

COMMITTEE PROPOSALS

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Constitutional Convention
Committee Proposal/1
December 5, 1955

ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON
SUFFRAGE, ELECTIONS, AND APPORTIONMENT

Hon. William A. Egan
President, Alaska Constitutional Convention

My dear Mr. President:

The attached Constitutional Article entitled "Suffrage and Elections" has been unanimously approved by the Committee on Suffrage, Elections and Apportionment.

Section 1 sets forth the present suffrage qualifications of the 50 year old Act of Congress with two changes: first, the voting age is lowered one year to twenty (20); second, the literacy test is somewhat relaxed to a requirement that qualified voters be able to "read or speak the English language as prescribed by the legislature." This leaves the test of ability to the legislative branch.

The Committee strongly believes that the present Alaskan tested and tried voting law (38-1-2 and 38-1-8 ACLA 1949) with its many decisions should be preserved, hence adopted Section 1 in the form chosen. To depart from the Act of Congress would create uncertainty and provoke needless litigation.

Section 2 is not unusual and is self-explanatory. The Committee believes that permanent registration should be required in urban areas, i.e. municipalities with population over 2,500, leaving the matter in other areas for legislative decision.

Section 3 disenfranchises those convicted of felonies involving moral turpitude, leaving the matter of restoration of civil rights to the responsible agencies of government.

Section 4 preserves the present law.

Respectfully submitted,

John S. Hellenthal
Chairman
Committee on Suffrage, Elections
and Apportionment

Constitutional Convention of Alaska

COMMITTEE PROPOSAL NO. 1

Introduced by Committee on Suffrage, Elections and Apportionment

ARTICLE ON SUFFRAGE AND ELECTIONS

RESOLVED, that the following be agreed upon

as part of the Alaska State Constitution.

Qualifications	1	Section 1. Every citizen of the United States,
and	2	who shall have attained the age of 20 years, who
Residence	3	is an actual and bona fide resident of Alaska,
	4	and who has been such resident continuously
	5	during the entire year immediately preceding
	6	the election, and who has been such resident
	7	continuously for thirty days next preceding the
	8	election in the election district in which he
	9	votes, and who is able to read or speak the
	10	English language as prescribed by the Legislature,
	11	unless incapacitated from complying therewith
	12	by physical disability only, and who is not
	13	barred from voting by any other provision of law,
	14	shall be qualified to vote in any State or local
	15	election. This section shall not apply to any
	16	citizen who legally voted at the general election
	17	of November 4, 1924.

Further 1 Section 2. The Legislature shall establish a
Mandatory and 2 system of permanent voter registration in munici-
Permissive 3 palities with populations over 2,500, and may
Qualifications 4 provide for voting precincts within election
5 districts; it shall provide for absentee voting;
6 it shall prescribe the method of voting at all
7 elections; it shall provide that contested
8 elections be determined by a court of competent
9 jurisdiction.

Disqualifi- 10 Section 3. No person judicially determined to be
cation 11 of unsound mind and no person convicted of a
12 felony involving moral turpitude, unless pardoned
13 and restored to his civil rights, shall be
14 qualified to vote in any State or local election.

Elections 15 Section 4. General elections shall be held on
16 the second Tuesday in October and every second
17 year thereafter on the same day, but the
18 Legislature is empowered to change said date.

Constitutional Convention
Committee Proposal/2
December 5, 1955

ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON
JUDICIARY BRANCH

Hon. William A. Egan
President, Alaska Constitutional Convention

My dear Mr. President:

Your Committee on the Judiciary Branch presents for your consideration and adoption its proposed Judiciary Article.

The Committee proposal, while incorporating many of the ideas contained in Convention Proposals Numbered One, Twelve, and Twenty-two which were referred to the Committee, is a Committee substitute.

The Committee has included a section-by-section commentary on the proposed Judiciary Article.

Respectfully submitted,

George M. McLaughlin, Chairman,
Thomas C. Harris,
Maurice T. Johnson,
Irwin L. Metcalf,
Ralph J. Rivers,
R. E. Robertson,
Warren A. Taylor.

Constitutional Convention of Alaska

COMMITTEE PROPOSAL NO. 2

Introduced by Committee on Judiciary Branch

ARTICLE ON THE JUDICIARY

RESOLVED, that the following be agreed upon as
part of the Alaska State Constitution.

Judicial Power	1	Section 1. The judicial power of the State is vested in
	2	a Supreme Court, a Superior Court, and such other courts
	3	as the Legislature may establish. The jurisdiction of
	4	the respective courts shall be prescribed by law and the
	5	courts shall constitute a unified judicial system for
	6	purposes of operation and administration.
Supreme Court	7	Section 2. The Supreme Court is the highest court of the
	8	State with appellate jurisdiction and consists of three
	9	justices, one of whom is Chief Justice. The number of
	10	justices may be increased by law upon request of the
	11	Supreme Court.
Superior Court	12	Section 3. The Superior Court is the trial court of gen-
	13	eral jurisdiction and consists of five judges. The num-
	14	ber of judges may be changed by law.
Nomina- tion and Appoint- ment	15	Section 4. Justices of the Supreme Court and judges of
	16	the Superior Court are appointed by the Governor on nomi-
	17	nation by the Judicial Council as provided in this
	18	article.

Approval or 1 Section 5. Each justice of the Supreme Court and
Rejection by 2 each judge of the Superior Court shall, at the
Voters. 3 next general election following a period of three
5 years after his appointment, be subject to approval or
6. rejection by the voters of the State on a non-part-
7. isan ballot in the manner provided by law. Every
8 ten years after approval each justice of the sup-
9 reme Court, and every six years after approval
10 each judge of the Superior Court, shall again be
11 subject to approval or rejection by the voters in
12 the same manner.

Vacancy in 13 Section 6. If, at any election, a majority of the
Judicial 14 voters declare that any justice or judge shall not
Office 15 be retained in office, the office shall become
16 vacant ninety days after the election and shall be
17 filled by the method of selection provided in this
18 article. If a justice or judge fails to file, in
19 advance of the election as prescribed by law, a
20 declaration of his candidacy for election to suc-
21 ceed himself, his office shall become vacant ninety
22 days after the election, and shall be filled by the
23 method of selection provided in this article.

Qualifica- 24 Section 7. To be eligible for appointment, Justices
tion of 25 of the Supreme Court and Judges of the Superior
Judges 26 Court shall be citizens of the United States and of

1 the State, who have been admitted to practice law in
2 the State for at least five years and have been resi-
3 dents of the State for at least five years next preced-
4 ing their respective nominations.

Other 5 Section 8. Judges of other courts shall be selected in
Courts 6 the manner and for the terms and subject to eligibility
7 qualifications to be prescribed by the Legislature.

Selection 8 Section 9. Whenever there is a vacancy in an office of
of Judges 9 Justice of the Supreme Court or Judge of the Superior
10 Court, the Governor shall fill the vacancy by appointing
11 one of not less than two qualified persons who shall
12 have been nominated by a non-partisan judicial council
13 established and organized as provided in this article.

Judicial 14 Section 10. The Judicial Council consists of six mem-
Council; 15 bers chosen in the following manner: On the basis of
How 16 appropriate area representation the governing body of
Selected 17 the organized State bar shall appoint three members of
18 the bar to serve as members of the Judicial Council for
19 terms as specified in this article. Three non-attorney
20 members representing different major areas shall be ap-
21 pointed by the Governor for terms as specified in this
22 article, subject to confirmation by the Senate. The
23 six members so appointed shall be compensated as pro-
24 vided by law.

Judicial 25 Section 11. After the members first appointed to the

Council; 1 Judicial Council have submitted to the Governor the
Chairman- 2 names of nominees for appointments to fill the initial
ship and 3 vacancies in the Supreme Court, including the office of
Quorum 4 chief justice, and the justices have been appointed and
5 qualified, the chief justice shall thereafter be ex-
6 officio a seventh member and the chairman of the Judi-
7 cial Council which shall continue to act by the affir-
8 mative vote of at least four of its members in accord-
9 ance with rules which it shall promulgate governing its
10 own procedure. No member of the Judicial Council, other
11 than the chief justice, may hold any office of the state
12 or of the United States while a member of the Council.

Judicial 13 Section 12. The terms of members of the Judicial Coun-
Council; 14 cil shall be six years, except that the attorney mem-
Terms of 15 bers first selected shall be appointed to terms of one
Office 16 year, three years and five years respectively, and the
17 non-attorney members first selected shall be appointed
18 to terms of two years, four years and six years respec-
19 tively. In the event of vacancy, a successor shall be
20 appointed to fill the unexpired term in the manner pro-
21 vided for initial appointment.

Judicial 22 Section 13. In addition to nominating qualified persons
Council; 23 for appointment to fill court vacancies, the Judicial
Additional 24 Council shall be responsible for conducting studies
duties 25 from time to time for improvement of the administration

1 of justice, including such matters as court structure,
2 rules of procedure and administration of the courts, and
3 for making reports and recommendations to the Supreme
4 Court and the Legislature at intervals of not more than
5 two years. The Judicial Council shall also perform such
6 other specific duties as are assigned to it by law.

Retirement 7 Section 14. Whenever the Judicial Council certifies to
for 8 the Governor that any justice of the Supreme Court ap-
Incapacity 9 pears to be so incapacitated as substantially to prevent
10 him from performing his judicial duties, the Governor
11 shall appoint a board of three persons to inquire into
12 the circumstances and, on the board's recommendation, the
13 Governor may retire the justice. For judges of other
14 courts, if a judge appears to be so incapacitated as sub-
15 stantially to prevent him from performing his judicial
16 duties, the Judicial Council shall recommend to the
17 Supreme Court that the judge be put under early retire-
18 ment. After notice and hearing, the Supreme Court by
19 vote of a majority of its members may retire the judge.

Retire- 20 Section 15. Except in cases of early retirement because
ment for 21 of physical or mental infirmity each justice and judge
Age 22 shall be retired at the age of 70, on such retirement pay
23 as may be prescribed by law, and shall render no further
24 service on the bench, except for special assignments as
25 are provided by court rule. The basis and amount of re-

1 tirement pay for justices and judges who retire or are
2 retired at an earlier age shall be prescribed by law.

Impeach-
ment of
Judges

3 Section 16. Impeachment of any justice or judge for mal-
4 feasance or misfeasance in the performance of his offic-
5 ial duties shall be effected as generally prescribed by
6 law for State officials.

Compensa-
tion of
Judges

7 Section 17. The justices and judges shall receive for
8 their services such compensation as is prescribed by law,
9 which shall not be diminished during their respective
10 terms of office, unless by general law applying to all
11 salaried officers of the State.

Ineligi-
bility to
Other
Offices

12 Section 18. No Justice of the Supreme Court or Judge of
13 the Superior Court, while serving as a justice or judge,
14 may practice law, hold office in any political party, or
15 hold any office or position of profit under the United
16 States, or the State or a political subdivision of the
17 State, and shall, if he files for elective public office,
18 thereby forfeit his judicial position. Compensation for
19 service in the State Militia or the armed forces of the
20 United States is not "profit" as that term is here used.

Rule-Mak-
ing Power

21 Section 19. The Supreme Court shall make and promulgate
22 rules governing the administration of all courts of the
23 State. It shall also make and promulgate rules govern-
24 ing practice and procedure in all civil and criminal
25 cases in all courts, which rules may be changed by the

1 Legislature only upon a two-thirds vote of the members
2 elected to each house.

Court Ad-
ministra-
tion

3 Section 20. The Chief Justice of the Supreme Court shall
4 be the administrative head of all the Courts in the State.
5 He may assign judges from one court or division thereof
6 to another for temporary service. For other phases of
7 court administration the Chief Justice shall, with the
8 approval of the Supreme Court, appoint an administrative
9 director to serve at his pleasure and to supervise the
10 administrative operations of the judicial system.

Constitutional Convention
Committee Proposal/2
December 5, 1955

ALASKA CONSTITUTIONAL CONVENTION

Commentary on the Judiciary Article

(Sec. 1 Judicial Power)

This section establishes the basic court structure and also provides needed flexibility for future enlargement by the addition of such local or other courts as the Legislature may deem necessary. The concept of a unified court system is in accord with the fundamental and minimum standards of judicial administration approved and supported by the American Bar Association.

(Sec. 2 Supreme Court)

The initial membership of the Supreme Court is fixed at three justices, one of whom is the chief justice. The provision for future enlargement by the Legislature is qualified by the provision that such enlargement be requested by the Court. A similar provision is found in the new constitution of Puerto Rico and is designed to prevent the number of justices from being increased for any purpose other than to meet the needs of judicial business.

(Sec. 3 Superior Court)

The placing of general trial jurisdiction in a single court, with as many judges thereof as may be necessary to handle the volume of cases, is in line with modern development, and is reversing

the former trend toward a complex structure of specialized courts that has so greatly impeded efficient judicial administration in many states. The Legislature will be free, however, to create lower or other courts as may be necessary, and to determine the jurisdiction of courts and the geographical extent of their authority.

(Sec. 4 Nomination and Appointment)

The main features of the plan for judicial selection sponsored by the American Bar Association and embodied in the Missouri Plan, are summarized in the Association's handbook on judicial administration as: "(1) appointment by governor from list submitted by a nominating committee, the nominating and appointing authority being divided between two agencies; (2) periodic submission to the electorate with no opposing candidate, or 'running against the record.'" Both of these features are incorporated in the selection plan here presented.

(Sec. 5 Approval or Rejection)

The American Bar Association's handbook states: "The ideal solution is to provide that, after a specified period of service, and periodically thereafter, the appointee should either come up for reappointment or should go before the people at a general election on the basis of his record and with no opposing candidate. The latter alternative is probably preferable, especially since it retains for the voters an opportunity to participate in the process

of judicial selection in about the only way in which they can effectively do so. The able judge has little to fear from such a system, while it does permit removal of a judge whom experience has shown to be plainly unqualified or who has become unfit to continue on the bench." It can be added that the type of plan here provided has functioned effectively in Missouri and also in California, where a comparable requirement has applied to appellate judges for more than twenty years.

(Sec. 6 Vacancy in Judicial Office)

In order to allow time for selecting a successor as well as for completing the judicial business remaining before a judge's service terminates, a period of 90 days is allowed after the election at which he is rejected or for which he fails to file. The provision for having a justice or judge file a declaration of his intention to be a candidate to succeed himself is a feature of both the Missouri and the California Constitutions. The details of such declaration such as its form and the time limits for its filing are properly, however, left to the Legislature as herein contemplated.

(Sec. 7 Qualification of Judges)

The requirements of citizenship and of minimum periods of **membership** in the bar and residence are comparable to those in a majority of states. It should be noted that the section refers to admission and residence "in the State", which will, by general provision elsewhere in the Constitution, presumably and necessarily be defined to include the predecessor Territory.

(Sec. 8 Other Courts)

This section confirms and implements the Legislature's authority to create such additional courts as may be needed, with appropriate methods of selection and qualifications for appointment.

(Sec. 9 Selection of Judges)

The appointment of justices and judges by the Governor from a list of several qualified persons selected by a non-partisan nominating agency is an essential feature of both the American Bar Association and the Missouri plans. The Association's handbook suggests that the nominating body should include laymen as well as lawyers, and that "If the state has a judicial council meeting these qualifications it may well serve as the nominating agency". The present article embodies this approach.

(Sec. 10 Judicial Council; How Selected)

Selection of lawyer members by the state bar association and of non-lawyers by the Governor, both groups of members on a geographical representation basis, is a recommended feature of the Missouri Plan and has been adopted herein. The American Bar Association handbook's comments: "Nomination by a body of this sort, composed of high caliber men, should not only produce better judges but also remove any likelihood of improper motivation in their selection."

(Sec. 11 Judicial Council; Chairmanship and Quorum)

Since the establishment of the Judicial Council must precede the nomination of any judges, including the chief justice, the latter

cannot become an ex officio chairman (as he did automatically in Missouri) until after his appointment has been effected. Thereafter, he will serve as a seventh member of the Council. In the event of his incapacity to serve, it is contemplated that rules of the Council will provide for an acting chief justice as his interim successor.

(Sec. 12 Judicial Council; Terms of Office)

This section provides for staggering the initial terms of the Judicial Council so that non-attorney and lawyer members are appointed in alternate years, respectively, and thereafter each successor member will serve for six years. Judge Laurance M. Hyde of the Missouri Supreme Court points out the reason for a similar six-year term in that state as being that, since a governor serves only a four-year term, no one governor will be able to appoint all of the non-lawyer members during any such term, and thereby control to that extent the personnel of the nominating body.

(Sec. 13 Judicial Council; Additional Duties)

This section empowers and directs the Judicial Council, with its experience and vantage-point in the field of judicial administration, to recommend needed improvements in the structure and operation of the court system.

(Sec. 14 Retirement for incapacity)

It is becoming increasingly recognized that provision should be made, as this section does, for relieving a judge from his judicial duties when, as very occasionally happens, his retirement for reasons

other than age or misconduct, becomes necessary to protect the administration of justice. Such retirement of a Supreme Court justice should be done only on recommendation of an outside board, rather than by the Supreme Court itself. This procedure is similar to that adopted in the Constitution for Hawaii. For other judges, removal by Supreme Court proceedings will be effective and adequate, as has been provided in the Constitution of Puerto Rico.

