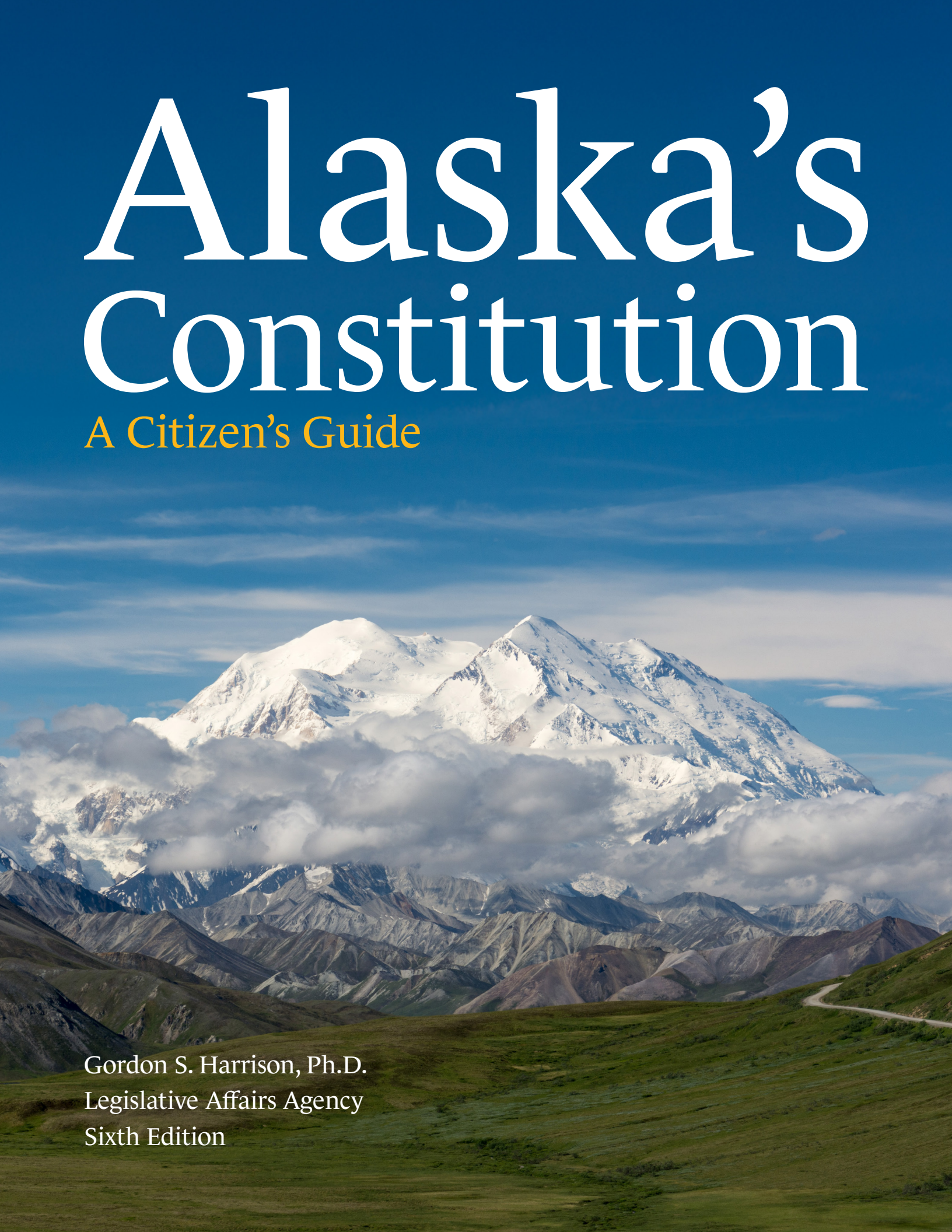
Alaska's Constitution

A Citizen's Guide



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Legislative Affairs Agency
Sixth Edition

