

June 20, 2013

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

Re: *Review of Initiative Application for “An Act increasing the Alaska minimum wage to \$8.75 per hour effective January 1, 2015, \$9.75 per hour effective January 1, 2016, and thereafter adjusted annually for inflation.”*
A.G. File No. JU2013200288

Dear Lieutenant Governor Treadwell:

You asked us to review an application for an initiative entitled “An Act increasing the Alaska minimum wage to \$8.75 per hour effective January 1, 2015, \$9.75 per hour effective January 1, 2016, and thereafter adjusted annually for inflation” (“13MINW”). Because the application complies with the specific constitutional and statutory provisions governing the initiative process, we recommend that you certify the application.

I. Summary of the Proposed Bill.

A. Brief Summary and Background.

The bill proposed by this initiative would provide for an increase in Alaska’s minimum wage. Specifically, the bill would increase Alaska’s minimum wage to \$8.75 per hour effective January 1, 2015, \$9.75 per hour effective January 1, 2016, and thereafter adjusted annually for inflation.

Currently, AS 23.10.065(a) sets Alaska’s minimum wage at \$7.25 per hour until December 31, 2009, “and thereafter not less than 50 cents an hour more than the federal minimum wage.” Accordingly, since 2010, Alaska’s minimum wage has been \$7.75 per

hour. The Fair Minimum Wage Act of 2007¹ amended the Fair Labor Standards Act of 1938 to ultimately increase the federal minimum wage to \$7.25 per hour for employment subject to the Federal Fair Labor Standards Act. For states that have statutory minimum wages, those wages range from \$5.15 per hour in Wyoming and Georgia (for employment exempt from the federal minimum)² to \$9.19 per hour in Washington.³

B. Sectional Summary.

The bill proposed by this initiative is two pages long, single-spaced, and consists of four sections, which are summarized as follows.

- **Section 1.** This section is a statement of findings and a declaration. The section declares that an increase in Alaska's minimum wage would help ensure a minimum standard of living for the health and well-being of Alaskans; that Alaskans working full-time at the current minimum wage earn far below the federal poverty level for a family of three; that several states in the Pacific Northwest have a higher minimum wage; and that a fair minimum wage indexed to the cost of living will help low-income workers keep pace with inflation.
- **Section 2.** This section is a statement of purpose and intent, providing that the bill intends to raise Alaska's minimum wage to \$8.75 per hour effective January 1, 2015, \$9.75 per hour effective January 1, 2016, and thereafter adjusted annually for inflation.
- **Section 3.** This section would repeal and reenact AS 23.10.065(a). The section would require every employer to pay each employee a minimum wage of \$8.75 per hour effective January 1, 2015, \$9.75 per hour effective January 1, 2016, and thereafter adjusted annually for inflation. The section provides a method for calculating that adjustment, and provides that the adjustment would apply to work performed from January 1 through December 31 of the year for which it is effective. The section provides that an employer may not use tips or gratuities to offset payment of the

¹ 29 U.S.C. § 206 (2007).

² Wyo. Stat. Ann. § 27-4-202(a); GA. Code. Ann. § 34-4-3.

³ This amount, effective January 1, 2013, was calculated pursuant to the requirements of a 1998 ballot initiative, "Initiative 688." See Perkins Coie, *Washington Minimum Wage Rises to \$6.90*, 8 No.1 1 Wash. Emp. L. Letter 6 (Dec. 2001).

minimum wage, and that Tip Credit as defined by relevant federal law does not apply to the minimum wage.

- **Section 4.** This section provides that if the minimum wage determined under section 3 of the bill is less than one dollar over the federal minimum wage, the Alaska minimum wage shall be set at one dollar over the federal minimum wage, and that the amount shall be adjusted in subsequent years by the method set forth in section 3 of the bill.

II. Analysis.

Under AS 15.45.070, the lieutenant governor must review an application for a proposed initiative and within sixty calendar days of receipt either “certify it or notify the initiative committee of the grounds for denial.” The application for the 13MINW initiative was filed on April 26, 2013. The 60th calendar day after the filing date is June 25, 2013. 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.”

A. Form of the proposed bill.

In evaluating an initiative application, you must determine whether the application is in the “proper form.”⁴ 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.”⁵

The form of a proposed initiative bill is prescribed by AS 15.45.040, which requires four things: (1) the bill be confined to one subject; (2) the subject be expressed in the title; (3) the enacting clause state: “Be it enacted by the People of the State of Alaska”; and (4) the bill not include prohibited subjects. The prohibited subjects are the making or repealing of appropriations, the enactment of local or special legislation, the

⁴ Alaska Const. art. XI, § 2.