(Sec. 15 Retirement for Age)

The retirement laws for state judges have tended increasingly to adopt 70 as the maximum or mandatory retirement age. However, a retired justice or judge may still be called upon, in many states, for temporary service or special assignment, and this section permits such service to be made possible by court rule.

(Sec. 16 Impeachment of Judges)

Procedure for impeachment of justices and judges should, as here provided, be in accord with that for other State officers.

(Sec. 17 Compensation of Judges)

While compensation for justices and judges should be prescribed by law, it should not be susceptible of arbitrary diminution during office. It should be subject to increase as future needs dictate, and should be subject to decrease only when a general reduction applying to all State officers becomes imperative.

(Sec. 18 Ineligibility to Other Offices)

The prohibition against the practice of law or holding other office by full-time justices and judges is a necessary and desirable one, and has been widely advocated. A similar provision was contained in the proposed new Judicial Article for the State of Illinois.

(Sec. 19 Rule-Making Power)

One of the major factors in New Jersey's remarkable achievement in bringing its trial calendars and court business up-to-date, and in simplifying and expediting the administration of justice, has been the vesting of the rule-making power in the Supreme Court, and the exercise of such power by the Court in adapting the Federal Rules of Civil Procedure to state court practice. The American Bar Association has strongly advocated, as its first and keystone recommendation in its program for reform of judicial procedure: "That practice and procedure in the courts should be regulated by rules of court; and that to this end the courts should be given full rule-making powers." This section places primary responsibility for such rule-making in the Supreme Court, reserving to the Legislature a power to change rules of procedure by a two-thirds vote.

(Sec. 20 Court Administration)

A coequal factor in New Jersey's historic modernization of its judicial system has been the vesting of administrative authority and responsibility in its chief justice, with power to assign judges to courts or areas for temporary service as needed. To assist the

chief justice by supervising the management and housekeeping functions of the courts, both statewide and local, and by furnishing him with accurate and current statistics on court business, an administrative director is essential. This has been demonstrated not only by the economies effected by the Administrative Office of the United States Courts since its establishment in 1939, but also by the fact that nearly a third of the states have since followed the example thus set. Its inclusion in this section will, together with the other provisions contained in this article, place Alaska in the vanguard of jurisdictions whose judicial systems typify the best and most modern principles of efficient judicial administration and will provide the guarantee of a strong, fearless and independent judiciary.

Constitutional Convention
Committee Proposal/3
December 9, 1955

ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON
DIRECT LEGISLATION, AMENDMENT AND REVISION

Hon. William A. Egan
President, Alaska Constitutional Convention

Dear Mr. President:

Your Committee on Direct Legislation, Amendment and Revision presents for your consideration and adoption its proposed Articles on Initiative, Referendum and Recall; and Amendment and Revision.

The Committee proposal, while incorporating many of the ideas contained in Convention Proposals No. 29 and 34, and in other drafts submitted to the Committee, is a Committee substitute.

A section by section commentary of the subject matter has been prepared by your Committee for the use of the Delegates to the Convention.

Respectfully submitted,

E. B. Collins, Chairman

Jack Hinckel

M. R. Marston

Irwin L. Metcalf

Warren A. Taylor

W. O. Smith

Leonard King

CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 3

Introduced by Committee on Direct Legislation

INITIATIVE, REFERENDUM AND RECALL
AMENDMENT AND REVISION

RESOLVED, that the following be agreed upon as part
of the Alaska State Constitution:

ARTICLE ON DIRECT LEGISLATION

Initiative 1 Section 1. The people reserve the power by petition
2 to propose laws and to enact or reject such laws at the
3 polls.

Referendum 4 Section 2. The people reserve the power to require,
5 by petition, that laws enacted by the legislature be
6 submitted to the voters for ~~approval~~ approval or rejection.

Procedure 7 Section 3. The legislature shall prescribe the
8 procedures to be followed in the exercise of the powers
9 of initiative and referendum, subject to the specific
10 authority reserved herein. No law shall be enacted to
11 hamper, restrict or impair the exercise of powers reserved
12 herein by the people.

Petitions, 13 Section 4. Prior to general circulation, an initia-
ballot 14 tive petition shall be signed by ten qualified electors
title, 15 as sponsors and have the constitutionality certified by
election, 16 the Attorney General. Certification shall be reviewable
vote re- 17 by the courts. A valid initiative or referendum petition
quired 18 shall be signed by qualified electors equal to eight

1 percent of the number of votes cast for Governor in the
2 preceding general election at which the Governor was
3 chosen. Petitions shall be filed with the Attorney Gen-
4 eral, who shall prepare a ballot title, and the adequa-
5 cy of the ballot title shall be reviewable by the courts.
6 Initiative petitions may be filed at any time. Refer-
7 endum petitions shall be filed within 90 days after ad-
8 journment of the legislative session at which the measure
9 was passed. Laws proposed by the initiative shall be
10 submitted to the voters by ballot title at an election
11 not later than 180 days after the adjournment of the
12 legislative session following the filing of the petition,
13 unless the legislature enacts the measure initiated
14 during the session. The question on referendum shall be
15 submitted to the voters by ballot title not later than
16 120 days after the filing of a petition against the mea-
17 sure. A majority of the votes cast is necessary for the
18 adoption of an initiated law, or the defeat of a measure
19 referred. No law passed by the initiative may be vetoed
20 by the Governor nor amended or repealed by the legislature
21 for a period of three years.

Restrictions 22 Section 5. Neither the initiative nor referendum
23 may be used as a means of making or defeating appropria-
24 tions of public funds or earmarking of revenues nor for
25 local or special legislation. Emergency acts are not

1 subject to referendum.

Recall

2 Section 6. Every elected public official in the
3 State, except judicial officers, is subject to recall by
4 the voters of the State or subdivision from which elected.
5 Grounds for recall are malfeasance, misfeasance, nonfeas-
6 ance, or conviction of a crime involving moral turpitude.
7 The legislature shall prescribe the recall procedures.

ARTICLE ON REVISION AND AMENDMENT

Methods

1 Section 1. Revisions of or amendments to this
2 constitution may be adopted by two succeeding legisla-
3 tures, or be proposed by constitutional convention or
4 by the legislature.

Proposals by
Legislature

5 Section 2. Any legislature may by a two-thirds
6 vote of each house propose amendments to the Constitu-
7 tion. Proposed amendments may be submitted by ballot
8 title prepared by the Attorney General to the voters at
9 the next general election. If a majority of the votes
10 tallied on the question favor the adoption of the amend-
11 ment, the amendment is adopted.

12 Proposed amendments may be submitted to the next
13 legislature not less than two years after being proposed.
14 If the second legislature by a two-thirds vote of each
15 house favors the adoption of the amendment, the amend-
16 ment is adopted.

Constitutional
Convention

17 Section 3. The legislature may provide for
18 Constitutional Conventions. If any ten-year period
19 elapses during which the legislature has not called a
20 convention, the Governor shall certify the question,
21 "Shall there be a Constitutional Convention?" The
22 question shall be submitted at the first general elec-
23 tion following the expiration of such period. If a
24 majority of the ballots cast upon the question are in
25 the affirmative, delegates to the convention shall be

ARTICLE ON REVISION AND AMENDMENT

-2-

1 chosen at the next regular election unless the legisla-
2 ture provides for the election of delegates at a special
3 election.

4 Unless the legislature provides otherwise, the law
5 providing for the Alaska Constitutional Convention of
6 1955 shall be followed insofar as possible relating to
7 number of members, districts, convention powers, election
8 and certification of delegates, submission and ratifica-
9 tion of revisions and ordinances, and other applicable
10 provisions. The appropriation provisions of the law
11 shall be self-executing and shall constitute a first
12 claim on the general fund of the State Treasury. The
13 legislature may provide additional appropriations.

ALASKA CONSTITUTIONAL CONVENTION

Commentary on the Article of Initiative, Referendum
and Recall

(Sec. 1 Initiative)

The initiative is the power of the people to initiate laws themselves and provide for a referendum on such laws without action by the legislature. This section reserves the authority of the people to initiate laws by petition and vote of the people directly.

(Sec. 2 Referendum)

This section permits the people to require that laws passed by the Legislature be referred to a vote of the people before taking effect. This power is known as the Referendum.

(Sec. 3 Procedure)

Many constitutions, in the states which make provision for the use of the initiative and referendum, contain a great degree of detail relating to the exercise of the initiative and referendum. This section permits the legislature to provide by law for some details, but provides that the legislature may not restrict the substantive rights guaranteed in Section 4, nor to require procedures more difficult than provided in Section 4.

(Sec. 4 Petition, Ballot title; election; vote required)

This section sets forth certain substantive provisions and minimum procedures affecting the exercise of the initiative

and referendum. To prevent waste of money on elections for laws that are unconstitutional, sponsors are required to submit a proposed law to the Attorney General for certification of its constitutionality, subject to court review, prior to the circulation of petitions. The provision is intended to stop, at the initial stage, the circulation of petitions for laws that would, even if approved by the voters, result in expensive court action.

If the legislature adopts a measure that is the subject of the initiative, the measure does not have to be submitted to the people.

Additional details of procedure may be provided by the legislature subject to the limits imposed by this section. The procedure outlined has the advantage of brevity while ensuring the substantive rights to the people.

(Sec. 5 Restrictions)

The exercise of the initiative is a fundamental right of the people, but special interest groups should not be permitted to unduly hamper the operation of government. The restrictions in Section 5 will prevent the abuses and problems that have sometimes arisen in the states permitting initiative and referendum. Neither the initiative nor referendum can be used with regard to emergency legislation, appropriations, or measures earmarking taxes and other revenues, or for special or local laws that are of interest to only one group of people or people in only one portion of the state.

(Sec. 6 Recall)

The right of the people to remove elected officials is preserved. The Legislature is directed to provide the methods to be used.

Commentary on the Article on Amendment and Revision

(Sec. 1 Methods)

This section outlines three methods by which the constitution may be amended or revised. (1) By action of two separate legislatures directly; (2) by action of one legislature and referral to the people; and (3) by constitutional convention.

(Sec. 2 Proposals by Legislature)

The Legislature, by a two-thirds vote, may submit a proposed amendment to a vote at a general election. Use of general election is intended to insure a substantial vote on the question.

An alternate method is provided which permits the legislature, by a two-thirds vote, to submit a proposed amendment to the next legislature, but not to a succeeding session of the same legislature. If the second legislature adopts the amendment by a two-thirds vote it becomes part of the constitution without referring it to a vote of the people.

(Sec. 3 Constitutional Convention)

The legislature is empowered to call a convention, but if the legislature does not provide for a convention each ten years, the question is submitted to the people at the following general election.

The legislature is authorized to prescribe the procedures and powers of a convention; but if it does not make such provisions, the law calling this convention will be followed insofar as practicable.

Constitutional Convention
Committee Proposal/4
December 13, 1955

CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 4

Introduced by Committee on Recommendations and Resolutions
LOCATION OF STATE CAPITAL, AND PROCEDURE FOR CHANGE THEREOF

RESOLVED, that the following ordinance be ordained:

1 Section 1. The seat of government shall be Juneau,
2 which is established as the capital of the State until
3 changed as hereinafter provided.

4 Section 2. At the first regular session of the
5 Legislature held ten years after this Constitution be-
6 comes effective, the legislature shall provide by law
7 for making and publicizing a study of the public advan-
8 tages, for selection as a site for the seat of govern-
9 ment, of various communities which may petition the
10 Legislature for selection as the seat of government,
11 and for submitting, at the next general election after
12 the study is made and publicized, to the qualified voters
13 of the State the question of the selection of a site for
14 the seat of government of the State. The community
15 receiving 65 percent or more of the qualified votes cast
16 at the election shall become the seat of government of
17 the State. If no community receives at least 65 percent
18 of the qualified votes, the question shall be submitted
19 to the qualified voters at the next general election in

1 respect to the two communities receiving the larger
2 number of votes at the first election, and the community
3 receiving 55 percent or more of the qualified votes cast
4 shall become the seat of government of the State.

Constitutional Convention
Committee Proposal/5
December 14, 1955

ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON
LEGISLATIVE BRANCH

Hon. William A. Egan
President, Alaska Constitutional Convention

Dear Mr. President:

Your Committee on Legislative Branch submits the attached proposed Article, together with a commentary and explanation of its reasons for its decisions.

The committee considered Delegate Proposals Numbers 23 and 25 and incorporated some of their provisions in its report.

Respectfully submitted,
Steve McCutcheon, Chairman
John McNees, Secretary
George D. Cooper
Helen Fischer
Jack Hinckel
Eldor Lee

I do not concur as to Sections 13, 14, 15, and 21.

Dora M. Sweeney

Constitutional Convention of Alaska

COMMITTEE PROPOSAL NO. 5

Introduced by Committee on Legislative Branch

LEGISLATIVE POWERS AND DUTIES

RESOLVED, that the following be agreed upon as part
of the Alaska State Constitution.

ARTICLE ON LEGISLATIVE BRANCH

Legislative	1	<u>Section 1.</u> The legislative power and authority of the
Power	2	state is vested in a legislature, which consists of a
	3	Senate of not more than 20 members and a House of
	4	Representatives of not more than 40 members.
Qualifica-	5	<u>Section 2.</u> A senator shall be at least 25 years of age
tions of	6	and have resided in Alaska at least 3 years, and in the
Members	7	district to be represented at least one year, immediately
	8	prior to filing for office, and shall otherwise be a
	9	qualified elector.
	10	A representative shall be at least 21 years of age
	11	and have resided in Alaska at least 3 years, and in the
	12	district to be represented at least one year, immediately
	13	prior to filing for office, and shall otherwise be a
	14	qualified elector.
Election;	15	<u>Section 3.</u> Members of the legislature shall be elected
Terms	16	on the day provided for general elections, and their
	17	terms of office shall begin on the fourth Monday of the
	18	following January. The term of office of members of the

1 House of Representatives is two years. The term of
2 office of members of the Senate is four years, and one-
3 half of the members shall be elected each two years.

Vacancies

4 Section 4. Any vacancy in the legislature shall be filled
5 for the unexpired term in such manner as may be prescribed
6 by law, or, if no provision be made by law, by appoint-
7 ment by the governor for the unexpired term.

Disquali-
fications

8 Section 5. No member of the legislature shall hold any
9 other office which has been created, or the salary or emol-
10 uments of which have been increased while he was a member
11 of the legislature, during the term for which he was
12 elected and for one year after the expiration of such
13 term. No legislator or other elective or appointive
14 officer of this state shall file or run for election to
15 any other state office until his services have been termin-
16 ated, but a member of one house of the legislature may be
17 nominated and elected to the other house. This section
18 shall not apply to positions of employment in or
19 elections to any constitutional convention.

Privileges
of
Members

20 Section 6. No member of the legislature shall be held to
21 answer before any other tribunal for any statement made
22 or action taken in the exercise of his legislative func-
23 tions; and members of the legislature shall, in all cases
24 except felony or breach of the peace, be privileged from
25 arrest during their attendance at the sessions of their

1 respective houses, and in going to and returning from
2 the same.

Salary and 3 Section 7. Each member of the legislature shall receive
Travel 4 an annual salary equal to one-third of the salary of the
Expense 5 Governor, and shall be entitled to travel expenses in go-
6 ing to and returning from sessions. The presiding offi-
7 cers of the respective houses may receive an additional
8 salary, and members of the legislature may receive a per
9 diem allowance for expenses while in session, as the
10 legislature may direct.

Regular 11 Section 8. The legislature shall convene on the fourth
Sessions 12 Monday in January each year. Neither house may adjourn
13 or recess for a period longer than three days without the
14 concurrence of the other.

Special 15 Section 9. Special sessions may be called by the Governor.
Sessions 16 Special sessions may be ordered by a vote of two-thirds
17 of the legislators, through a poll directed by the legis-
18 lative council, which shall cause the legislature to assem-
19 ble in special session. When the legislature is convened
20 in special session by the Governor there shall be no legis-
21 lation upon subjects other than those designated in the
22 proclamation of the Governor calling such session, or
23 presented to them by the Governor. No special session
24 shall be of longer duration than thirty days.

Interim 25 Section 10. There shall be a legislative council and
Committees 26 such other interim committees as the legislature may

1 establish. The council and other committees may meet
2 between sessions and perform such duties and employ other
3 persons as the legislature may direct or permit. Members
4 of the council and other committees may receive an allow-
5 ance for expenses during the performance of their duties.
6 Section 11. The Houses of each legislature shall adopt
7 uniform rules of procedure. Each house shall have the
8 power to choose its officers and employees, shall be the
9 judge of the elections and qualifications of its members;
10 and each house shall keep a journal of its proceedings. A
11 majority of the members of each house shall constitute a
12 quorum to do business, but a smaller number may adjourn
13 from day to day and may compel the attendance of absent
14 members. The legislature shall have the power to regulate
15 lobbying.