Alaska's Constitution:

A Citizen's Guide

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Alaska State Legislature
Legislative Affairs Agency
Gordon Harrison

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PREFACE TO THE SIXTH EDITION

The Citizen's Guide has a long history. This publication first appeared as a booklet in 1982. Dr. Gordon Harrison wrote it under contract with the Alaska Legislature to provide the public with an overview of the state constitution prior to the general election that year at which voters were asked if there should be a constitutional convention. Subsequent editions appeared in 1986, 1992, 2003, and 2021. With each edition the booklet expanded to include important judicial decisions on constitutional questions and relevant legislative and political developments.

In the preface to the fourth edition, Dr. Harrison lamented the growing length of this publication, recognizing that it might be intimidating to the average citizen of the state for whom it was originally intended. On the other hand, he wanted it to be useful as a reference for legislators, their staff, and other state employees whose work may require more detail about the constitution than the typical lay person might desire.

After shepherding this publication for over 40 years, in August 2024, Dr. Harrison met with staff of the Legislative Affairs Agency to discuss the future of the Citizen's Guide. There were recent constitutional developments that needed to be added, he thought, but more than that, the publication needed a thorough review for outdated information. For example, there are statements throughout the book about the number of states that do things a certain way, and about the number of times the Alaska Legislature has done certain things. Many such observations were made years ago and needed to be checked. He proposed that this review and revision be made by the Research Services office of the Legislative Affairs Agency, and further, that stewardship of the Citizen's Guide be formally passed to the Legislative Affairs Agency. This sixth edition of the Citizen's Guide is the result of that meeting.

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INTRODUCTION

This book is about the origin and evolution of Alaska's constitution. It discusses how the delegates to Alaska's constitutional convention approached the subjects of the various articles; and it touches on the key ideas, words, phrases, judicial interpretations, and political history associated with the sections of each article. It provides a guided tour through Alaska's basic law, written for the citizen who wants to learn more about the state constitution as well as practitioners who interact with the law every day.

WHAT IS A STATE CONSTITUTION?

Each of the fifty state constitutions creates a framework of government consisting of three branches: a legislative branch, typically composed of two chambers; an executive branch, with its numerous administrative agencies; and a judicial branch, with a supreme court and a system of lower courts. Each branch is largely independent of the others, but there are mutual checks and balances that prevent the concentration of too much power in one branch.

This basic system of state government dates from the American revolutionary period when the thirteen colonies created independent constitutional governments. One can recognize it in the federal constitution, which is an amalgam of ideas and political principles written in Philadelphia in 1787 when it became apparent that a strong central government was necessary for economic prosperity and military defense. The U.S. Constitution delegated certain powers to the new federal government and reserved others for the states. It also prohibited the federal government from violating basic personal rights and political freedoms of its citizens.

While all state governments follow a general pattern, they vary widely in the details of structure and operation. For example, Nebraska has only one legislative chamber, whereas all the other states have two. Alaska has a total of 60 members in its legislature (20 senators and 40 representatives), whereas New Hampshire has 424 (24 senators and 400 representatives, and second in size only to the US Congress). The heads of several executive departments are elected in most states, while they are appointed by the governor in others (Alaska included). Also, various approaches are used to select and remove state judges. In sum, there are many differences among state governments.

State constitutions also vary in length. Some are loaded with detail, while others are short and general. These characteristics depend upon the unique historical social and political experience of

each state. Alaska's short constitution speaks only to the broad principles of governmental organization and operation, leaving details of implementation to the legislature.

As a general rule, long and detailed constitutions need frequent amendment because they attempt to describe the minutiae of governmental structure, procedures and public policy, which must evolve with the political, social and economic life of society. Short, general constitutions are more flexible in the face of change, providing legislatures and courts leeway to adapt constitutional principles to conditions unforeseen by drafters of the original document.

