

THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Law

CIVIL DIVISION

1031 West 4th Avenue, Suite 200
Anchorage, AK 99501
Main: 907.269.5100
Fax: 907.276.3697

January 19, 2023

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

Re: *22AKHE Ballot Measure Application Review*
AGO No. 2023100126

Dear Lieutenant Governor Dahlstrom:

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

This act would get rid of the Open Primary System and Ranked-Choice General Election. In place of that, this act would create a Political Party Primary and General Election Process that is easily understood. The political parties of Alaska will select their candidates through a primary process. Voters would vote for their preferred candidate, and then each one preferred candidate from each registered political party would appear on the general ballot. (22AKHE).

We review initiatives to ensure they meet all constitutional and statutory requirements, without considering the merits of any initiative. Because this initiative is a partial reversal of the Ballot Measure 2 initiative (19AKBE) and the Alaska Supreme Court upheld that initiative application, we recommend that you certify this application. It is in the proper form, and both the proposed bill and the application comply with the constitutional and statutory provisions governing initiatives.

I. The proposed bill

The bill proposed by this initiative has 59 sections. It is a line-by-line repeal of many aspects of Ballot Measure 2, the election reform initiative which passed in 2020 and became effective in 2021. The proposed bill would eliminate open, non-partisan primary elections and ranked-choice general elections and reinstate party primaries. It would reverse all of the changes made by Ballot Measure 2, except for the changes to campaign finance disclosure requirements.

Section 1 would add a new section to the uncodified law listing findings and intent supporting the changes made in the initiative bill. These emphasize the public's interest in the function of elections and in party primaries.

Section 2 would reinstate the requirements for election board members. 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 3 would reverse the 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 under AS 15.40.143 in Section 30.

Section 4 would reinstate the requirements for certain appointees to the Alaska Public Offices Commission. As before, the governor would appoint two members of each of the two political parties whose candidate for governor received the highest number of votes.

Section 5 would make conforming changes necessitated by the change in the prior section.

Section 6 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 7 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 8–9 would make conforming changes to the precinct ballot count and election certification processes.

Section 10 would again allow voters to choose a party primary ballot.

Section 11 would make conforming changes to account for the return of special runoff elections under AS 15.40.143 in Section 30 and the repeal of open primary elections.

Section 12 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 13–18 would make conforming changes to account for the return of special runoff elections under AS 15.40.143 in Section 30 and the repeal of open primary elections.

Sections 19–20 would reinstate party 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 21 would reinstate the requirements for declarations of candidacy to account for party primaries, in which the governor and lieutenant governor would run separately.

Section 22 would reinstate the party petition process to replace an unopposed incumbent who dies or is disqualified or incapacitated.

Section 23 would reenact the prior process for the distribution of primary ballots.

Section 24 would reenact the prior process for placing political party nominees on the general election ballot.

Section 25 would reinstate the requirement that write-in candidates state their political party or group membership, if any, in their letters of intent.

Section 26 would reinstate the requirement that joint write-in candidates for governor and lieutenant governor must be of the same political party.

Section 27 would reinstate the party petition process to replace a nominee who has died, withdrawn, resigned, or become disqualified or incapacitated.

Section 28 would make conforming changes required by the repeal of ranked-choice voting.

Sections 29–37 would reinstate the special election and special runoff election processes to fill a vacancy in the office of United States senator or representative.

Sections 38–43 would reinstate the special election process to fill a vacancy in the office of governor.

Section 44 would reinstate the requirements and confirmation process for appointees to fill vacancies in the state legislature.

Sections 45–50 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 51–54 would make conforming changes to account for the return of special runoff elections under AS 15.40.143 in Section 30.

Section 55 would make conforming changes to account for the return of the party petition process.

Section 56 would make conforming changes to account for the return of special runoff elections under AS 15.40.143 in Section 30.

Section 57 would restore the prior definition of political party to allow parties to qualify based on the candidates they nominated.

Section 58 would make a conforming change to account for the return of the party petition process.

Section 59 would repeal the following statutes:

- AS 15.15.025, providing for a top-four, nonpartisan, open primary
- AS 15.15.030(14) and (15), requiring statements about candidates' designated affiliations on the ballot
- AS 15.15.030(16) and (17), concerning the design of ranked-choice general election ballots
- AS 15.15.060(e), requiring a statement about candidates' designated affiliations at polling places
- AS 15.15.350(c), (d), (e), (f), and (g), providing for ranked-choice general elections
- AS 15.58.020(a)(13) and (c), requiring statements about open primaries and ranked choice voting in the election pamphlet
- AS 15.80.010(34), defining ranked-choice voting

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 22AKHE on November 23, 2022. Sixty calendar days later is Sunday, January 22, 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 proposed bill and the form of the application.

A. 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 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.”³ The bill proposed by 22AKHE 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 partially reverse Ballot Measure 2 by repealing the open, non-partisan primary and ranked-choice general election provisions, but not the campaign finance disclosure provisions. The Lieutenant Governor, on advice from this office, initially denied the application for Ballot Measure 2 because the proposed bill was not confined to one

¹ Alaska Const. art. XI, § 2.

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

³ *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).

subject.⁴ We viewed the open primary and ranked-choice provisions as especially distinct from the campaign provisions.⁵ The Alaska Supreme Court reversed, holding that all three topics were confined to the subject of election reform.⁶ Because the bill proposed by 22AKHE includes the two most similar topics of the three properly included in Ballot Measure 2, it complies with the single-subject rule.