Rules of
Procedure

16 Section 12. The legislature shall direct by law in what
17 manner and in what court suits may be brought against
18 the state or agencies thereof.

Suits
against
State

19 Section 13. All civil officers of this state shall be
20 liable for impeachment by the legislature. A motion for
21 impeachment shall arise in the Senate and shall be by two-
22 thirds vote of all the Senators. Such motion shall list
23 fully the basis for the proceeding. The trial on impeach-
24 ment shall be conducted before the house of representatives,
25 and a Justice of the Supreme Court designated by the Court
26 shall preside. A vote of two-thirds of all the members of

Impeach-
ment.

1 the house of representatives is required to render a judg-
2 ment of impeachment. Judgment of impeachment shall not
3 extend beyond removal from office, but shall not prevent
4 punishment of such officer by the courts on charges growing
5 out of the same matter.

Joint
Address

6 Section 14. Any civil officer, except the Governor, may
7 be removed for cause which need not be sufficient ground
8 for impeachment. The cause or causes shall be stated at
9 length in a concurrent resolution and entered on the jour-
10 nal of each house. The resolution must be passed by vote
11 of a majority of the members of each house. No officer
12 shall be removed unless he has been served with a state-
13 ment of the cause alleged, and had an opportunity to be
14 heard. On the question of removal, the yeas and nays
15 shall be entered on the journals.

Veto by
Governor

16 Section 15. The governor shall have the power to veto
17 bills passed by the legislature. If the Governor vetoes
18 a bill he shall return it to the house of representatives
19 together with his objections. The legislature sitting as
20 one body shall reconsider the passage of the bill. Bills
21 not carrying appropriations or affecting the expenditure
22 of monies shall become law by a two-thirds vote of the
23 total number of legislators to which the state is entitled.
24 Bills carrying appropriations, dealing with taxation or
25 affecting payments of monies under existing statutes, or

1 an item or items in the general appropriations bill shall
2 become law upon the affirmative vote of three-fourths of
3 the total number of legislators to which the state is
4 entitled. The vote on reconsideration of a vetoed bill
5 shall be entered on the journals of both houses. While
6 the legislature is in session, if the Governor neither
7 signs nor vetoes a bill within fifteen days (Sundays ex-
8 cepted) after it is delivered to him, it shall become law
9 without his signature. If the legislature is not in
10 session and the Governor neither signs nor vetoes a bill
11 within twenty days (Sundays excepted) after it has been
12 presented to him, the same shall be law in like manner
13 as if he had signed it.

Bills;
Enactment

14 Section 16. The legislature shall establish the procedure
15 for enactment of bills into law, and no bill shall become
16 law without a vote of a majority of the membership of each
17 house, and the yeas and nays on final passage shall be
18 entered in the journal. Every bill, except bills for ap-
19 propriations and bills for codification, revision, or re-
20 arrangement of existing laws, shall be confined to one
21 subject, which shall be expressed in the title. Bills
22 for appropriations shall be confined to appropriations.

Time of
Taking
Effect

23 Section 17. No law passed by the legislature, except the
24 general appropriation act, shall take effect until ninety
25 days after the adjournment of the session at which it was

1 enacted, unless in case of emergency, which emergency must
2 be expressed in the act, the legislature shall, by a vote
3 of two-thirds of all the members of each house, otherwise
4 direct.

Local or 5 Section 18. The legislature shall pass no local or special
Special 6 act in any case where a general act can be made applicable,
Acts 7 and whether a general act can be made applicable shall be
Prohibited 8 a matter for judicial determination. No local act shall
9 take effect until approved by a majority of the qualified
10 voters voting thereon in the district to be affected.

Appropria- 11 Section 19. No appropriation shall be made for other than
tion Re- 12 a public purpose; nor to any denominational or sectarian
striction 13 institution or association.

Remission 14 Section 20. No obligation or liability of any person,
of Taxes 15 association or corporation held or owned by the state, or
Prohibited 16 any municipal corporation therein, shall ever be ex-
17 changed, transferred, remitted, released or postponed, or
18 in any way diminished by the legislature nor shall such
19 liability or obligation be extinguished except by the
20 payment thereof into the proper treasury.

Referendum 21 Section 21. Any bill failing of passage by the legislature
22 may be submitted to referendum by order of the Governor
23 either in its original form or with such amendments which
24 were considered by the legislature, as he may designate.
25 Any bill which, having passed the legislature, is returned

1 thereto by the Governor with objections and, upon reconsid-
2 eration is not approved by the majorities required by this
3 constitution, may be submitted to referendum by a majority
4 of all the members sitting as one body. Bills thus sub-
5 mitted to referendum shall be voted on at the next suc-
6 ceeding regular election occurring at least sixty days
7 after action is taken to submit them, unless the legisla-
8 ture shall provide for their submission at an earlier date.
9 This section shall not apply to bills containing appropria-
10 tions, raising or earmarking revenues, nor to local or
11 special bills.

Freedom of 12 Section 22. The legislature shall never pass any law which
Religion 13 affects the freedom of religious worship nor shall any
14 inhabitant of this state be molested in person or property
15 on account of his or her mode of religious worship.

Native 16 Section 23. The state of Alaska and its people do agree
Lands 17 that they forever disclaim all right and title to any
18 lands or other property not granted or confirmed to the
19 State or its political subdivisions by or under the author-
20 ity of the Act of Admission of this state, the right or
21 title to which is held by the United States or is subject
22 to disposition by the United States, and to any lands or
23 other property (including fishing rights) the right or
24 title to which may be held by any Indians, Eskimos, or
25 Aleuts (hereinafter called natives) or is held by the

1 United States in trust for said natives; that all such
2 lands or other property, belonging to the United States or
3 which may belong to said natives, shall be and remain
4 under the absolute jurisdiction and control of the United
5 States until disposed of under its authority, except to
6 such extent as the Congress has prescribed or may here-
7 after prescribe and except when held by individual natives
8 in fee without restrictions on alienation; and that no
9 taxes shall be imposed by the State upon any lands or other
10 property now owned or hereafter acquired by the United
11 States or which, as hereinabove set forth, may belong to
12 said natives, except to such extent as the Congress has
13 prescribed or may hereafter prescribe, and except when held
14 by individual natives in fee without restriction on alien-
15 ation; and no legislative act by the State of Alaska shall
16 be taken thereon. Nothing in this section shall prevent
17 this state from accepting any payments in lieu of taxes
18 that may be authorized by the Congress.

Taxes on
Nonresi-
dents

19 Section 24 The legislature shall not pass any act which
20 taxes the property and lands of citizens of the United
21 States residing without the state at a higher rate than
22 the lands and other property belonging to residents of
23 the State of Alaska.

Board of
Apportion-
ment

24 Section 25. There shall be a Board of Apportionment to
25 be composed of one member elected from each house and

1 three members of the public appointed by the Governor;
2 and the Chief Justice shall preside, without a vote. In
3 the event that either house shall fail to elect a member
4 of the board the governor shall appoint one member of that
5 house to serve on the Board of Apportionment. Any three
6 members of the Board constitute a quorum, but no reappor-
7 tionment shall take effect without the affirmative vote
8 of three members. The Board shall have the power to
9 reapportion and redistrict both the house and the senate,
10 not oftener than once in six years but at least once each
11 twelve years, and the Supreme Court shall issue an order
12 fixing the boundaries and the number of members to be
13 elected in each Senatorial and House District.

ALASKA CONSTITUTIONAL CONVENTION
Commentary on the Legislative Article

(Sec. 1 Size of Houses)

There seems to be widespread opinion that small houses focus the attention of the people upon the legislature better than do large ones, for the personalities and voting records of a few legislators may be understood by the public but they will not make the effort necessary to keep up with large houses. In small houses, moreover, the members may grow to know one another well and to proceed with the minimum formality. Instead of setting the number, therefore, it is here set at a maximum with no minimum.

(Sec. 2 Age and Residence)

The age and residence requirements for senators and representatives are set low in order to induce young people to take an early and active part in the democratic process.

(Sec. 3 Election Day and Term)

The election day is to be provided by act of the legislature, and the date at which legislators take their seats is the same as in the Territorial Legislature. The term of two years for members of the House and four for the Senate is common in the majority of states.

(Sec. 4 Vacancies)

The Legislature is permitted under the proposed wording to provide for special elections if it cares to use such a more expensive method than appointment by the governor for the unexpired term.

(Sec. 5 Dual Officeholding)

It is generally agreed that the temptation to create jobs or to increase the salary in existing jobs which legislators would then accept ought to be removed. There have been instances in which legislators have virtually coerced governors into appointing them to state offices as the price for their acting on the governor's program; such deals would be prevented by requiring a year to elapse before eligibility. This section, furthermore, would prevent any state official from using his office or expense account as a vehicle for campaigning for another office.

(Sec. 6 Legislative Immunity)

This immunity from actions of slander for words spoken in debate is an ancient and necessary protection for members of **parliaments**. The wording is almost the same as that in the United States Constitution.

(Sec. 7 Salary and Travel)

Most states have not paid legislators respectable salaries, and then the citizens have often been disappointed when their legislators were not respectable, either. Good salaries will not automatically

produce good legislators; rather, they make their selection possible. Poor salaries, on the other hand, tend to produce two types of legislators: Those who have private means, and who are, consequently, likely to be upper-class in their attitudes; and, second, those who are on the payroll of some outside interest and who are sent to the legislature to vote as that interest desires. Such legislators are, in some states, called "the inside lobby". The interests that control these legislators do not want them to vote for higher legislative salaries, lest they get too independent, and this opposition is added to the sentiment that the poorly paid legislators are not worth more than they are paid. A consequence is that the legislature, which ought to be the forum of the people, has come to be that branch of the state government that the people have held in the lowest regard. The people's business is sufficiently important so that men should make careers of being legislators, as they make careers of being in Congress; and we should pay them enough to make careers possible and respectable.

Since the governor occupies a single, conspicuous office, payment of more adequate salaries to governors has generally been possible, and the states have therefore attracted many fine men as candidates. But since the value of money changes over the years, it is undesirable to put dollaramounts in a constitution. Instead, it appears that both objectives (higher salaries and no dollar amounts) may be reached at once by tying the salaries of governors and legislators together.

(Sec. 8 Regular Sessions)

Having paid legislators so poorly that they got poor legislators,

some states have sought to cure that evil by limiting the number of days the legislature could remain in session on the theory that the less the legislators were at the capitol the less harm they could do. This is essentially an anti-democratic view, for it presumes that the representatives of the people ought not to be available to represent them except for short and limited periods. It seems better to pay legislators well and then to trust them to stay in session as long as necessary. As our states increase in population, the 30-day and 60-day sessions set in some constitutions have become more and more obviously inadequate, and to do the necessary business such tricks have had to be resorted to as setting phoney legislative days, stopping the clock, forcing the governor to call special sessions, and so on.

The date for the meeting (the fourth Monday in January) is the date used by the Territorial Legislature.

The requirement that neither house may adjourn without the consent of the other is universal. It is necessary to prevent one house from stopping the public business by adjourning.

(Sec. 9 Special Sessions)

Some constitutions permit only the executive to call special sessions, but if the governor has performed some questionable action when the legislature is not in session he can prevent or postpone being queried about it by refusing to call a special session. The newer constitutions have, therefore, set up some arrangement by which the legislators may without him produce a special session.

The other provisions of this section are almost standard constitutional equipment.

(Sec. 10 Legislative Council and Interim Committees)

Provision for these is also now almost standard. Their authorization is desirable lest a question be raised about the legislature's constitutional ability to designate committees to act when the legislature is no longer in session.

(Sec. 11 Rules)

Different sets of rules have occasionally led to trickery and often have led to citizen confusion. It is difficult for a citizen to understand why one house cannot do what the other can do. To avoid these situations both houses are required to adopt uniform rules.

The other provisions of this section are usual in constitutions, except perhaps for the regulation of lobbying. That power is here specifically given to the legislature, because in some jurisdictions cases have arisen to challenge the right of the legislature, under the freedom of petition rights, to regulate the behavior of lobbyists.

(Sec. 12 Suits against the State)

Congress has by law permitted suits by aggrieved or injured citizens against the United States, and most states permit under various restrictions suits against municipalities and other local governments. It is no longer regarded as justice for the states to preserve absolute immunity against legal action for injuries its agents may commit.

(Sec. 13 Impeachment)

This section provides that all civil officers are subject to impeachment and removal from office by the legislature. In order to avoid unwarranted use of this power by the legislature the section provides that the Senate shall bring the action by a two-thirds vote. Since the Senate is composed of members with four-year terms it is expected that the Senators will not be over-hasty in bringing the impeachment proceeding. Because an impeachment proceeding is essentially a judicial action, one of the Justices of the Supreme Court will preside during the trial before the House of Representatives.

(Sec. 14 Joint Address)

Removal of officers, other than the Governor, by concurrent resolution of the legislature is authorized by this section. State Legislatures have not used the method of joint address too frequently. It permits the removal of officers for causes less than the high crimes that are usually the basis for impeachment proceedings; for example, removal on joint address permits removal for negligence, senility, or other inability.

(Sec. 15 Veto by Governor)

In many state constitutions, and in Alaska at present, the time allowed to the Governor for consideration of bills is so short that he is often unable to give them full and careful study. This section provides that the Governor will have fifteen days to sign or veto a bill while the legislature is in session and twenty days when the legislature

is not in session. . With the extended time allowed, the Governor is required to take positive action to sign or veto a bill, or the bill becomes law without his signature.

A two-thirds vote of the members of both houses sitting as one body is required to override a veto on ordinary bills. However, on revenue and appropriation bills, which affect the Governor's budget program, a majority of three-fourths is required to override a veto.

(Sec. 16 Bills: enactment)

Instead of incorporating specific requirements for the form and procedure of enacting bills, this section, like the United States Constitution, leaves this matter to the legislature. However, the section requires that the votes on final passage shall be recorded, and that bills shall be confined to one subject, except for revisions or consolidations and appropriation bills, which may cover many subjects. The use of riders on appropriation bills is prohibited, because of the abuses that have arisen in the Congress and in some states which do not have such a restriction.

(Sec. 17 Time of Taking Effect)

In order that a single date may be established when all bills, except emergency measures, will become laws, this section provides that the laws passed by any session will take effect 90 days after adjournment of each session. Exceptions are provided for the general appropriation bill, and, by a special two-thirds majority, any emergency measure. The emergency is required to be stated in the bill which will

tend to prevent use of this device for measures that are not, in fact, emergency legislation needed to prevent the disruption of governmental processes.

(Sec. 18 Local or Special Acts, Prohibited)

The legislature is prohibited from passing any local or special act when a general act can be made applicable . The question of whether a general act can be made applicable is made a matter of judicial determination. This method seems to be much better than attempting to enumerate the kinds of local or special acts that are prohibited. Local acts when permitted are required to be submitted to the voters of the district to be affected before taking effect as law.

(Sec. 19 Appropriation Restriction)

This section prohibits appropriations for other than public purposes and to sectarian or denominational institutions or associations. Your Committee knows that several proposals to this convention relate to a "public purpose" clause. Your Committee believes that some agreement must be reached as to just what language should be adopted to carry out the desires of this convention.

(Sec. 20 Remission of Taxes Prohibited)

This section prohibits the remission of taxes by the State or any municipal corporation. The section is added to ensure that no advantage will be gained by delinquent taxpayers.

(Sec. 21 Referendum)

Despite attempts to ensure a harmonious legislative-executive relationship by other sections of this Article, it is always possible that at times a deadlock will occur where a bill deemed necessary by the Governor will fail of passage, or a bill which a majority of the Legislature deems necessary but for which it cannot obtain the special majority required to override a veto. This section permits either the Governor or the Legislature to resolve such a deadlock by submitting the bill to a vote of the people. The provision does not apply to revenue or appropriation measures, nor to local or special legislation.

(Sec. 22, 23, 24)

These sections contain language which is directed by the enabling acts to be in the state constitution. Section 23 makes clear that the state may accept payments in lieu of taxes from the Federal government,

(Sec. 25 Board of Apportionment)

A board is set up here to eliminate delays in apportionment and reapportionment. All branches of the state government are involved in its selection, and its determinations are enforceable by the Supreme Court.

Constitutional Convention
Committee Proposal/6
December 15, 1955

ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON
LOCAL GOVERNMENT

Hon. William A. Egan, President
Alaska Constitutional Convention

Dear President Egan:

Your Committee on Local Government herewith presents the proposed article on local government for consideration by the Convention. Also attached is a commentary on the proposed article.

Respectfully submitted,

John H. Rosswog, Chairman
John M. Cross
James P. Doogan
Victor Fischer
Eldor R. Lee
Maynard D. Londborg
Victor C. Rivers

CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 6

Introduced by Committee on Local Government

LOCAL GOVERNMENT

RESOLVED, that the following be agreed upon as part of the
Alaska State Constitution.