It is the duty of the courts to interpret the constitution when disputes raise constitutional questions. Through that process, general constitutional language comes to have specific meaning. In their interpretation of constitutional provisions, state courts may find that a law passed by the legislature, an ordinance adopted by a local government, or an administrative act of a governmental agency is contrary to the meaning of the state constitution and therefore cannot be enforced.

This practice of scrutinizing the constitutionality of a law or administrative act when a suit is brought in court is called *judicial review*. It is profoundly important as part of the "checks and balances" in our system of government, even though there is no mention of it in the U.S. Constitution. Judicial review by the federal courts can result in nullification of state constitutional provisions found to conflict with the federal constitution, which is the "supreme law of the land," superseding state constitutions, acts of Congress, the federal executive branch, and state and local governments.

The following analysis of Alaska's constitution introduces the general principles of constitutional government and explains the origin and application of Alaska's specific constitutional provisions.

THE BACKGROUND OF ALASKA'S CONSTITUTION

Alaska's constitution is a unique document that expresses traditional American ideals and political forms in a specific historical context. Therefore, an examination of the constitution must include a review of the dominant social, economic, and political influences of that time. These include the statehood movement, the experience of territorial government, the lack of institutional development in the territory, and contemporary constitutional theory.

Statehood Movement

The Alaska Territorial Legislature passed House Bill 1 in 1955, calling for a constitutional convention. In the winter of 1955-1956, 55 elected delegates convened at the University of Alaska Fairbanks campus. The academic setting was chosen to inspire reflective deliberation and to escape the political pressures of Juneau. Statehood was still three years away, and at the time, the prospects were not bright for quick congressional action. Writing a constitution before Alaska was admitted to the Union was a gambit in the battle for statehood. Supporters hoped that a well-designed constitution written and approved by the people of the territory would win over skeptics in the territory and Washington, D.C. Alaska was not the first to use this tactic; several other territories had adopted constitutions prior to statehood. Hawaii, also seeking statehood, drafted its constitution in 1950.

The constitution was formally adopted by the convention delegates on February 5, 1956. Alaska voters ratified it on April 24, 1956, and it became law with the formal proclamation of statehood on January 3, 1959, after Congress passed the Alaska Statehood Act. Delegates to the constitutional convention were, for the most part, enthusiastic proponents of statehood. They shared the political idealism and aspirations that sustained the long statehood movement and brought to their deliberations in Fairbanks a sense of historical purpose. Absent from the convention was a faction adverse to statehood; some territorial residents regarded statehood as potential source of burdensome government and taxation, while, to corporate interests, statehood spelled the loss of influence over resource management that was exercised through political channels in Washington, D.C. Although the delegates voiced differences of opinion, their common cause ensured compromises were negotiable when disputes arose, and the convention was spared divisive conflicts over basic policy issues.

The convention delegates were mindful of the public relations value of the constitution. By preparing the document, Alaskans sought to demonstrate to Congress that they possessed political maturity and the ability for self-government. Also, it prompted the delegates to adopt a short and general document similar to that of the United States Constitution; employ the most up-to-date and progressive forms of constitutional draftsmanship; make use of political symbolism (for example, there were fifty-five delegates to the convention, the same number that met in Philadelphia in 1787); and be impeccably democratic in their procedures.

The statehood movement also influenced the constitution by orienting it to the *future.* Alaskans envisioned rapid growth and development of their state once they possessed the means of self-government. U.S. Supreme Court Justice Benjamin Cardozo once wrote that a good constitution states, "not the rules for the passing hour but principles for an expanding future." Thus, a keen awareness of the future helped the convention delegates create a flexible document intended to accommodate Alaska's ongoing development.

Territorial Experience

Alaska's constitution creates an exceptionally strong legislature and governor, largely in reaction to the frustrations of weak governmental institutions during the territorial period. Congress limited the power of the Alaska Territorial Legislature, retaining federal control over matters of vital interest to the residents of the territory. For example, Congress withheld the powers to incur debt for public works projects and manage the territory's fish, game, timber, and minerals.