⁵ *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 87 n.7 (Alaska 1988).

dedication of revenue, and the creation of courts, the definition of their jurisdiction, or prescribing rules of court.⁶

Absent a subject matter restriction under Alaska law on the use of the initiative process or a proposal that is clearly unlawful under controlling authority, the initiative bill must proceed to the ballot.⁷ Specifically, you have the authority to deny certification only if you determine that the measure violates any of the liberally construed constitutional and statutory provisions regulating initiatives.⁸ This initiative 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.”⁹ We find no such controlling authority and therefore recommend that the initiative be certified.

This initiative bill meets the first three requirements. It is confined to one subject—Alaska’s minimum wage. The subject is expressed in the title, “An Act increasing the Alaska minimum wage to \$8.75 per hour effective January 1, 2015, \$9.75 per hour effective January 1, 2016, and thereafter adjusted annually for inflation.” And the required enacting clause is present.

⁶ AS 15.45.010; *see* Alaska Const. art. XI, § 7 (also prohibiting dedication of revenue, the creation of courts, defining the jurisdiction of courts or prescribing their rules).

⁷ *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 roles of the lieutenant governor and a municipal clerk are analogous in the statewide and municipal initiative certification context, respectively. *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 898 (Alaska 2003).

⁸ *Alaska Action Ctr.*, 84 P.3d at 992.

⁹ *Id.* (internal citations and quotations omitted) (emphasis added).

With respect to the final requirement, in determining whether an initiative bill contains a prohibited subject, the Alaska Supreme Court has adopted a “deferential attitude toward initiatives,”¹⁰ 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.¹¹ Indeed, the court has “sought to preserve the people’s right to be heard through the initiative process wherever possible.”¹² We have reviewed the bill with these principles in mind and conclude that the initiative bill contains no prohibited subject. As such, the fourth requirement relating to the form of the bill is satisfied.

This bill is straightforward. It would simply increase Alaska’s minimum wage to \$8.75 per hour effective January 1, 2015, \$9.75 per hour effective January 1, 2016, and thereafter adjusted annually for inflation. Nothing in this bill suggests making or repealing an appropriation, enacting local or special legislation, dedicating revenue, creating courts, defining court jurisdiction or prescribing court rules. Accordingly, the bill contains no prohibited subject.¹³

B. Form of the application.

The form of an initiative application is prescribed in AS 15.45.030, which provides as follows:

The application must 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

¹⁰ *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1181 (Alaska 1985).

¹¹ *McAlpine*, 762 P.2d at 91; *Yute Air*, 698 P.2d at 1181.

¹² *Pebble Ltd. P’ship ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1076 (Alaska 2009).

¹³ AS 15.45.010; Alaska Const. art. XI, § 7.

- (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, we understand that the Division of Elections has determined that the application contains the signatures and addresses of not fewer than 100 qualified voters.

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 four sections. Therefore the maximum number of words for the summary may not exceed 200. There are seven words in the title and 151 words in the summary of the following proposed ballot proposition, which we submit for your review.¹⁴

¹⁴ At the request of your office, and consistent with past practice, we worked with the sponsors of the initiative in developing this summary.

An Act to Increase Alaska's Minimum Wage

This bill would raise Alaska's minimum wage from \$7.75 per hour to \$8.75 per hour as of January 1, 2015. The bill would raise the minimum wage to \$9.75 per hour as of January 1, 2016. The bill would adjust the minimum wage each year for inflation after 2016. The bill creates a method for this adjustment. Under the bill, if the adjusted minimum wage is less than one dollar over the federal minimum wage, Alaska's minimum wage will be one dollar over the federal minimum. Tips or gratuities would not count toward the minimum wage.

The bill has a statement of findings and declaration. This statement gives reasons for the bill. The reasons pertain to quality of life for low income workers, the effect of increases in the cost of living, the relationship of the Alaska minimum wage to the federal poverty level, and the minimum wage in other states.

Should this initiative become law?

This summary has a Flesch test score of 49.1. We believe the summary satisfies the readability standards of AS 15.60.005.¹⁵

IV. Conclusion.

For the foregoing reasons, we find that the proposed bill and application are in the proper form and that 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.

¹⁵ See, e.g., 2007 Op. Att'y Gen. (Nov. 8; 663-08-0036) (advising that ballot summary with Flesch test score of 44.9 satisfied AS 15.60.005). This office has previously recommended a proposed ballot summary with a Flesch test score of 33.8 for a complicated ballot initiative, and 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. We therefore believe a court would uphold this summary as well.

Hon. Mead Treadwell
Re: Review of 13MINW Initiative Application

June 20, 2013
Page 8 of 8

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/tjd