ARTICLE ON LOCAL GOVERNMENT

Purpose and	1	Section 1. The purposes of this Article are
Liberal	2	to secure the maximum amount of local self-govern-
Construction	3	ment consistent with the state's responsibilities
	4	to the whole people and the state's membership in
	5	the Union, and to provide a framework which will
	6	accomodate future development and prevent the pyra-
	7	miding of independent tax-levying local government
	8	units. A liberal construction shall be given to the
	9	provisions of this Article in order that these pur-
	10	poses may be progressively achieved.
Local Govern-	11	Section 2. The local government system of the
ment System	12	state shall consist of two categories. These cate-
	13	gories shall be known as boroughs and cities and
	14	all local government powers shall be vested in them.
Boroughs	15	Section 3. Boroughs shall be established according
	16	to such standards and in such manner as the legislature
	17	may provide. These standards shall include, but not

1 be limited to, such factors as population, geography,
2 economy and transportation. Each borough shall
3 embrace, to the maximum extent possible, an area and
4 population with common interests. The entire area
5 of the state shall be divided into boroughs. The
6 legislature shall provide for three types of boroughs
7 to be known as boroughs of the first class, boroughs
8 of the second class, and boroughs of the third class.
9 A minimum of three boroughs each of the first and
10 second classes shall be established. The legisla-
11 ture shall provide the methods by which boroughs may
12 be merged, consolidated, dissolved, reclassified or
13 otherwise changed.

Powers of
Boroughs

14 Section 4. The powers and functions appropriate
15 to the local government requirements of each of the
16 three classes of boroughs shall be conferred by law
17 or charter. The descending order, in terms of
18 powers and functions, shall be from the first through
19 the third class. Boroughs of the first class shall
20 be, and boroughs of the second class may be,
21 municipal corporations.

Assembly

22 Section 5. The governing body of the borough
23 shall be the assembly. It shall be composed of mem-
24 bers of the city council or councils and of addi-
25 tional members from the area outside the city or cities

1 but within the borough to be selected in the manner
2 and in the number to be prescribed by law or charter.

Service
Areas

3 Section 6. Service areas may be established by
4 the assembly to provide special services within
5 portions of the borough in accordance with procedures
6 established by law or charter. The assembly shall
7 govern service areas. Participation by residents in
8 the administration of service areas may be provided
9 by law or charter. These special services shall be
10 provided only to the residents of the service area
11 and shall be financed by taxes, charges, or assess-
12 ments to be levied by the assembly within the service
13 area involved. Such taxes, charges, or assessments
14 shall be in addition to those that may be levied
15 throughout the entire area of the borough.

Cities

16 Section 7. A city shall be a municipal corporation
17 and shall be incorporated according to standards
18 established by law. It shall be a part of the borough
19 in which it is located. The governing body of a city
20 shall be a council and may exercise such powers and
21 functions as may be conferred by law or charter.
22 Cities may be merged, consolidated, dissolved, or
23 classified in a manner provided by law.

Jurisdiction
of Boroughs
and Cities

24 Section 8. The city council's jurisdiction shall
25 extend to those matters which involve the area within
26 the city. The assembly's jurisdiction shall extend

1 to those matters involving the whole or any portion of
2 the borough.

Local Govern- 3
ment Taxation 4

Section 9. The power of local government taxation shall be exercised only by boroughs and cities.

Charters 5
6

Section 10. The qualified voters of any municipal corporation are hereby vested with the power to adopt or repeal a home rule charter of government in a manner provided by law and to amend the charter in a manner provided by the charter. In the absence of such legislation, the governing body of a municipal corporation in which the adoption of a charter is proposed shall provide for the procedure to be followed in the preparation, approval, or rejection of the charter. Consideration shall be given in the drafting of charters to such factors as representation on the basis of population and area, adjustment of existing indebtedness, and differential taxation based upon benefits to be derived. All charters, or parts thereof and amendments thereto, shall be submitted to the qualified voters of the municipal corporation and shall not become effective unless approved by a majority of the qualified voters voting on the specific question.

Home Rule 24
Powers 25

Section 11. A municipal corporation which adopts a charter may exercise all legislative powers which

1 are not prohibited by this constitution, by law, or
2 by its charter.

Optional
Forms of
Government

3 Section 12. The legislature shall provide optional
4 forms of government for those municipal corporations
5 which do not adopt charters. An authorized optional
6 form may be adopted or abandoned by majority vote of
7 the qualified voters of a municipal corporation voting
8 thereon.

Boundaries

9 Section 13. The legislature shall provide for the
10 rearrangement of local government boundaries to the
11 end that those boundaries may be adjusted as conditions
12 may require. The legislature shall establish a special
13 agency which, on its own motion or on petition, in a
14 manner prescribed by law shall consider all questions
15 relating to the rearrangement of local government
16 boundaries and the terms and conditions upon which
17 such rearrangements may be made. This agency in its
18 consideration of boundary rearrangements shall work
19 toward the end that local government units embrace
20 social, economic, and geographic areas which will
21 make possible the maximum realization of the purpose
22 of this Article. Decisions of this agency shall be
23 final within 45 days after the convening of the next
24 regular session of the legislature unless disapproved
25 by the legislature prior to that time.

Intergovern-
mental
Agreements

1 Section 14. Agreements may be made by any local
2 government with any other local government, with the
3 state or with the United States for a cooperative or
4 joint administration of any of its functions or
5 powers, and the legislature may facilitate such agree-
6 ments. Any city may, subject to such limitations as
7 established by law or charter, transfer to the
8 borough in which it is located any of its functions
9 or powers and may similarly revoke the transfer of
10 any such functions or powers.

Advice and
Review

11 Section 15. The legislature shall provide an
12 agency which shall render assistance and advice to
13 local governments, collect and publish information
14 relating to local government on a state-wide basis,
15 review the activities of local governments, and
16 perform such other duties as may be prescribed by law.

Special
Districts

17 Section 16. The legislature shall provide for the
18 integration of the special districts exercising local
19 government powers with the government of the borough
20 at the time the boroughs are established.

Increased
Financial
Burdens

21 Section 17. Increased local government expendi-
22 tures arising out of legislative acts shall not be-
23 come effective until approved by the local government
24 or until funds sufficient to meet the increased
25 expenditures are granted by the state to the local
26 governments.

General	1	Section 18. The legislature, in passing laws
Laws	2	relating to cities and boroughs, may act only by
Required	3	laws which are of general terms and effects.

ALASKA CONSTITUTIONAL CONVENTION

GENERAL DISCUSSION OF LOCAL GOVERNMENT UNDER PROPOSED ARTICLE

The committee on local government aimed at providing a maximum of self-government to people in all parts of Alaska. To meet this goal, two basic local government units were established--boroughs and cities. This framework is designed to accommodate today's needs and tomorrow's growth and development.

The proposed article is based upon experiences in the territory, the states, Canada and other countries. Proven principles and practices were brought together to establish a system of local government for the state of Alaska. It is a system which, in essence, many states have been attempting to achieve by modernizing existing units. We are fortunate in being able to start more or less from scratch.

The "borough", area-wise, is the larger of the two local government units. Cities would be located within the boundaries of the boroughs. The relationship between the two emphasizes mutual interest and cooperation.

Principles Underlying Proposed Local Government System:

1. Self-government--The proposed article bridges the gap now existing in many parts of Alaska. It opens the way to democratic self-government for people now ruled directly from the

capital of the territory or even Washington, D. C. The proposed article allows some degree of self determination in local affairs whether in urban or sparsely populated areas. The highest form of self-government is exercised under home rule charters which cities and first class boroughs could secure.

2. One basic local government system--The proposed article vests all local government authority in boroughs and cities. It prevents creation of numerous types of local units which can become not only complicated but unworkable.

3. Prevention of overlapping taxing authorities--The proposed article grants local taxing power exclusively to boroughs and cities. This will allow consideration of all local needs in the levying of taxes and the allocation of funds. It will lead to balanced taxation. Single interest agencies with taxing authority often do not realize needs other than their own.

4. Flexibility-- The proposed article provides a local government framework adaptable to different areas of the state as well as changes that occur with the passage of time. It allows classification of units on the basis of ability to provide and finance local services. It allows optional administrative forms, adoption of home rule charters, boundary changes, etc.

5. State interest-- The proposed article recognizes that the state has a very definite interest in and concern with local

affairs. For example, the credit of the state is indirectly involved in local financial matters and local units are the agencies through which many state functions are performed. The proposal therefore gives the state power to establish and classify boroughs, to alter boundaries of local units, to prescribe powers of non-charter governments, to withhold authority from home-rule boroughs and cities and to exercise advisory and review functions.

The Borough

Under terms of the proposed article, all of Alaska would be subdivided into boroughs. Each would cover a large geographic area with common economic, social and political interests. Boundaries are to be established by the state.

The borough will fill the gap so often caused by the absence of a unit sufficiently large enough to deal with a particular local government problem. For instance, such needs as schools, health service, police protection, recording, could be met at the borough level or in smaller areas within the borough.

Areas in Alaska vary widely as to economy, population size and density, means of transportation, financial ability to support local government and other factors. Therefore, three classes of boroughs were created to allow for variations.

A borough of the first class would offer the largest amount of authority and self-government to its citizens through adoption of home rule charters. The third class borough would have the most

limited scope, with the state performing most of the local functions. It could remain unorganized. A governing body might be elected to act in an advisory capacity to the state in cases where the state is providing funds to perform local services. The second class borough is granted powers falling in the range between the other two classes.

The governing body of the borough is to be known as the assembly. The basis for representation would be established by the legislature or by charter in the case of first class boroughs. Apportionment could be on the basis of population or area or both. Cities within boroughs would be represented by city council members.

("Borough" means a place organized for local government purposes. It was adopted by the committee after many names were reviewed. The committee felt it desirable to avoid any term, such as "county", already encumbered with detailed legal definitions or having a definite connotation in people's minds.)

Cities

The status of existing cities is not changed under the proposed article. Future incorporations would be governed by the legislature. Cities will have authority to adopt home rule charters.

Borough-City Relationships

The borough is created as a form of area government. Many boroughs of Alaska will have no cities within them. Others might include one or more cities, which would be part of the borough.

The borough would have no control over internal affairs of cities within its boundaries. The borough's jurisdiction would cover matters involving the borough as a whole, matters involving portions of the borough outside of cities and matters jointly involving the city and a surrounding area.

The committee believes that maximum cooperation between boroughs and cities and integration of their mutual functions will provide residents with best services at least cost. Provisions in this article facilitating mutual action include authority for cooperative agreements, for the transfer of functions from one unit to another and for establishment of service areas. Coordination will also be fostered by the provision that the city's representatives on the borough governing body be members of the city council since they know what the city can offer and are familiar with city needs.

Service Areas

Need may arise within a portion of a borough for services not required throughout its entire jurisdiction. These might include road improvements, fire protection, education, utilities. Any one service could be provided through establishment of a service area within which taxes, assessments or charges could be levied to cover the special cost.

Service areas would be under the jurisdiction of the borough's assembly. Thus all local taxes would be levied by a single agency. The borough assembly could, of course, establish advisory or admin-

istrative boards within service areas. For example, what is today an independent school district could exist within a borough. But budgetary review authority and allocation of funds would rest with the borough governing body rather than the city council. (It would also be possible to constitute the whole borough a school district.)

Boundaries

Under the proposed article the state establishes the original borough boundary lines. While this authority is left with the legislature, the local government committee envisions it would be done only after thorough study and consideration of economic, geographic, social and political factors.

Provision is also made for changes in the boundaries of boroughs and cities. Under the proposed article the legislature would establish a state agency or commission for this purpose. The local government committee believes boundaries should be left flexible to allow for changing conditions. Particularly in the case of boroughs, Alaska would thus avoid one of the pitfalls of stateside county government where boundaries are frozen by constitution or tradition.

Boundary changes could be made by the state agency upon petition or upon its own motion. The legislature would prescribe conditions for making changes and would be granted a veto power over all changes.

The advantage of the proposed method lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against the boundary change can be analyzed objectively.

The committee did not believe boundary questions should be placed in the hands of the court since this is a non-judicial matter.

Application To Small Communities

One of the local government problems in Alaska today is the inability of small communities to organize for provision of just one or a few local services. By authorizing the establishment of service areas within boroughs, the proposed article makes it possible for a small unincorporated community or a relatively isolated area to meet a specific local need.

Through establishment of service areas and assumption of administrative or advisory responsibility, the citizens of small communities or rural areas will be preparing themselves for full self-government. The committee felt the state has a particular responsibility to delegate authority in the administration of state financed local functions as well as to provide assistance and advice.

Constitutional Convention
Committee Proposal/6/a
January 18, 1956

ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON
LOCAL GOVERNMENT

Hon. William A. Egan, President
Alaska Constitutional Convention

Dear President Egan:

Your Committee on Local Government herewith presents the revised proposed article on local government for consideration by the Convention. Also attached is a commentary on the proposed article.

Respectfully submitted,

John H. Rosswog, Chairman
John M. Cross
James P. Doogan
Victor Fischer
Eldor R. Lee
Maynard D. Longborg
Victor C. Rivers

CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 6/a

Introduced by Committee on Local Government

LOCAL GOVERNMENT

RESOLVED, that the following be agreed upon as part of
the Alaska State Constitution.

ARTICLE ON LOCAL GOVERNMENT

Purpose and Liberal Construction	1	Section 1. The purposes of this Article are
	2	to secure the maximum amount of local self-govern-
	3	ment consistent with the interests and welfare
	4	of all the people of the state, and to provide
	5	a framework which will accomodate future develop-
	6	ment and prevent the duplication and overlapping
	7	of independent tax-levying local government units.
	8	A liberal construction shall be given to the pro-
	9	visions of this Article in order that these pur-
	10	poses may be achieved.
Local Government Power	11	Section 2. All local government powers
	12	shall be vested in boroughs and cities. The
	13	state may delegate taxing powers only to
	14	organized boroughs and cities.
Boroughs	15	Section 3. Boroughs shall be established
	16	according to such standards and in such manner

1 as the legislature may provide. These standards
2 shall include, but not be limited to, such factors
3 as population, geography, economy and transporta-
4 tion. Each borough shall embrace, to the maximum
5 extent possible, an area and population with
6 common interests. The entire area of the state
7 shall be divided into boroughs which may be
8 either organized or unorganized. The legislature
9 shall classify boroughs and provide the methods
10 by which they may be organized, incorporated,
11 merged, consolidated, dissolved, reclassified or
12 otherwise changed.

Powers of
Boroughs

13 Section 4. The powers and functions appro-
14 priate to the local government requirements of
15 each class of borough shall be conferred by law,

Assembly

16 Section 5. The governing body of the organized
17 borough shall be the assembly. The composition of
18 the assembly shall be prescribed by law provided
19 that each city shall be represented by persons who
20 are members of its city council and that the addi-
21 tional members shall be elected by the voters
22 living outside the cities.

Service
Areas

23 Section 6. Service areas to provide special
24 services within portions of an organized borough
25 may be established, altered or abolished by the

1 assembly, subject to the provisions of law. The
2 assembly may authorize the levying of such taxes,
3 charges or assessments within a service area as
4 may be necessary to finance the activities. No
5 new service area shall be created when, in the
6 judgment of the assembly, the objectives of
7 Section 1 of this Article would be better served
8 by giving a new function or functions to an
9 existing service area, incorporation of the area
10 as a city, or annexation of the area to a city.

Unorganized
Boroughs

11 Section 7. The Legislature shall provide
12 for the performance of necessary functions in
13 unorganized boroughs, allowing for a maximum of
14 local participation and responsibility.

Cities

15 Section 8. A city shall be incorporated
16 according to standards established by law. It
17 shall be a part of the borough in which it is
18 located. The governing body of a city shall be
19 a council which shall have such powers and
20 functions as may be conferred by law or charter.
21 Cities may be merged, consolidated, dissolved, or
22 classified in a manner provided by law.

Charters

23 Section 9. The qualified voters of any
24 borough of the first class or of any city of the
25 first class may adopt, amend or repeal a home

1 rule charter of government in a manner provided
2 by law. In the absence of such legislation, the
3 governing body of a borough or city of the first
4 class in which the adoption of a charter is
5 proposed shall provide for the procedure to be
6 followed in the preparation, approval, or
7 rejection of the charter. All charters, or parts
8 thereof and amendments thereto, shall be submitted
9 to the qualified voters of the borough or city
10 and shall not become effective unless approved by
11 a majority of the qualified voters voting on the
12 specific question.

Extended
Home Rule

13 Section 10. The legislature may extend
14 home rule to other classes of boroughs and cities.

Home Rule
Powers

15 Section 11. A home rule borough or city may
16 exercise all legislative powers which are not
17 prohibited by this constitution, by law or by its
18 charter.

Boundaries

19 Section 12. The legislature shall establish
20 a local boundary commission and regulate its
21 activities. The commission may, on its own motion
22 or on petition, consider any proposed boundary
23 change and present it to the legislature during
24 the first ten days of any regular session. Any
25 such change shall become effective at the end of

1 the session unless disapproved by a resolution
2 concurred in by a majority of all the members
3 of each house. The commission, subject to law,
4 may also establish terms and conditions upon which
5 local action to adjust local government boundaries
6 may be effectuated.

