14) and (15), requiring statements on the ballot about candidates' designated affiliations and AS 15.15.030(16) and (17), concerning the design of ranked-choice general election ballots.

Section 21 would repeal AS 15.15.060(e), requiring a statement at polling places about candidates' designated affiliations.

Section 22 would repeal AS 15.15.350(c), (d), (e), (f), and (g), providing for ranked-choice general elections.

Section 23 would reverse the changes to the ballot counting requirements that had been necessitated by ranked-choice voting. Voters would no longer rank candidates in a general election.

Sections 24-25 would make conforming changes to the precinct ballot count and election certification processes.

Section 26 would make conforming changes to account for the return of special runoff elections and the repeal of nonpartisan primary elections.

Section 27 would reinstate the requirements for district absentee ballot counting board members. The election supervisor would appoint one nominee from the political party of which the governor is a member and one nominee of the political party that received the second largest number of votes for governor.

Sections 28-33 would make conforming changes to account for the return of special runoff elections and the repeal of nonpartisan primary elections.

Sections 34-35 would reinstate partisan primary elections in their prior form, including the requirements that political parties preclear their bylaws with the Department of Justice and submit them to the Division of Elections.

Section 36 would reinstate the requirements for declarations of candidacy to account for partisan primaries, in which the governor and lieutenant governor would run separately.

Section 37 would reinstate the party petition process to replace an unopposed incumbent who dies or is disqualified or incapacitated.

Section 38 would reenact the prior process for the distribution of primary ballots.

Section 39 would reenact the prior process for placing political party nominees on the general election ballot.

Section 40 would reinstate the requirement that write-in candidates state their political party or group membership, if any, in their letters of intent.

Section 41 would reinstate the requirement that joint write-in candidates for governor and lieutenant governor must be of the same political party.

Sections 42-52 would reinstate the party petition process to replace a nominee who has died, withdrawn, resigned, or become disqualified or incapacitated.

Section 53 would make conforming changes required by the repeal of ranked-choice voting.

Sections 54-64 would reinstate the special election and special runoff election processes to fill a vacancy in the office of United States senator or representative.

Sections 65-71 would reinstate the special election process to fill a vacancy in the office of governor.

Section 72 would reinstate the requirements and confirmation process for appointees to fill vacancies in the state legislature.

Sections 73-79 would reinstate the special election process to fill a vacancy in the state senate if more than two years and five months remain in the term.

Sections 80-82 would make conforming changes to account for the return of special runoff elections.

Section 83 would repeal AS 15.58.020(a)(13), which requires a statement about open primaries and ranked choice voting in the general election pamphlet.

Section 84 would make conforming changes to account for the return of the special runoff elections.

Section 85 would repeal AS 15.58.020(c), which requires a statement about open primaries and ranked choice voting in the primary or special primary election pamphlet.

Section 86 would make conforming changes to account for the return of the party petition process.

Section 87 would make conforming changes to account for the return of special runoff elections.

Section 88 would restore a prior definition of "political party" to allow parties to qualify based on votes cast for their nominated candidate or voters registered to their party.

Section 89 would repeal AS 15.80.010(46) defining "voter registration agency." The sponsors may have intended to repeal AS 15.80.010(34) defining "ranked-choice voting."

Section 90 would make a conforming change to account for the return of the party petition process.

Section 91 would add a new section of uncodified law requiring the director of elections for two years to make efforts to inform voters of the changes made to the state's elections process under this initiative bill.

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 24ESEG on December 16, 2024. Sixty calendar days later is February 14, 2025.

In evaluating an initiative application, the lieutenant governor must determine whether it is in the "proper form."[3] 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."[4] This requires consideration of both the form of the proposed bill and the form of the application.

A. Form of the proposed bill

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[3] Alaska Const. art. XI, § 2.

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

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 includes 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."[5] The bill proposed by 24ESEG meets all four of these requirements and it is not clearly unconstitutional under existing authority.

First, the bill is confined to one subject: election reform. The proposed bill would largely reverse 19AKBE by repealing the open, nonpartisan primary, the ranked-choice general election, and the campaign finance disclosure provisions. The Lieutenant Governor, on advice from this office, initially denied the application for 19AKBE because the proposed bill contained three subjects (open primary, ranked-choice voting, and campaign finance disclosure) and was therefore not confined to one subject.[6] The Alaska Supreme Court reversed, holding that all three topics were confined to the subject of election reform.[7] Because the bill proposed by 24ESEG includes the same three topics, it complies with the single-subject rule.

Second, the proposed bill includes a title that expresses the subject. The title specifies the bill's changes to primary and general elections and alludes to campaign finance requirements. To the extent the title does not specify the changes to campaign finance disclosure requirements, bill titles should be construed liberally in favor of validity.[8]

Third, the proposed bill includes the requisite enacting language.

Fourth, the bill does not include any 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. As with 19AKBE, the bill proposed by 24ESEG does not include any of the prohibited subjects.[9]

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5 *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)); *State v. Vote Yes for Alaska's Fair Share*, 478 P.3d 679, 690 n.58 (Alaska 2021).

6 2019 Op. Alaska Att'y Gen. (Aug. 29), 2019 WL 4239852, at *10.

7 *Meyer v. Alaskans for Better Elections*, 465 P.3d 477, 498 (Alaska 2020).

8 *Griffin v. Sheldon*, 78 F. Supp. 466, 469 (D. Alaska 1948), *rev'd on other grounds*, 174 F.2d 382 (9th Cir. 1949).

9 *See* 2019 Op. Alaska Att'y Gen. (Aug. 29), 2019 WL 4239852, at *7.

Finally, the proposed bill is not clearly unconstitutional under existing authority. While the lieutenant governor's certification decision does not involve a comprehensive, pre-election review of the constitutionality of a proposed bill, the lieutenant governor may reject a bill if it "proposes a substantive ordinance where controlling authority establishes its unconstitutionality."[10] 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.[11]

A return to party primaries, single-choice elections, and previous disclosure requirements is not clearly unconstitutional. The proposed bill would reenact the primary and general election processes as they existed before 19AKBE. Those election processes have not been held unconstitutional.[12] The proposed bill would also reinstate disclosure requirements that had not been subject to successful constitutional challenges.

B. 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;
>
> (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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> (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.

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[10] *Kohlhaas*, 147 P.3d at 717 (quoting *Kodiak Island Borough*, 71 P.3d at 900); *Pebble 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"); *Vote Yes for Alaska's Fair Share*, 478 P.3d at 690–91.

[11] *Kohlhaas*, 147 P.3d at 717–18 (quoting *Kodiak Island Borough*, 71 P.3d at 900).

[12] *See, e.g.*, *State v. Alaska Democratic Party*, 426 P.3d 901, 904–05 (Alaska 2018).

The 24ESEG application includes the proposed bill and the requisite statement on each signature page, even though the titles are the pages may vary. The application 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 and addresses of 220 qualified voters. The application, therefore, includes the requisite number of qualified sponsors and it is in the proper form.

IV. Conclusion

This initiative application is in the proper form. Both the proposed bill and the application 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 be of further assistance to you on this matter.

Sincerely,

TREG R. TAYLOR
ATTORNEY GENERAL

By:

Thomas Flynn
Chief Assistant Attorney General