Executive authority in the territory was similarly frail, the consequence of its dispersal among far-flung agencies of the federal and territorial government. The U.S. Departments of the Interior and Agriculture controlled the natural resources of Alaska. In part, this was a product of a longstanding belief in Washington, D.C., that the frontier zeal of Alaskans for economic development rendered them unfit for stewardship of the public's resources. Meanwhile, many Alaskans had come to the opinion that the federal government's vigilance as a trustee of the public interest was really a cloak for the interests of bureaucrats and economics of nonresident corporations exploiting those resources (principally Seattle and San Francisco salmon canning companies and east coast mining conglomerates). Alaskans long suspected a silent conspiracy between those distant entities to perpetuate federal control.

Likewise, the territorial legislature deliberately sought to isolate the governor, a presidential appointee, from the executive machinery of the territory by creating a web of boards and commissions, and providing for elected executive officers, including the attorney general, auditor, treasurer, commissioner of labor, and highway engineer.

It is not surprising that when crafting their own charter for self-government, Alaska's constitutional convention delegates created strong legislative and executive branches. They avoided limitations, prohibitions, and hedges on the power of the legislature, and centralized executive power. These principles of legislative and executive organization were considered necessary to make government effective, accountable to the public, and free from the grip of special interests.

Lack of Institutional Development

At the time of the constitutional convention, Alaska was much less populated, and its infrastructure was deficient. It was institutionally undeveloped, lacking cohesive systems of local or regional governance. There were cities and a few independent school and utility districts but no counties because the Territorial Organic Act of 1912 prevented their creation. The federal government operated the courts, allowing delegates to the constitutional convention to avoid resistance by entrenched local political jurisdictions and specialized local court systems. Instead, they had the opportunity to design a system of local government before most areas of the state required it. Elsewhere in the United States, the movement to reform metropolitan government was stalled by the defensive reactions of myriad existing local governmental units and special service districts.

Contemporary Constitutional Theory

Alaska's constitution was written by territorial residents who reflected the political aspirations and experience of Alaskans. However, there is nothing unsophisticated about the document. Indeed, it embodies the most modern and progressive concepts of state constitutional draftsmanship. The delegates were aware of the current thinking of political scientists and state constitutional lawyers. They commissioned studies by consultants; brought constitutional scholars from around the country to advise them; and had at hand several new state constitutions (Missouri, 1945; New Jersey, 1947; and Hawaii, 1950). In fact, experts at the Alaska convention had helped write these constitutions, and their guidance was profoundly important.

In the decade prior to the convention, there was an outpouring of literature on constitutional revision from state and federal commissions, legal scholars, and national organizations. Prominent among the latter was the National Municipal League of New York City, (now the National Municipal League) which had published periodically since 1921 a *Model State Constitution.* This document, which Alaska delegates had before them, embodied the combined wisdom of leading political scientists, lawyers, and practitioners of government at the state and local levels.

An active constitutional reform movement had emerged in the United States in the late 1930s as the role of state government dramatically expanded. Many states found their constitutions standing in the path of progress. These long, complicated documents were typically the product of the nineteenth century during periods when politicians were widely distrusted. They intentionally crippled legislative and executive authority, dispersed executive power, and created operational inefficiencies. In the face of new demands for governmental services, lawmakers in these states repeatedly faced the cumbersome and uncertain process of amendment.

The constitutional reform movement stressed the need to simplify and shorten state constitutions and allow the legislature and governor to carry out the business of government. Underlying the effort was

a belief in the potential of government to solve contemporary problems. Delegates to the constitutional convention shared this view of state government as a means to further the social and economic development of Alaska. They were confident in the wisdom and dedication of their fellow citizens to govern for the common good and defend against exploitation by special interest groups by establishing a strong political authority.