Intergovern-
mental
agreements

7 Section 13. Subject to procedures and limita-
8 tions prescribed by law, agreements may be made
9 by any local government with any other local
10 government, with the state or with the United
11 States for a cooperative or joint administration
12 of any of its functions or powers. Any city may,
13 subject to such limitations as established by law
14 or charter, transfer to the borough in which it
15 is located any of its functions or powers and
16 may similarly revoke the transfer of any such
17 functions or powers.

Advice and
Review

18 Section 14. Provision shall be made by law
19 for an agency in the executive branch of the
20 government which shall render assistance and advice
21 to local governments and charter drafting agencies,
22 collect and publish information relating to local
23 government on a state-wide basis, review the
24 activities of local governments, and perform such
25 other duties as may be prescribed by law.

Special
Districts

1 Section 15. The legislature shall provide
2 for the integration of special districts per-
3 forming local government functions with the
4 government of a borough at the time the borough
5 is organized.

Constitutional Convention
XII/Local Government
January 18, 1956

ALASKA CONSTITUTIONAL CONVENTION
COMMENTARY ON LOCAL GOVERNMENT ARTICLE

Since the Territory of Alaska has no provisions for home rule and the people are governed directly from Washington, D.C. and the Capital of the territory, the Committee on Local Government is proposing this Article with the purpose of enabling the people in any part of Alaska to achieve a maximum amount of home rule for themselves. Studies were made of systems used in the United States, Canada and some European countries. The provisions of this article are intended to be self executing so far as possible. The plan is designed to accomodate today's needs and tomorrow's growth, and provides flexibility to meet the need for local government in all parts of Alaska.

We have not tried to detail the mechanics of setting up units of Local Government, but have tried to prepare a framework within which the Legislature of the State of Alaska can provide by law for local government and home rule.

Section 1. This section states the purpose and intent of this Article; to promote democratic self-government below the state level, guarding the interests and welfare of all concerned in a framework which will foster orderly development and prevent the abuses of duplication and overlapping of taxing entities.

Section 2. The purpose of this section is self-explanatory. It provides for no more than two levels of local government and local taxing power.

Section 3. Authorization of the legislature to divide the whole state into boroughs, some of which will doubtless remain for some time without fully organized governments. It provides for classification and alteration of boroughs.

Section 4. The legislature may make laws outlining the powers and functions appropriate to each class of borough.

Section 5. This section provides for representation of both rural and urban areas in the assembly, which is the governing body of the borough. Cities are to be represented on the assembly by certain members of their Councils to insure close cooperation between boroughs and cities. The actual method of apportionment is to be provided by the Legislature.

Section 6. Authorizes the borough assembly to establish special service areas, supported primarily by those benefited from such services.

Section 7. The State is authorized to provide for necessary services in unorganized boroughs with a maximum of local participation even in the smallest communities.

Section 8. This section provides for the incorporation, classification, government and powers of cities in accordance with law.

Section 9. Constitutional authority is given to first class boroughs and cities to adopt, repeal or amend home rule charters as the need arises. This is a self executing clause.

Section 10. This section provides that the legislature by law may extend home rule to any other classes of boroughs and cities.

Section 11. Home rule boroughs or cities have the power by their own law to govern themselves entirely unless otherwise prohibited by Constitutional or statutory law, or by their charters.

Section 12. This section provides for an agency that shall concern itself exclusively with local boundary questions. Boundary changes recommended by the agency are to be effective unless disapproved by the legislature.

Section 13. Boroughs and cities may make inter-governmental agreements with other boroughs, cities, the state and the United States, giving greater flexibility and closer cooperation between various levels of government.

Section 14. This section provides for an agency in the executive branch to help the people and local officials in the various parts of the State obtain by their own efforts the kind of local self-government they need and can afford. The agency will carry on a continuing study to assist the people and the Legislature in determining what changes may be necessary from time to time in the interest of better local government for all.

Section 15. The legislature is directed to bring special districts within the jurisdiction of organized boroughs as contemplated by this Article.

The name Borough was chosen from Black's Law Dictionary which states that a Borough is "a place for local government purposes." County was not used because of a wish to avoid undesirable connotations that attach to it and also because of its weak legal status in many states.

Constitutional Convention
Committee Proposal/7
December 15, 1955

ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON
PREAMBLE AND BILL OF RIGHTS

Hon. William A. Egan
President, Alaska Constitutional Convention

Dear Mr. President:

Your Committee on Preamble and Bill of Rights transmits herewith a proposed Preamble, an Article containing a Declaration of Rights, and an Article on Health, Education, and Welfare, and recommends their adoption by the convention. A commentary follows each of the proposed articles.

Two minority reports are attached, one by Delegates McNealy, Armstrong and Hellenthal suggesting an article to prohibit wire-tapping and the other by Mr. Hellenthal suggesting an article on collective bargaining.

The Committee made the following disposition of the delegates' proposals referred to this Committee:

Proposal No. 2: Incorporated in part in the Declaration of Rights and the Article on Education.

Proposal No. 6: Sections 6, 10, 11, 12 and 13 have been referred back to the floor, This Committee felt it had no jurisdiction on these subjects. The remainder of the sections were considered. The Committee adopted sections 3 and 7 with some changes. The rest of the proposal was not considered to be constitutional material.

Proposal No. 9: Section five of this proposal was reported back to the floor as not being within the terms of reference of this committee. Other articles of this proposition were included in the committee report.

Proposal No. 13: This proposal was incorporated in the Declaration of Rights with some changes.

Proposal No. 16: This proposal was a suggested preamble. The text was considered and was incorporated in part in the report of the committee.

Proposal No. 17: Sections 1, 2, 3, and 5 were adopted in substance in the Proposal on Health, Welfare and Education. Section 4 was rejected as not proper constitutional material. Section 8 is a general provision that will be considered in another section of the Constitution.

Proposal No. 19: The article on the Distribution of Power was rejected as not being necessary in this Constitution. Such an article would attempt to limit the executive, judicial and legislative branches in an unrealistic way. Complete separation has never existed and would not exist under this provision.

Proposal No. 21: Mr. Harris asked that this proposal be amended by the exclusion of the phrase dealing with labor because he did

not intend it to be a right to work provision. The committee considered the proposal as amended and included some of the material in the Declaration of Rights.

Proposal No. 31: This proposal was considered and rejected on the basis that these matters were outside the terms of reference of this Committee.

Proposal No. 38: The committee considered this proposal and included sections 1 and 2 in substance in the Declaration of Rights. Section 3 was partly rejected as not being constitutional material and the balance was included in the Declaration of Rights.

Respectfully submitted,

Dorothy Awes, Chairman

Ada B. Wien

R. Rolland Armstrong

Seaborn J. Buckalew

James P. Doogan

John Hellenthal

Robert J. McNealy

ALASKA CONSTITUTIONAL CONVENTION

COMMITTEE PROPOSAL NO. 7

Introduced by the Committee on the
Preamble and Bill of Rights

RESOLVED: That the following be agreed upon as part of the
Alaska State Constitution.

PREAMBLE, Article on Declaration of Rights, and
Article on Health, Education and Welfare.

1 We, the people of the State of Alaska, grateful to Almighty
2 God for our civil and religious liberty, seeking His con-
3 tinued blessing upon our endeavors to secure and transmit
4 these liberties unimpaired to posterity, do ordain and estab-
5 lish this Constitution.

6 ARTICLE

7 DECLARATION OF RIGHTS

8 Rights of Section 1. This constitution is to promote the gen-
9 Man eral welfare of the people, and is dedicated to the
10 principle that all persons have a natural right to
11 life, liberty, the pursuit of happiness and the en-
12 joyment of the gains of their own industry; that all

1 persons are equal and are entitled to equal rights
2 and opportunities under the law. These rights carry
3 with them corresponding duties to the people and to
4 the state.

5 Source and Section 2. All political power is inherent in the
6 Aim of Poli- people. All government originates with the people,
7 tical Power is founded upon their will only, and is instituted
8 solely for the good of the people as a whole.

9 Civil Section 3. No person is to be denied the enjoy-
10 Rights ment of any civil or political right because of race,
11 color, creed or national origin. The legislature
12 shall provide appropriate legislation in accord here-
13 with.

14 Freedom of Section 4. Every person may freely speak, write,
15 Speech and and publish on all subjects, being responsible for
16 Press; Assem- the abuse of that liberty. The right of the people
17 bly and peaceably to assemble and to petition the government
18 Petition or any department thereof shall never be abridged.

19 Freedom of Section 5. No law shall be made respecting an
20 Religion establishment of religion or prohibiting the free ex-
21 ercise thereof.

22 Due Section 6. No person shall be deprived of life,
23 Process liberty or property without due process of law.

24 Grand Juries, Section 7. The grand jury shall consist of twelve
25 Indictments citizens, any nine of whom concurring may find an

1 and Informa-- indictment or a true bill; Provided, that no grand
2 tion jury shall be convened except upon an order of a
3 judge of a court having the power to try and determine
4 felonies; but when so assembled such grand jury shall
5 have power to investigate and return indictments for
6 all character and grades of crime; and that the power
7 of grand juries to inquire into the willful misconduct
8 in office of public officers, and to find indictments
9 in connection therewith, shall never be suspended.

10 No person shall be prosecuted criminally for felony
11 other than by indictment or information, which shall
12 be concurrent remedies, but this shall not be applied
13 to cases arising in the land or naval forces or in the
14 militia when in actual service in time of war or pub-
15 lic danger.

16 No Double Section 8. No person shall be put in jeopardy
17 Jeopardy twice for the same offense. No person shall be com-
18 No Self- Incrimina- pelled in any criminal proceeding to be a witness
19 tion against himself.

20 Excessive Section 9. Excessive bail shall not be required,
21 Bail, Unusual nor excessive fines imposed, nor cruel and unusual
22 Punishments punishments inflicted.

23 Prohibited Section 10. No bill of attainder, ex post facto
24 State law, nor any law impairing the obligation of con-
25 Action tracts, nor any law making any irrevocable grant of

1 special privileges or immunities shall be passed, and
2 no conviction shall work corruption of blood or for-
3 feiture of estate. The administration of criminal
4 justice shall be founded on principles of reformation,
5 and not vindictiveness.

6 Searches and
7 Seizures

Section 11. The right of the people to be secure
8 in their persons, houses and other property, papers,
9 and effects, against unreasonable searches and seiz-
10 ures, shall not be violated, and no warrants shall
11 issue, but upon probable cause, supported by oath or
12 affirmation, and particularly describing the place to
be searched, and the persons or things to be seized.

13 Criminal
14 Matters:
15 Trial by
Jury, Rights
of Accused

Section 12. In all criminal prosecutions the ac-
cused has the right to a speedy and public trial, by
an impartial jury. In courts not of record the jury
16 may consist of not more than twelve nor less than six
17 persons. The accused is also entitled to be informed
18 of the nature and cause of the accusation; to be re-
19 leased on bail, except for capital offenses; to be
20 confronted with the witnesses against him; to have
21 compulsory process for obtaining witnesses in his favor,
22 and to have the assistance of counsel for his defense.

23 Civil Cases:
24 Trial by
Jury

Section 13. In suits at common law, where the
amount in controversy exceeds two hundred and fifty
25 dollars, the right of trial by jury is preserved, ex-

1 cept that the legislature may provide for a jury of
2 not less than six in courts not of record. The legis-
3 lature may provide for a verdict by not less than
4 three-fourths of the members of the jury.

6 Habeas Cor-
7 pus

 Section 14. The privilege of the writ of habeas
 corpus shall not be suspended, unless when, in cases
8 of rebellion, invasion or imminent peril, the public
9 safety requires it.

10 Militia,
11 Right to
12 Bear Arms

 Section 15. A well-regulated militia being nec-
 essary to the security of a free state, the right of
12 the people to keep and bear arms shall not be in-
13 fringed. The military shall be in strict subordina-
14 tion to the civil power. No soldier, in time of peace
15 shall be quartered in any house without the consent of
16 the owner or occupant, nor in time of war, except as
17 prescribed by law.

18 Treason

 Section 16. Treason against the State shall con-
19 sist only in levying war against it, or in adhering to
20 its enemies, giving them aid and comfort. No person
21 shall be convicted of treason, unless on the testimony
22 of two witnesses to the same overt act, or on confes-
23 sion in open court.

24 Eminent
25 Domain

 Section 17. Private property shall not be taken
 or damaged for public use without just compensation.

1 No Imprison-
2 ment for Debt

Section 18. There shall be no imprisonment for
debt, except in cases where there is a strong pre-
sumption of fraud.

4 Construction

Section 19. The enumeration of rights in this
constitution shall not impair or deny others retained
by the people.

5

6

ALASKA CONSTITUTIONAL CONVENTION

COMMITTEE PROPOSAL NO. 7

ARTICLE

HEALTH, EDUCATION AND WELFARE

1 Public
2 Educa-
3 tion

Section 1. The State shall establish and maintain by general law a system of public schools which shall be open to all children of the State and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private institution.

9 Public
10 Health

Section 2. The State shall provide for the promotion and protection of public health.

11 Public
12 Welfare

Section 3. The State may provide for public welfare for persons unable to maintain a standard of living compatible with health and human dignity.

14 Substand-
15 ard Areas
16 and Public
Housing

Section 4. The State may provide for and assist in the clearance, development and rehabilitation of substandard areas and for public housing.

ALASKA CONSTITUTIONAL CONVENTION

MINORITY REPORT

BILL OF RIGHTS

1 1. We believe that the following should be inserted as a
2 sentence following the first sentence of Section 10, to-wit:

3 "Wire tapping or obtaining unauthorized informa-
4 tion by other technical means or devices is pro-
5 hibited. Evidence obtained in violation of this
6 section shall be inadmissable in the courts."
7

8 2. We reach this conclusion because we believe that this
9 practice is prohibited by implication by the 4th Amendment to
10 the Federal Constitution. The United States Supreme Court has
11 reached the same conclusion. We are of the opinion that had
12 this practice been possible and prevalent in the days of the
13 founding Fathers it would have been expressly prohibited by
14 name.

R. J. McNealy

R. Rolland Armstrong

J. Hellenthal

MINORITY REPORT

1 1. Persons in society have the moral and legal right to organ-
2 ize and bargain collectively in democratic and peaceful manner.

3 2. The right of man to organize into free associations of his
4 own choosing is necessitated by the common good and is a funda-
5 mental, civil, natural and philosophical right that strengthens
6 the general welfare.

7 3. The right to bargain collectively carries with it the cor-
8 relative right of the majority of the group to bind the minority
9 by and to the provisions of security agreements fairly arrived at.

10 4. Therefore the following section should be included in the
11 Declaration of Rights:

12 "Persons in private employment and those employed
13 by the State or local governments, when engaged in
14 proprietary and non-governmental activity, and
15 groups of persons, shall have the right to organize
16 and bargain collectively. Persons in public employ-
17 ment shall have the right to organize, present to
18 and make known to the State, or any of its political
19 subdivisions or agencies, their grievances and pro-
20 posals through representatives of their own choosing."

John Hellenthal

ALASKA CONSTITUTIONAL CONVENTION

Commentary on the Preamble and the Declaration of
Rights

(Sections 1 and 2 Rights of Man. Sources and Aim of Political Power)

These sections affirm the sovereignty of the people and the origin of government.

(Section 3 Civil Rights)

In this paragraph we have provided for the equal enjoyment of the rights of all people regardless of race, color or national origin. This section obligates the legislature to implement the provision by legislation. At present, we have Civil Rights Legislation in the Territorial statutes, which the legislature shall retain or improve. It is impossible and unwise to enumerate in this Constitution all of the places where and conditions under which civil rights must be guaranteed.

(Section 4 Freedom of Speech and Press; Assembly and Petition.)

This provision, like the provision in the Federal Constitution, guarantees the freedom of speech, press, assembly and the right to petition the government. This right to petition is broader than in the Federal Constitution, which limits the right to petition to grievances.

(Sections 5 and 6 Freedom of Religion. Due Process)

These sections are identical with the Federal Constitution. A statement on use of public funds for religious and other private schools is part of the article on Education.

(Section 7 Grand Jury)

The grand jury is preserved, for all purposes, particularly for investigation of public officials. A grand jury of twelve is provided as adequate for performance of its functions. The article provides for alternative procedure of indictment or information, and allows the judge to call the grand jury at any time. Many states have found the same or similar procedure to be most satisfactory.

(Section 8 Double Jeopardy: Self Incrimination)

This section is the same as the Federal Constitution with one exception. In the clause pertaining to self incrimination, the phrase "criminal proceeding" is used rather than the more limited phrase "criminal case" of the Federal Document.

(Section 9 Excessive Bail, Unusual Punishment)

This statement on excessive bail is identical with the United States Constitution.