Second, the proposed bill includes a title that expresses its single subject. The purpose of the title requirement for initiated bills, as for legislative bills, is to “prevent surreptitious introduction of legislation not indicated by the title.”⁷ Bill titles should be construed liberally in favor of validity.⁸ As quoted above, this title may not be written in the typical style or address every aspect of the proposed bill. But the title does address the proposed bill’s primary purpose—the elimination of open primary and ranked-choice general elections—without concealing any other purpose. Anyone interested in this bill would be advised by the title that it is a partial repeal of Ballot Measure 2.⁹

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 Ballot Measure 2, the bill proposed by 22AKHE does not include any of the prohibited subjects.¹⁰

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

⁴ 2019 Op. Alaska Att’y Gen. (Aug. 29), 2019 WL 4239852, at *10.

⁵ *Id.* at *9.

⁶ *Meyer v. Alaskans for Better Elections*, 465 P.3d 477, 498 (Alaska 2020).

⁷ *State v. First Nat. Bank of Anchorage*, 660 P.2d 406, 415 n.19 (Alaska 1982); compare AK Const. art. II, § 13 (“The subject of each bill shall be expressed in the title.”) with AS 15.45.040(2) (“[T]he subject of the bill shall be expressed in the title.”).

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 *First Nat. Bank of Anchorage*, 660 P.2d at 415 n.19.

¹⁰ See 2019 Op. Alaska Att’y Gen. (Aug. 29), 2019 WL 4239852, at *7.

establishes its unconstitutionality.”¹¹ 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.¹²

A return to party primaries and single-choice elections is not clearly unconstitutional. The proposed bill would reenact the primary and general election processes as they existed, without constitutional challenges, before Ballot Measure 2.¹³ Indeed, the changes instituted by Ballot Measure 2 were themselves constitutional.¹⁴ Reversing these changes and reinstating the prior law is not unconstitutional.

The timing of this reversal would not raise constitutional concerns either. The Alaska Constitution prohibits the repeal of an initiated law “by the legislature within two years of its effective date.”¹⁵ Even if this prohibition applied to the repeal of an initiated law by initiative, instead of just repeals “by the legislature,” the proposed bill would be permissible. Ballot Measure 2 became effective February 28, 2021.¹⁶ The proposed bill could not become effective until after the legislature adjourns and an election is held, which cannot occur before February 28, 2023.¹⁷

Although the proposed bill raises no constitutional concerns, we note one statutory inconsistency. Section 57 of the proposed bill would amend the definition of political party in AS 15.80.010(27). But this statute was amended by SLA 2022, ch. 72, § 1, effective January 1, 2023. The threshold for recognized political parties is no longer determined by votes cast or registered voters in prior elections. Instead, the threshold is currently set at 5,000 registered voters.¹⁸ Section 57 would likely have no effect on the current law. This inconsistency does not make the bill proposed by 22AKHE clearly

¹¹ *Kohlhaas*, 147 P.3d at 717 (quoting *Kodiak Island Borough*, 71 P.3d at 900); *Pebble P’ship ex rel. Pebble Mines Corp.*, 215 P.3d at 1077 (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.

¹² *Kohlhaas*, 147 P.3d at 717 (quoting *Kodiak Island Borough*, 71 P.3d at 900).

¹³ *See State v. Alaska Democratic Party*, 426 P.3d 901, 904–05 (Alaska 2018).

¹⁴ *Kohlhaas v. State*, 518 P.3d 1095, 1100 (Alaska 2022).

¹⁵ AK Const. art. 11, § 6.

¹⁶ *See id.*; *Kohlhaas v. State*, 518 P.3d at 1101 n.2.

¹⁷ AK Const. art. 11, §§ 4, 6.

¹⁸ AS 15.80.010(27).

unconstitutional, so it meets the constitutional and statutory requirements for certification.

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
- (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 22AKHE 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. 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 181 qualified voters.

We note that there are at least three different versions of signature pages, each with a slightly different description of the proposed bill. But there appear to be 129 valid signatures on one, consistent version of the signature page. All of the signature pages also indicate that the proposed bill was attached. The application, therefore, includes the requisite number of qualified sponsors and it is in the proper form.

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.¹⁹ The proposition must adhere to the readability policy described in AS 15.80.005 and ask whether the proposed bill should become law.²⁰

The bill proposed by 22AKHE has 59 sections, which would require a summary of fewer than 2,950 words. Below is a ballot title with 10 words and a summary with 126 words. Using the readability formula described in AS 15.80.005(c), the summary has a score of 57.07. This is slightly below the target score of 60, but the Alaska Supreme Court has upheld ballot summaries with lower scores.²¹ We submit this ballot title and summary for your consideration:

An Act Restoring Political Party Primaries and Single-Choice General Elections

This act would get rid of open primary elections and ranked-choice general elections. It would bring back political party primaries and single-choice general elections.

Elections will occur exactly as they did before Ballot Measure 2 became the law in 2021. In the primary election, voters will choose a party’s ballot. They will vote for one candidate and the winning candidate will be the party’s nominee. In the general election, voters will select one candidate. The candidate with the most votes will win.

This act would also bring back party petitions, special runoff elections, and other processes in place before Ballot Measure 2. It would put all election laws, except campaign finance laws, back the way they were before Ballot Measure 2.

Should this initiative become law?

¹⁹ 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.*

²⁰ AS 15.45.180(b).

²¹ *See Pebble*, 215 P.3d at 1082–84.

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
Assistant Attorney General