(Section 10 Prohibited State Action)

In general the Federal Constitution is followed in this statement. In addition, the section prohibits any law granting any special privilege or immunity. Considerable time was spent on the matter

(Section 11 Searches and Seizures)

The general language of the Federal Constitution is used. A prohibition against wire tapping was reviewed, but was not considered to be constitutional material.

(Section 12 Criminal Matters: Trial by Jury, Rights of Accused)

This section protects the rights of the accused in criminal cases. The legislature may provide for a jury of not more than twelve and not less than six in courts not of record; experience has shown this to be adequate protection of the rights of the accused in such courts. It also gives the defendant the opportunity to be released on bail except in capital offences.

(Section 13 Civil Cases: Trial by Jury)

This section preserves the right to trial by jury in Civil suits where the amount in controversy exceeds two hundred fifty dollars. The legislature may provide for a jury of not less than six in courts not of record and that a verdict may be handed down by not less than 3/4 of the jury. These qualifications have proven satisfactory in other jurisdictions. Experience shows this to be a desirable provision.

(Section 14 Habeas Corpus)

This section is identical with the Federal Constitution, with the exception of the additional phrase "imminent peril." This addition brings this declaration into conformity with circumstances which may have to be met under modern warfare.

(Section 15 Militia. Right to Bear Arms.)

This section is identical with the Federal Constitution, except for the addition of the provision on the subordination of the military to the civil power, which appears in the majority of state documents.

(Section 16 Treason)

This is identical with Article III, Section 3 of the United States Constitution.

(Section 17 Eminent Domain)

This section is identical with the Federal Constitution, except for the addition of the words "or damaged." These words were added in recognition of the fact that property may be damaged or made worthless as an incident of the taking of other property for public use. It is our belief that the property owner should be compensated for such injury.

(Section 18 Imprisonment for Debt)

Many of the state constitutions provide a prohibition of imprisonment for debt. The qualifying phrase "where there is a strong presumption of fraud", is included to prevent persons having fraudulent intent from incurring debts and fleeing the State without making payment.

ALASKA CONSTITUTIONAL CONVENTION

Commentary on the Article of Health, Education and Welfare

(Section 1 Education)

This paragraph on Education provides for the establishment and maintenance of the system of public schools and other educational institutions. They will be free from sectarian control. These statements follow closely that of H. R. 2535.

This section prohibits the direct use of public funds for religious and other private institutions.

(Sections 2 and 3 Health and Welfare)

These sections authorize the legislature to provide for health and welfare as the need arises.

(Section 4 Substandard Areas and Public Housing)

It is necessary to have a statement relative to these subjects, so the legislature has necessary authority to act when action is desirable.

Constitutional Convention
Committee Proposal/8
December 16, 1955

ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON RESOURCES

Hon. William A. Egan, President
Alaska Constitutional Convention

Dear Mr. President:

Your Committee on Resources presents for your consideration and adoption its proposed Article on Resources.

The Committee proposal, while incorporating many of the ideas contained in Convention proposals, is a Committee proposal and is unanimously endorsed by the Committee.

A section by section commentary on the subject matter has been prepared by your Committee for the use of the Delegates to the Convention.

Respectfully submitted,

W. O. Smith, Chairman

Burke Riley

John Boswell

Ada B. Wien

Leonard King

B. D. Stewart

Peter R. Reader

Barrie M. White

Truman C. Emberg

CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 8

Introduced by Committee on Resources

STATE LANDS AND NATURAL RESOURCES

RESOLVED, that the following be agreed upon as part of
the Alaska State Constitution:

ARTICLE ON STATE LANDS AND NATURAL RESOURCES

Statement	1	It is the policy of the State to
of Purpose	2	foster and encourage settlement and development
	3	through the maximum use and availability of its
	4	resources consistent with the public interest and
	5	the avoidance of waste, and to that end it is the
	6	intent of this Article to extend to all peoples the
	7	opportunity of participation in Alaska's heritage.
State's	8	Section 1. The State of Alaska has the power to
Proprietary	9	provide for the utilization, conservation and
Interest	10	balanced development of all of the natural resources,
	11	including aesthetic features, of the land and waters
	12	belonging to the State for the maximum benefit of
	13	its people.
Sustained	14	Section 2. Forests, fisheries, wildlife and
Yield	15	other replenishable resources belonging to the State

1 shall be administered, utilized and maintained on
2 the sustained yield principle in order to achieve
3 the highest beneficial public use.

General 4 Section 3. Game fish, wildlife, fisheries and
Reservations 5 waters, wherever occurring in their natural states
6 within the State or its jurisdiction, are reserved
7 to the people for common use.

General 8 Section 4. Facilities, improvements and services
Authorization 9 may be provided to assure greater utilization,
for Facili- 10 development, reclamation and settlement of the State
ties, Improve- 11 lands, and fuller utilization and development of the
ments and 12 fisheries and waters of the State.
Services

Uniform 13 Section 5. Laws and regulations made for the use
Application 14 of natural resources shall bear equally on all persons
15 similarly situated with reference to the subject
16 matter and purpose to be served by the law or regula-
17 tion.

Special 18 Section 6. Sites, objects, and areas of natural
Acquisitions 19 beauty or of historic, cultural or scientific inter-
and Purposes 20 est may be acquired, preserved, and administered for
21 the use, enjoyment and welfare of the people, under
22 the laws of the State.

State 23 Section 7. Lands and interests therein possessed
Public 24 or acquired by the State, including submerged and
Domain 25 tidal lands, and not used or intended exclusively for

1 governmental purposes or for reserved sites and
2 areas, constitute the State public domain. Such
3 lands and interests therein are to be held in
4 trust for the people of the State. These lands and
5 interests may be disposed of only in accordance with
6 provisions of applicable acts of Congress, including
7 the Act admitting Alaska to the Union, this Constitu-
8 tion and the laws of the State.

9 The Legislature shall make provision
10 for the selection, classification and administration
11 of lands in the State public domain, and the several
12 uses thereof, in such manner as will give maximum
13 use and public benefit.

Leases

14 Section 8. The Legislature may authorize the
15 leasing of any lands and interests therein in the
16 State public domain, subject to the following
17 conditions:

18 In granting leaseholds and in administer-
19 ing the State public domain and interests
20 therein, the various potential uses of the
21 land shall be considered. Leases shall
22 state use, conditions and tenure, to enable
23 reasonable concurrent uses in the lands and
24 waters of the State. The Legislature shall
25 provide, among other conditions, for payment

1 by the party at fault for damage or injury
2 arising from noncompliance with terms
3 governing concurrent use, for forfeiture
4 in the event of breach of conditions and,
5 generally, for enforcement of terms.

Sales and
Grants

6 Section 9. The Legislature may authorize the
7 sale or grant of State lands or interests therein,
8 subject to the following conditions:

9 All sales or grants of State land or
10 interests therein shall contain such reserva-
11 tions to the State of all mineral resources
12 as are required by the Congress, access
13 thereto, and access to all other resources
14 generally reserved to the people; except
15 that the reservation of access shall not
16 impair the owners' full beneficial use,
17 prevent the control of trespass nor preclude
18 compensation for damage.

Public
Notice and
Other
Safeguards

19 Section 10. Disposals or leases of state lands or
20 interests therein shall be preceded by such public
21 notice and other appropriate safeguards of the public
22 interest as the Legislature shall determine. Each
23 such transaction shall be subject to review or audit,
24 as prescribed by law.

Creation of
Mineral
Rights

1 Section 11. Discovery and appropriation shall be
2 the basis for establishing a right in those minerals
3 heretofore subject to location under the Federal
4 Mining Laws and now reserved to the State. Prior
5 discovery and filing shall give prior right to such
6 minerals and to issuance of permits, licenses, lease-
7 holds, or patents if authorized by the Congress, for
8 the extraction thereof. Continuance of such right
9 shall depend upon beneficial use as prescribed by
10 law.

11 Prospecting permits giving exclusive
12 right of exploration for specific periods and areas
13 may be provided for exploration conducted for coal,
14 oil, gas, oil shale, sodium, phosphate, potash, sulfur,
15 and other Mineral Leasing Act minerals and for the use
16 of geophysical, geochemical and similar methods of
17 prospecting for all minerals. Issuance, type, and
18 terms of leases for coal, oil, gas, oil shale, sodium,
19 phosphate, potash, sulphur and other Mineral Leasing
20 Act minerals shall be as provided by Law.

21 Surface uses of the land shall be
22 limited to those uses necessary to the extraction of
23 the mineral deposits, and continuance of such right
24 shall depend upon beneficial use as prescribed by
25 law.

Creation of 1 Section 12. All surface and sub-surface waters,
Water Rights 2 reserved to the people for common use, shall be
3 subject to appropriation for beneficial use as
4 prescribed by law. Priority of appropriation shall
5 give prior right. An appropriation of water, except
6 for municipal water supply, shall be limited to
7 stated uses and be subject to concurrent appropria-
8 tion for other beneficial uses and to the general
9 reservation of fish and wildlife to the people for
10 common use.

Access to 11 Section 13. Free access to the navigable waters of
Navigable 12 the State shall not be denied any person resident of
Waters 13 Alaska or of any State or Territory of the United
14 States, except that the State may by general law
15 regulate and limit such access for other beneficial
16 or public purposes.

No Exclusive 17 Section 14. There shall be no exclusive right or
Right of 18 special privilege of fishery created or authorized
Fishery. 19 in the natural waters of the State.

Preferences 20 Section 15. The Legislature shall provide for
Among Bene- 21 determination of the order of preference of the
ficial Uses 22 beneficial uses of the waters of the State and of
23 the State public domain in order to realize the
24 highest public purpose in terms of the potentialities
25 of each locality. No person shall be involuntarily

1 divested of his right to use of waters, his interests
2 in lands, or improvements affecting either, except
3 for a superior beneficial or public use and then
4 only by operation of law.

Private 5 Section 16. Proceedings in eminent domain may be
Ways of 6 undertaken for private ways of necessity to permit
Necessity 7 essential access for extraction or utilization of
8 resources.

State 9 Section 17. The State of Alaska shall consist of
Boundaries 10 all the territory, together with the territorial
11 waters appurtenant thereto, now included in the
12 Territory of Alaska.

Residual 13 Section 18. The specific provisions of this Art-
Powers 14 icle shall not limit the powers of the State in re-
15 lation to the utilization, development and conserva-
16 tion of natural resources except as specifically
17 provided herein.

ALASKA CONSTITUTIONAL CONVENTION
Commentary on Article on State Lands and
Natural Resources

(Sec. 1 States' Proprietary Interest)

This section is a general grant of authority to the State for the utilization and development of all resources over which the State has a proprietary interest. This includes all game fish, wildlife, fisheries, waters and those lands and related land uses including mineral rights, etc., that may be acquired by the State through grants from the United States or by other means. Authority over private lands and resource interests is not provided in this Article except as that authority is generally reserved in Section 18.

(Sec. 2 Sustained Yield)

Sustained yield is recognized as a principle applicable to the administration of plant and animal life subject to the immediate authority of the State. This provision applies generally to wildlife and fisheries anywhere in the State and to the forests and other replenishable resources including grass which occurs on lands in the State public domain. This principle is qualified in terms of "the highest beneficial public use" in recognition of its not being in the public interest to preserve certain parasitic or predatory organisms destructive of more beneficial plant and animal life. The reference of this section is to the State of Alaska, and not to any particular parcel of land or any particular body of water.

(Sec. 3 General Reservations)

Game fish, wildlife, fisheries and water are recognized as belonging to the State so long as in a natural state. These resources are subject to a private right only when they have been acquired or utilized as provided by law. For example, a private person has no right to buy and sell wild animals in their natural state, but once an animal is taken in compliance with law, it becomes the property of the taker, subject to use or disposition withing the law. This provision does not apply to the domestication of fur-bearing animals or other animals subject to intensive culture or the fish in private ponds. The ownership of water is generally recognized as vesting in the state. Private rights can be acquired only to the use of water.

(Sec. 4 General Authorization for Facilities, Improvements and Services)

This general authorization is made to facilitate the development of the State's natural resources. In localities where lands are susceptible to general agricultural development, the State would have authority to undertake improvements in providing roads or improvements on the land in preparation for settlement of the land. Where improvements or facilities may be essential to the development of fisheries and water resources, the state would have the authority to undertake those developments. Such developments could require the services of technical specialists and advisors who can assist citizens of the State on technical problems involving the

improvement of production and resource utilization in much the same way that the farm agent has worked on problems of agricultural production and the Forest Service has rendered aid to private owners of standing timber.

(Sec. 5 Uniform Application)

This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to the disposition of the State.

(Sec. 6 Special Acquisition and Reservations)

General authority is granted the State to acquire special sites, objects or areas of scenic, historic, cultural or scientific interest, to reserve similiar sites, objects or areas in the state public lands and to administer these special sites, objects, and areas for general public use. These sites, objects or areas might ultimately become state monuments or parks.

(Sec. 7 State Public Domain)

This section defines the State public domain to include all lands and interests therein that are acquired by the State except for (1) lands used or intended to be used exclusively for governmental operations and (2) those sites and areas that have been acquired or reserved for special scenic, historic, cultural or scientific interests. The lands, and interests therein, in the State Public Domain are to be held in trust for the people of the state until disposed of in accordance with provisions of federal

law, the State Constitution and State Law. Should terms of enabling legislation covering grants of lands to the State be modified before passage, the language of this section would avoid necessity of amending the Constitution.

General authority is granted to the Legislature to provide for the selection, classification and administration of the State Public Domain. The Enabling Bill provides for State selection of granted lands. Classification, or examination by whatever means, will be the process whereby the State determines what lands it will wish to select. The Legislature is given general authority to provide for the general administration of the State public domain in order to assure maximum use and public benefit in the several uses of those lands.

(Sec. 8 Leases)

The Legislature is authorized to lease State lands or interests therein. In granting leases, the potential uses of the land are to be considered so that maximum benefit can be derived. Each lease shall state the particular use or uses to be made of the lands as well as the conditions of the use and the term or tenure of the lease in order to facilitate reasonable concurrent use by others if occasion arises. "Reasonableness" of concurrent uses implies that possibilities of conflict in use should be kept to a minimum. Provisions of liability, forfeiture and other means of enforcement of the lease are to be provided in the instrument.

(Sec. 9 Sales and Grants)

Sales and grants of State lands and interests **therein are** generally authorized with provision for reservation of mineral rights and for reservations of access. The reservation of mineral rights is prompted by provisions of the Enabling Bill. Mineral deposits in such lands shall be subject to lease by the State as the Legislature may direct.

The reservation of mineral rights in the proposal is in conformity with the proposed enabling bill, H.R. 2535, of the 84th Congress.

Reservation of access is required on all grants or sales of state land so as to assure access to reserved mineral rights and to those resources generally reserved to the people by Section 3 of the proposal. While reserving access, the section explicitly provides that these rights of access shall not impair the owner's full beneficial use, shall permit the control of trespass and allow for compensation for damages done to the owner of the land.

(Sec. 10 Public Notices and Safeguards)

Certain safeguards of the public interest are essential in public land transactions. Such transactions may vary in importance from routine matters to those of substantial value. If general constitutional provisions impose too rigid requirements, the land administration can become hopelessly ensnarled in red tape. As a result this section of the Constitution provides for the Legislature to establish public notice, review or audit and other safeguards to

protect the public interest. As requirements change and many transactions become routine, appropriate modifications can be made in procedures if rigid requirements are not specified in the Constitution itself.

(Sec. 11 Creation of Mineral Rights)

With the restrictions on the sale, grant or patent of mineral lands as provided in the proposed Enabling Bill and in Section 9 of the proposal, this section recognizes the established pattern of mining rights as applied to a system of leaseholds or limited patents. This established system of mining law recognizes the preferential right of a prospector to a mineral deposit on the basis of discovery and appropriation. Appropriation involves both location and filing. All mining law requires continued beneficial use (assessment work) to maintain a mining claim.

These elements of mining law were described by Costigan in his standard works on American Mining Law when he stated, "They (mining laws) all recognize discovery followed by appropriation, as the foundation to the possessor's title and development by working as the condition of its retention." This conception underlies the statement of mineral rights contained in Section 11.

Exceptions to these general rules applicable to mineral rights have become recognized through the Mineral Leasing Act of 1920 as amended. The fuel minerals of oil, gas, oil-shale and coal and phosphates, potash and other non-metallic minerals have been developed under a lease system which involves exclusive right

to prospect certain areas over a given period of time subject to payment of certain royalties if commercial development is undertaken. This is the reason for making exceptions of these non-metallic minerals and for the newer forms of geophysical and geochemical prospecting. Otherwise the right of an ordinary prospector to search for mineral deposits is fully recognized and he is recognized as having a preferential right to the appropriate permit, license or lease, for the extraction of these mineral deposits. The prospector's preferential right would presumably be transferable in the same manner that a claim can be conveyed today.

Section 11 is so phrased as to permit patenting of claims on state land should Congress remove the anticipated restrictions and the Legislature so provide. However in adapting the ideas behind the Act of July 23, 1955 to Alaskan conditions, restrictions are placed upon claims and patents so that the surface uses of the land shall be limited to those uses necessary to the extraction of the mineral deposits and so long as beneficial use is maintained. The land will be available for construction of mining works, the disposition of mining wastes and for the timber necessary in mine construction. However, forests on these lands would not be generally available to the mineral claimant. The further requirement of beneficial use is to assure that the lands patented for mineral purposes will revert to public control when for example, mining has ceased, the mineral deposits have been exhausted or the property abandoned, which situations would depend on legislative definition of "beneficial use".

(Sec. 12 Creation of Water Right)

This section provides for the prior-appropriation system of water rights generally used in the western states and in Alaska. The prior appropriation system recognizes the principle of "first come; first served", or "first in time; first in right" which is also the basic principle of mining law. Here again the concept of appropriation involves filing an application for stated quantities of water for stated uses at specific locations. The preservation of a prior appropriation right to water requires continued beneficial use. Concurrent use is recognized to assure maximum utilization. Water used for the generation of hydro-electric power for example is also subject to appropriation for domestic consumption or other uses that do not conflict with those for which prior appropriations have been made. Appropriations are subject to the general reservation of fish and wildlife provided in Section 3 so that reservoirs shall not exclude fish and wildlife remaining in natural states from coming under the provision of their general reservation to the people.

(Sec. 13 Access to Navigable Waters)

This section assures free access to the navigable waters of the state for "any person resident of Alaska or any state or territory of the United States." However such access may be limited by other beneficial purposes such as the construction of dam or other water-works. Since the control of navigable waters

is a Federal question within the province of Congressional authority, any actions taken by the Federal government would supersede this constitutional provision.

(Sec. 14 No Exclusive Right of Fishery)

This section is intended to serve as a substitute for the provision prohibiting the several right of fisheries in the White Act. Instead of using the terminology of that Act the purposes sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the State.

(Sec. 15 Preferences Among Beneficial Uses)

This is a basic provision found in the resource codes and constitutions of several of the Western States. Orders of preference are usually made for water uses such as domestic or industrial consumption, irrigation, fisheries, hydro-electric power production, etc. With Alaska's diversity of conditions, provision was made to vary the determination of priorities of use according to the potentialities of any particular locality, area or region. Again this provision is limited in bearing on the waters of the State and on the State Public Domain where the state maintains its proprietary interest, and not upon private or federal land holdings.

The provision for divestment of right allows eminent domain proceedings to be used in permitting a higher use only. As among users of the same order of priority, the power of condemnation cannot be used. Under this type of provision the state may have granted a mining lease for placer mining in a river bed. If the

stream had important hydro-electric potentialities a power company might desire to use a site, which would cause the flooding of the mine. If the hydro-electric development was determined to be a higher beneficial use, the mining properties might be acquired by appropriate legal action with just compensation for the interests and improvements of the conflicting mining use.

The last sentence, protecting any person from involuntary divestment of property rights and interests, is generally applicable to any established right and might be relied upon to protect persons who claim possessory rights to tidelands in coastal areas where substantial improvements have been made in docks, wharves or other waterfront facilities and homes.

(Sec. 16 Private Ways of Necessity)

This provision was borrowed from the Wyoming Constitution and modified to meet Alaskan conditions. The Wyoming provision states, "Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes, or ditches on or across the lands of others for agricultural, mining, domestic or sanitary purposes, nor in any case without due compensation." In that arid state this provision was developed to assure access to water supply even though it might be necessary for a private person to secure easement across adjoining private lands. Since the adoption of the Wyoming Constitution, a number of western states have

included a similiar provision in their constitutions. Since the problem of essential access in Alaska is not limited to water supply as in Wyoming this article makes only a general provision for the use of eminent domain proceedings to provide essential access for extraction and utilization of natural resources.

(Sec. 17 State Boundaries)

This is the same boundary statement set forth in H.R. 2535.

(Sec. 18 Residual Powers)

The Article on State Lands and Natural Resources is primarily concerned with the State's proprietary interests in the State public lands, waters, wildlife and fisheries. This section explicitly states that the other provisions in the Article on State Lands and Natural Resources shall not limit the exercise of the general police powers of the State to provide for the utilization, development and conservation of natural resources in general, including those in private ownership.

Regulation of stream pollution, the prohibition of fish-traps and fire control in timber areas are illustrations of action taken under general public police powers to provide for public health, safety or the general welfare which may affect resource development, utilization or conservation on both public and private lands.

Constitutional Convention
Committee Proposal 8/a
Date: January 16, 1956

ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON RESOURCES

Hon. William A. Egan, President
Alaska Constitutional Convention

Your Committee on Natural Resources submits for consideration of the Convention the attached proposed Article No. 8, as a Committee Substitute for tentative committee Proposal No. 8 earlier submitted. Accompanying said Proposal is a revised Commentary.

The Committee has considered the following Delegate Proposals and reports on them as follows:

Sections 1 & 2 of Proposal 5 have been incorporated in part in the Committee Proposal.

Section 3 was not incorporated in the Committee Proposal and, in the Committee's opinion, might properly be considered by the Committee on Resolutions.

Section 13, Proposal No. 6 is believed to be more properly the concern of Finance, Ordinances and Transitional Matters.

In the Committee proposal matters proposed in delegate Proposal No. 7 are touched upon in part and the way left clear for such future Legislative action as may be desired.

The Committee recommends for reference to the Resolutions

Committee and to the next Territorial Legislature the proposition that the Territorial Legislature put in motion, through its Legislative Council or otherwise, a comprehensive study of necessary legislation in the resources field to implement this proposed Article. It is recognized that in most respects Legislation based on such study will be the province of the State Legislature, yet the Committee feels that the undertaking will be of such scope and magnitude that early attention should be given it.

Sections 5 & 6 of Proposal No. 9 are in part incorporated in Section 6 of the Committee Proposal.

Sections 6 & 7 of Proposal 17 are in substance incorporated in this Proposal.

Proposal 18 is in part incorporated in Section 10 of this Proposal.

Proposal 26 was considered beyond the province of the Committee and without the scope of the Constitution. However, the Committee recommends that the Convention adopt a suitable resolution addressed to appropriate Federal agencies now in position to remedy the situation which Proposal 26 seeks to reach.

Sections 1, 3, 4, and 5 of Proposal 30 are covered generally in this Proposal, while Sections 2 and 6 are not.

Proposal 32 is merged in this proposal.

Both before and since the submission of Proposal 33, the abolition of fishtraps received the Committee's searching attention. While the Committee Proposal does not mention traps, the Committee urges an expression in this respect by the Convention, and recommends that the Convention adopt an appropriate Resolution or Ordinance as a means of hastening the abolition of traps.

Respectfully submitted,

W. O. Smith, Chairman

Burke Riley

John C. Boswell

ada B. Wien

Leonard King

B. D. Stewart

Peter L. Reader

Barrie M. White, Jr.

Truman C. Emberg

CONSTITUTIONAL CONVENTION OF ALASKA
COMMITTEE PROPOSAL NO. 8/A
Introduced by Committee on Resources
STATE LANDS AND NATURAL RESOURCES

RESOLVED, that the following be agreed upon as part of
the Alaska State Constitution:

ARTICLE ON STATE LANDS AND NATURAL RESOURCES

Statement
of Purpose

1 It is the policy of the State to foster
2 and encourage settlement and development through the
3 maximum use and availability of its natural resources
4 consistent with the public interest and the avoidance
5 of waste. To that end it is the intent of this Article
6 to extend to all peoples the opportunity of participa-
7 tion in Alaska's heritage.

State
Boundaries

8 Section 1. The State of Alaska shall consist
9 of all the territory, together with the territorial
10 waters appurtenant thereto, now included in the
11 territory of Alaska.

State's
Proprietary
Interest

12 Section 2. The State of Alaska shall provide
13 for the utilization, conservation and development of
14 all of the natural resources, including land and waters
15 belonging to the State, in accordance with provisions
16 of applicable acts of Congress, including the act
17 admitting Alaska to the Union, this Constitution, and

1 the laws of the State, for the maximum benefit of its
2 people.

Sustained Yield 3 Section 3. Forests, fish, wildlife, grasslands
4 and other replenishable resources belonging to the
5 State shall be administered, utilized and maintained
6 on the sustained yield principle.

General Reservations 7 Section 4. Fish, wildlife, and waters, wherever
8 occurring in their natural states, are reserved to the
9 people for common use.

Fish and Game Management 10 Section 5. Regulation and administration
11 of the commercial fisheries and of the wildlife, in-
12 cluding game fish, shall be delegated to a commission,
13 or to separate commissions, under such terms as the
14 legislature shall prescribe.

General Authorization for Facilities, Improvements and Services 15 Section 6. Facilities, improvements and
16 services may be provided to assure greater utilization,
17 development, reclamation and settlement of lands, and
18 fuller utilization and development of the fisheries,
19 wildlife and waters.

Uniform Application 20 Section 7. Laws and regulations governing
21 the use or disposal of natural resources shall apply
22 equally to all persons similarly situated with reference
23 to the subject matter and purpose to be served by the
24 law or regulation.

Special Acquisitions and Purposes 1 Section 8. Sites, objects, and areas of
2 natural beauty or of historic, cultural, recreational
3 or scientific interest may be acquired, preserved, and
4 administered for the use, enjoyment and welfare of the
5 people, under the laws of the State, and may be re-
6 served from the State public domain.

State Public Domain 7 Section 9. Lands and interests therein, in-
8 cluding submerged and tidal lands, possessed or
9 acquired by the State, and not used or intended
10 exclusively for governmental purposes, constitute
11 the State public domain.

12 The Legislature shall make provision for the
13 selection and administration of lands in the State
14 public domain.

Leases 15 Section 10. The Legislature may provide for
16 the leasing of any part of the public domain, or
17 interests therein, subject to reasonable concurrent uses.

18 Leases shall provide, among other conditions,
19 for payment by the party at fault for damage or injury
20 arising from noncompliance with terms governing con-
21 current use, for forfeiture in the event of breach of
22 conditions and, generally, for enforcement of terms.

Sales and Grants 23 Section 11. The Legislature may provide for
24 the sale or grant of State lands or interests therein,
25 and establish sales procedures subject to the following
26 conditions;

1 All sales or grants of State land or interests
2 therein shall contain such reservations to the State
3 of all mineral or water resources as are required by
4 the Congress, or the State, and shall provide for
5 access thereto, and to all other resources reserved
6 to the people; except that the reservation of access
7 shall not impair the owners' beneficial use, prevent
8 the control of trespass, nor preclude compensation for
9 damage.

Public
Notice and
Other
Safeguards

10 Section 12. Disposals or leases of state
11 lands or interests therein shall be preceded by such
12 public notice and other appropriate safeguards of the
13 public interest as the Legislature shall prescribe.

Mineral
Rights

14 Section 13. Discovery and appropriation shall
15 be the basis for establishing a right in those minerals
16 subject to location under the Federal mining laws in
17 the year 1955 and now reserved to the State, as well as
18 to all other metallic minerals reserved to the State.
19 Prior discovery, location and filing shall, as pres-
20 cribed by law, give prior right to such minerals and
21 to issuance of permits, licenses, leaseholds, deeds, or
22 patents if authorized by the Congress, and by the State,
23 for the extraction thereof. Except as title to mineral
24 lands shall have been conveyed by the State, continuance
25 of such right shall depend upon performance of annual

1 labor, on payment of fees, rents, or royalties, or such
2 other requirements as may be prescribed by the Legislature.

3 Surface use of such lands, by the **mineral**
4 claimant, shall be limited to those necessary to the
5 extraction and basic processing of mineral deposits.

6 The Legislature shall provide for the issuance,
7 type, and terms of leases for coal, oil, gas, oil shale,
8 sodium, phosphate, potash, sulphur, pumice, and other
9 minerals as may be prescribed by law.

10 Leases and prospecting permits giving exclusive
11 right of exploration for specific periods and areas may
12 be authorized for exploration conducted for coal, oil,
13 gas, oil shale, sodium, phosphate, potash, sulfur,
14 pumice, and other non-metallic minerals as may be
15 prescribed by law; and for the use of geophysical,
16 geochemical and similar methods of prospecting for all
17 **minerals**.

Water
Rights

18 Section 14. All waters reserved to the
19 people for common use shall be subject to appropriation.
20 Priority of appropriation shall give prior right. An
21 appropriation of water, except for public water supply,
22 shall be limited to stated purposes and subject to
23 preferences of beneficial uses, concurrent or otherwise,
24 as prescribed by the Legislature, and to the general
25 reservation of fish and wild life.
26

Access to Navigable Waters 1 Section 15. Free access to the navigable or
2 public waters of the State shall not be denied any
3 resident of Alaska or citizen of the United States,
4 except that the State may by general law regulate and
5 limit such access for other beneficial or public purposes.

No Exclusive Right of Fishery 6 Section 16. There shall be no exclusive right
7 or special privilege of fishery created or authorized
8 in the natural waters of the State.

Divestment of Rights 9 Section 17. No person shall be involuntarily
10 divested of his right to use of waters, his interests in
11 lands, or improvements affecting either, except for a
12 superior beneficial or public use and then only by
13 operation of law.

Private Ways of Necessity 14 Section 18. Proceedings in eminent domain
15 may be undertaken for private ways of necessity to
16 permit essential access for extraction or utilization
17 of resources.

Residual Powers 18 Section 19. The enumeration of specified
19 powers shall not be construed as limitations on other
20 implied powers of the State in relation to the utiliza-
21 tion, development and conservation of natural resources,
22 except as specifically provided herein.

Constitutional Convention
X/Resources/8/A
January 16, 1956

ALASKA CONSTITUTIONAL CONVENTION

Commentary on Article on State Lands and
Natural Resources

(Sec. 1 State Boundaries)

This is the same boundary statement set forth in H.R. 2535.

(Sec. 2 States' Proprietary Interest)

This section is a general grant of authority to the State for the utilization and development of all resources over which the State has a proprietary interest. This includes all game fish, wildlife, fisheries, waters and those lands and related land uses including mineral rights, etc., that may be acquired by the State through grants from the United States or by other means. Authority over private lands and resource interests is not provided in this Article except as that authority is generally reserved in Section 18.

(Sec. 3 Sustained Yield)

Sustained yield is recognized as a principle applicable to the administration of plant and animal life subject to the immediate authority of the State. This provision applies generally to wildlife and fisheries anywhere in the State and to the forests and other replenishable resources including grass which occurs on lands in the State public domain. This principle is qualified in terms of "the highest beneficial public use" in recognition of its not being in the public interest to preserve certain parasitic or predatory organisms destructive of more beneficial plant and animal life. The

reference of this section is to the State of Alaska, and not to any particular parcel of land or any particular body of water.

(Sec. 4 General Reservations)

Game fish, wildlife, fisheries, and water are recognized as belonging to the State so long as in a natural state. These resources are subject to a private right only when they have been acquired or utilized as provided by law. For example, a private person has no right to buy and sell wild animals in their natural state, but once an animal is taken in compliance with law, it becomes the property of the taker, subject to use or disposition within the law. This provision does not apply to the domestication of fur-bearing animals or other animals subject to intensive culture, to fish in private ponds, or to registered trap lines if authorized by law. The ownership of water is generally recognized as vesting in the state. Private rights can be acquired only to the use of water.

(Sec. 5 Fish and Game Management)

Management of fish and game resources, and the regulation thereof, are by this section to be the responsibility of a commission, or commissions. Composition and tenure of commissions is not mentioned, because the Committee did not wish to fix membership rigidly in the Constitution, and because the "staggered term" concept is firmly established in Alaska's Board system.

(Sec. 6 General Authorization for Facilities, Improvements and Services)

This general authorization is made to facilitate the development of the State's natural resources. In localities where lands

are susceptible to general agricultural development, the State would have authority to undertake improvements by providing roads or improvements on the land in preparation for settlement. Where improvements or facilities may be essential to the development of fisheries and water resources, the state would have the authority to undertake those developments. Such developments could require the services of technical specialists and advisors who can assist citizens of the State on technical problems involving the improvement of production and resource utilization in much the same way that the farm agent has worked on problems of agricultural production and the Forest Service has rendered aid to private owners of standing timber. The section is not, however, intended as an authorization for the State's entering business in competition with private industry.

(Sec. 7 Uniform Application)

This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to **disposition by the State.**

(Sec. 8 Special Acquisition and Reservations)

General authority is granted the State to acquire special sites, objects or areas of scenic, historic, cultural or scientific or recreational interest, to reserve similar sites, objects or areas in the state public lands and to administer these special sites, objects, and areas for general public use. These sites, objects or areas might ultimately become state monuments or parks.

(Sec. 9 State Public Domain)

The State public domain is defined to include all lands and interests therein that are acquired by the State except for (1) lands used or intended to be used exclusively for governmental operations, and (2) those sites and areas that have been acquired or reserved for special scenic, historic, cultural, recreational, or scientific interest. The lands, and interests therein, in the State Public Domain may be disposed of in accordance with provisions of federal law, the State Constitution and State Law. Should terms of enabling legislation covering grants of lands to the State be modified before passage, the language of this section would avoid necessity of amending the Constitution.

General authority is granted to the Legislature to provide for the selection and administration of the State Public Domain. The Enabling Bill provides for State selection of granted lands. The Legislature is given general authority to provide for the general administration of the State public domain in order to assure maximum use and public benefit in the several uses of those lands.

(Sec. 10 Leases)

The Legislature is authorized to lease State lands or interests therein. In granting leases, the potential uses of the land are to be considered so that maximum benefit can be derived. Each lease shall state the particular use or uses to be made of the lands as well as the conditions of the use and the term or tenure of the lease in order to facilitate reasonable concurrent use by others if occasion arises. "Reasonableness" of concurrent uses

implies that possibilities of conflict in use should be kept to a minimum. Provisions of liability, forfeiture and other means of enforcement of the lease are to be provided in the instrument.

(Sec. 11 Sales and Grants)

Sales and grants of State lands and interests therein are generally authorized with provision for reservation of mineral rights and for reservations of access. The reservation of mineral rights is prompted by provisions of H.R. 2535, the current Enabling Bill.

Reservation of access is required on all grants or sales of state land so as to assure access to reserved mineral rights and to those resources generally reserved to the people by Section 3 of the proposal. While reserving access, the section explicitly provides that these rights of access shall not impair the owner's beneficial use, shall permit the control of trespass and allow for compensation for damages done to the owner of the land.

(Sec. 12 Public Notices and Safeguards of the Public Interest)

Certain safeguards of the public interest are essential in public land transactions. Such transactions may vary in importance from routine matters to those of substantial value. If general constitutional provisions impose too rigid requirements, the land administration can become hopelessly ensnarled in red tape. As a result this section of the Constitution provides for the Legislature to establish public notice, and other safeguards to protect the public interest. As requirements change and many transactions become routine, appropriate modifications can be made in procedures if rigid requirements are not specified in the Constitution itself.

(Sec. 13 Mineral Rights)

With the restrictions on the sale, grant or patent of mineral lands as provided in the proposed Enabling Bill and in Section 9 of the proposal, this section recognizes the established pattern of mining rights whether applied to a system of leaseholds or patents. This established system of mining law recognizes the preferential right of a prospector to a mineral deposit on the basis of discovery and appropriation. Appropriation involves both location and filing. All mining law requires continued beneficial use (assessment work) to maintain a mining claim.

These elements of mining law were described by Costigan in his standard works on American Mining Law when he stated, "They (mining laws) all recognize discovery followed by appropriation, as the foundation to the possessor's title and development by working as the condition of its retention". This conception underlies the statement of mineral rights contained in Section 13.

Exceptions to these general rules applicable to mineral rights have become recognized through the Federal Mineral Leasing Act of 1920, as amended, and other special legislation for Alaska. The fuel minerals of oil, gas, oil-shale, and coal and phosphates, potash and other non-metallic minerals have been developed under a lease system which involves exclusive right to prospect certain areas over a given period of time subject to payment of certain royalties if commercial development is undertaken. This is the reason for making exceptions of these non-metallic minerals and for the newer forms of geophysical and geochemical prospecting. Otherwise the

right of an ordinary prospector to search for mineral deposits is fully recognized and he is recognized as having a preferential right to the appropriate permit, license, lease or patent if possible, for the extraction of these mineral deposits. The prospector's preferential right would presumably be transferable in the same manner that a claim can be conveyed today.

Section 13 is so phrased as to permit patenting of claims on state land should Congress remove the anticipated restrictions and the Legislature so provide. However in adapting the ideas behind the Act of July 23, 1955 to Alaskan conditions, restrictions are placed upon claims and patents so that the surface uses of the land shall be limited to those uses necessary to the extraction and basic processing of mineral deposits. The land will be available for construction of mining works, the disposition of mining wastes and for the timber necessary in mine construction. However, forests on these lands would not be generally available to the mineral claimant. The further requirement of assessment work, operation, or payments is to assure that the lands claimed for mineral purposes will revert to public control when for example, mining has ceased, the mineral deposits have been exhausted or the property abandoned.

(Sec. 14 Water Rights)

This section provides for the prior-appropriation system of water rights generally used in the western states and in Alaska. The prior appropriation system recognizes the principle of "first come; first served", or "first in time; first in right" which is also

the basic principle of mining law. Here again the concept of appropriation involves filing an application for stated quantities of water for stated uses at specific locations. The preservation of a prior appropriation right to water requires continued beneficial use. Concurrent use is recognized to assure maximum utilization. Water used for the generation of hydro-electric power, for example, is also subject to appropriation for domestic consumption or other uses that do not conflict with those for which prior appropriations have been made. Appropriations are subject to the general reservation of fish and wildlife provided in Section 3 so that reservoirs shall not exclude fish and wildlife remaining in natural states from coming under the provision of their general reservation to the people.

Preference among beneficial uses is a basic provision found in the resource codes and constitutions of several of the Western States. Orders of preference are usually made for water uses such as domestic or industrial consumption, irrigation, fisheries, mining, hydro-electric power production, etc.

The provision for divestment of right allows eminent domain proceedings to be used in permitting a higher use only. As among users of the same order of priority, the power of condemnation cannot be used. Under this type of provision the state may have granted a mining lease for placer mining in a river bed. If the stream had important hydro-electric potentialities a power company might desire to use a site, which would cause the flooding of the mine. If the hydro-electric development was determined to be a higher beneficial

use, the mining properties might be acquired by appropriate legal action with just compensation for the interests and improvements of the conflicting mining use.

(Sec. 15 Access to Navigable Waters)

This section assures free access to the navigable waters of the state for "any person resident of Alaska or citizen of the United States." However, such access may be limited by other beneficial purposes such as the construction of dam or other water-works. Since the control of navigable waters is a Federal question within the province of Congressional authority, any actions taken by the Federal government would supersede this constitutional provision.

(Sec. 16 No Exclusive Right of Fishery)

This section is intended to serve as a substitute for the provision prohibiting the several right of fisheries in the White Act. Instead of using the terminology of that Act the purposes sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the State.

(Sec. 17 Divestment of Rights)

This section, protecting any person from involuntary divestment of property rights and interests, is generally applicable to any established right and might be relied upon to protect persons who claim possessory rights to tidelands in coastal areas where substantial improvements have been made in docks, wharves or other waterfront facilities and homes.

(Sec. 18 Private Ways of Necessity)

This provision was borrowed from the Wyoming Constitution and modified to meet Alaskan conditions. The Wyoming provision states, "Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes, or ditches on or across the lands of others for agricultural, mining, domestic or sanitary purposes, nor in any case without due compensation." In that arid state this provision was developed to assure access to water supply even though it might be necessary for a private person to secure easement across adjoining private lands. Since the adoption of the Wyoming Constitution, a number of western states have included a similar provision in their constitutions. Since the problem of essential access in Alaska is not limited to water supply as in Wyoming, this article makes only a general provision for the use of eminent domain proceedings to provide essential access for extraction and utilization of natural resources.

(Sec. 19 Residual Powers)

The Article on State Lands and Natural Resources is primarily concerned with the State's proprietary interests in the State public lands, waters, wildlife and fisheries. This section explicitly states that the other provisions in the Article on State Lands and Natural Resources shall not limit the exercise of the general police powers of the State to provide for the utilization, development and conservation of natural resources in general, including those in private ownership.

Regulation of stream pollution, the prohibition of fish-traps and fire control in timber areas are illustrations of action taken under general public police powers to provide for public health, safety or the general welfare which may affect resource development, utilization or conservation on both public and private lands.

Constitutional Convention
Committee Proposal/9
December 16, 1955

ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON
FINANCE AND TAXATION

Hon. William A. Egan
President, Alaska Constitutional Convention

My dear Mr. President:

Your Committee on Finance and Taxation presents for consideration of the Convention its proposed article on Finance and Taxation.

Your Committee considered and incorporated in this report many of the ideas contained in Convention proposals numbered 3, 4, 6 (Sections 8, 10, 11, and 12), 20 and 41.

We include a section-by-section commentary on the proposed article.

Respectfully submitted,

Leslie Nerland, Chairman

Dorothy J. Awes

Frank Barr

James Nolan

Frank Peratrovich

Chris Poulsen

Barrie M. White, Jr.

Constitutional Convention of Alaska

COMMITTEE PROPOSAL NO. 9

Introduced by Committee on Finance and Taxation

ARTICLE ON FINANCE AND TAXATION

RESOLVED, that the following be agreed upon as part
of the Alaska State Constitution

Taxing Power 1 Section 1. The power of taxation shall never be
2 surrendered; and shall never be suspended or con-
3 tracted away, except as provided herein.

Taxation of 4 Section 2. The lands and other property belonging
non-residents 5 to citizens of the United States residing without the
6 State shall never be taxed at a higher rate than the
7 lands and other property belonging to the residents
8 of the State.

Assessment of 9 Section 3. The legislature shall establish the
Property 10 standards for assessment of all property assessed
11 locally or by the State.

Exemptions 12 Section 4. The real and personal property of the
from 13 State and of its political subdivisions shall be ex-
Taxation 14 empt from taxation under such conditions and with
15 such exceptions as the legislature may direct. All
16 or any portion of property used exclusively for

1 non-profit religious, charitable, cemetery, or educa-
2 tional purposes as defined by law, is exempt from
3 taxation.

4 Other exemptions of like or different kind may be
5 granted by general law; and until otherwise provided
6 by law, all exemptions from taxation validly granted
7 are retained.

Taxation of U.S. Property Prohibited 8 Section 5. No tax shall be imposed upon any lands
9 or other property owned or acquired by the United
10 States, except as allowed by Federal law. Immunity to
11 taxation extends to all property owned by natives which
12 is held in trust by the United States, or over which
13 the United States has complete jurisdiction. Immunity
14 to taxation does not apply to property of individual
15 natives when held in fee without restrictions on
16 alienation.

Taxation of Interests in U.S. property 17 Section 6. Private leaseholds, contracts, or other
18 interests in land or property owned or held by the
19 United States shall be taxable to the extent of the
20 interests.

Taxation for Public Purpose 21 Section 7. No tax shall be levied or appropriation
22 of public money made or public property transferred,
23 nor shall the public credit be used, except for a
24 public purpose.

Earmarking Restricted 25 Section 8. All revenues shall be deposited in the
26 State treasury without allocation for special purposes,

1 except where state participation in Federal programs
2 will thereby be denied. This provision shall not pro-
3 hibit the continuance of any allocation for special
4 purposes existing upon the date of ratification of this
5 Constitution by the people of Alaska.

Debt 6 Section 9. No debt shall be contracted by or in
Contraction 7 behalf of the State, or any political subdivision
Restricted 8 thereof, unless the debt shall be authorized by law
 9 for capital improvements specified therein and be
10 10 approved by a majority of the qualified voters of the
11 11 State or of the respective political subdivision voting
12 12 on the question, provided that the State may by law
13 13 contract debt for the purpose of repelling invasion,
14 14 suppressing insurrection, defending the State in war,
15 15 meeting national catastrophies, or redeeming outstand-
16 16 ing indebtedness of the State at the time this
17 17 Constitution becomes effective.

Tax 18 Section 10. The State may by law borrow money to
Anticipation 19 meet appropriations for any fiscal year in anticipation
Notes 20 of the collection of the revenues of that year, but all
 21 debt so contracted shall be paid within one year.

Revenue Debt 22 Section 11. The restrictions in this Constitution
 23 on the contraction of debt do not apply to refunding
 24 indebtedness of the State or any political subdivision
 25 thereof; to indebtedness incurred under revenue bond

1 statutes by a public enterprise of the state or politi-
2 cal subdivision, or by a public corporation, when the
3 only security for such indebtedness is the revenues of
4 the enterprise or public corporation; or to indebted-
5 ness incurred under special improvement statutes when
6 the only security for such indebtedness is the pro-
7 perties benefited or improved or the assessments
8 thereon.

Governor's
Budget

9 Section 12. At such time as may be prescribed by
10 law, the governor shall submit to the legislature a
11 budget setting forth a complete plan of proposed ex-
12 penditures and anticipated income of all departments,
13 offices and agencies of the State for the next fiscal
14 year. At the time of submitting the budget to the
15 legislature, the governor shall also submit a general
16 appropriation bill to authorize all proposed expendi-
17 tures set forth in the budget. At the same time he
18 shall submit to the legislature a bill or bills cover-
19 ing all recommendations in the budget for new or
20 additional revenues.

Expenditure
of Money

21 Section 13. No money shall be withdrawn from the
22 treasury except in accordance with appropriations
23 made by law, nor shall any obligation for the payment
24 of money be incurred except as authorized by law. All
25 appropriated funds unexpended at the end of a period of

1 time specified by law shall be returned to the state
2 treasury.

Legislative

3 Section 14. The legislature shall appoint an audi-
4 tor who is a certified public accountant and who shall
5 serve during its pleasure. It is the duty of the
6 auditor to conduct such post-audits as may be pre-
7 scribed by law and to report to the governor and the
8 legislature.

Post-audit

Territorial

9 Section 15. The debts and liabilities of the Terri-
10 tory of Alaska shall be assumed and paid by the State
11 of Alaska, and debts owed to the Territory of Alaska
12 shall be collected by the State. Assets of the
13 Territory of Alaska shall become assets of the State.

Debt Assumed

ALASKA CONSTITUTIONAL CONVENTION

Commentary on the Article on Finance and Taxation

(Sec. 1 Taxing Power)

The power to tax is never to be surrendered, but under terms that may be established by the legislature, it may be suspended or temporarily contracted away. This could include industrial incentives, for example.

(Sec. 2 Taxation of Non-residents)

This section and its wording is required by the latest proposed enabling act, H.R. 2535.

(Sec. 3 Uniform Standards for Assessment)

The legislature is authorized to set up, notwithstanding home rule or any system for the selection of assessors, uniform standards of assessment.

(Sec. 4 Exemptions from Taxation)

All property owned by the state and its subdivisions is exempt from taxation unless the legislature directs otherwise. An exception from tax immunity might be appropriate if a government engaged in what is normally a private business, such as operating a ski resort, a moving picture theater, or a swimming pool.

The second sentence of this section is intended to exempt from taxation that part of the property of religious, charitable, cemetery, or educational organizations which is actually used for these purposes, as the legislature may direct. But their property used for other

purposes would be taxable, for example, an office building owned by a college as part of its endowment.

The legislature is authorized to make further tax exemptions to encourage, among other purposes, new industry, and all valid current exemptions are continued.

(Sec. 5 Taxation of United States Property)

This section is required by the latest proposed enabling act, H.R. 2535. Even if it were not included, the state could not, under a long line of U.S. Supreme Court cases, tax federal property.

(Sec. 6 Taxation of Private Interests in U.S. Property)

Taxation is permitted of private interests in land or property owned or held by the United States.

(Sec. 7 Public Purpose Clause)

Public purpose clauses are common to most constitutions, and are included to prevent appropriation of public funds for private purposes.

(Sec. 8 Earmarking of Revenues Restricted)

The allocation of certain revenues to special purposes is prohibited, with two exceptions: (1) if required in order to participate in a federal program or (2) if the earmarking is in existence at the time of ratification of the constitution. Even those persons or interests who seek the dedication of revenues for their own projects will admit that the earmarking of taxes or fees for other interests is a fiscal evil. But if allocation is permitted for one interest the denial of it to another is difficult, and the more special funds are set up the more difficult it becomes to deny other requests until the point is reached where neither the governor nor the legislature has any real control over the finances of the state. In one Rocky Mountain state the legislature

is free to appropriate only 17 per cent of the tax collections; the rest are dedicated. In Alaska at present, 27% of territorial funds are earmarked, primarily for school construction and roads.

(Sec. 9 Debt Contraction)

This section forbids state or local debt except in special emergencies or for the purpose of making capital improvements, the proposals for which must be approved by the voters.

(Sec. 10 Tax Anticipation Notes)

This section permits the state to borrow in anticipation of taxes in any fiscal year money to meet appropriations.

(Sec. 11 Refunding and Revenue Debt)

In a period when interest rates fall, a government may save large amounts of money if it can pay off its old high-rate obligations with new funds borrowed at lower rates. This process, here permitted, is called refunding, and the restrictions on the contraction of original debt are unnecessary; they are here made inapplicable. When the state or its subdivisions can contract debts for special purposes (for example, to build a toll bridge) without pledging more than the improvement or the revenues from the enterprise, such debt is permitted without referendum. This provision is sometimes necessary if a state is to take advantage of federal loans at particularly favorable rates.

(Sec. 12 Budget)

This section requires the governor to submit a complete budget and an appropriation bill to authorize the expenditures he proposes. This process is now standard.

(Sec. 13 Expenditures)

The requirement of appropriation before expenditure is also standard. The second sentence requires the recapture of unexpended balances.

(Sec. 14 Auditor)

The auditor is commonly regarded as a legislative officer, and his appointment is here vested in the legislature.

(Sec. 15 Debts and Assets)

This section provides for the state to take over the debts to and of the Territory of Alaska, as well as its assets.