PREAMBLE

We the people of Alaska, grateful to God and to those who founded our nation and pioneered this great land, in order to secure and transmit to succeeding generations our heritage of political, civil, and religious liberty within the Union of States, do ordain and establish this constitution for the State of Alaska.

A preamble states the purpose of a document but has no legal significance. The constitutions of all states but three (New Hampshire, Vermont, and Virginia) have a preamble. Most are a variation of the preamble to the U.S. Constitution, which reads:

> We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

Alaska's preamble was drafted as a substitute to an imitative version presented to the convention by committee. Delegate Victor Rivers described the current preamble as a more fitting expression of the "thinking and the speaking and the heritage of our Alaska people…." This preamble is one of the few to acknowledge the interdependence of the state with the other states in the federal system, which was a *Model State Constitution* recommendation. While absent from the U.S. Constitution, most states adopted a preamble that expresses gratitude to God. A motion to strike the reference during the constitutional convention failed on a voice vote, as did a motion to substitute the words Almighty God.

Like other preambles, Alaska's does not acknowledge the presence since time immemorial of indigenous populations, choosing instead to recognize those who "pioneered" it.

ARTICLE I

DECLARATION OF RIGHTS

All state constitutions contain a declaration of rights. Alaska's, like most others, evokes the Bill of Rights in the U.S. Constitution. Personal rights protected by the federal and state constitutions are intrinsic to our political system for they guarantee every citizen civil and political freedom vital to human liberty. A constitution which protects the rights of citizens necessarily limits a government's power. Declarations of rights are placed at the beginning of state constitutions to herald their societal preeminence.

Delegates to Alaska's constitutional convention did not venture far from the time-honored phrases of the federal constitution when drafting a declaration of rights. After all, the Bill of Rights had served the country well, and decades of judicial usage had given practical meaning to phrases such as "due process of law" and "equal protection of the laws." The delegates were wary of unnecessary innovation as they could not be sure of the ultimate legal interpretation of any new language introduced. Moreover, new terms and legal concepts could require numerous court cases over many years to clarify.

In selecting and phrasing rights to enshrine, the convention delegates were mindful of the document's symbolic functions. Alaskans would use it as proof of their political maturity and dedication to American constitutional principles in their appeal to Congress for statehood. And, of course, the constitution was to define governmental authority for Alaska's citizenry. Therefore, the delegates sought to express the nobility of the American democratic tradition with familiar words and concepts drawn directly from celebrated documents of our political history.

This is not to say that Alaska's declaration of rights is just a copy of the federal Bill of Rights. The delegates rearranged, restated, and expanded certain rights found in the U.S. Constitution. They also incorporated concepts and wording from other state constitutions. Consequently, several rights enumerated in the Alaska Constitution are not found in the U.S. Constitution—for example, the right to equal opportunities (Section 1), the right to receive fair and just treatment in legislative investigations (Section 7), the right to be released on bail for most offenses (Section 11), and protection from debtor's prison (Section 17).

While the delegates borrowed freely from the *Model State Constitution* and the constitutions of other states, they were discerning in the substantive provisions they imported. Many of the novel rights and

liberties protected by the constitutions of other states were passed over as more suitable for ordinary legislation or otherwise inappropriate for a basic law.

It is important to note that when the Alaska Supreme Court interprets the scope of a right enumerated under this article, it cannot provide less protection than that afforded under the federal constitution. The Fourteenth Amendment to the federal constitution, adopted in 1868, has been interpreted to apply most of the Bill of Rights to the states. Thus, a citizen's basic civil rights are protected by the federal constitution even if the state does not have its own constitutional declaration of rights. However, a state constitution may provide broader protections to its citizens than those provided under federal law. Accordingly, the Alaska Supreme Court has declared: "We are not limited by decisions of the U.S. Supreme Court or the U.S. Constitution when we expound our state constitution; the Alaska constitution may have broader safeguards than the minimum federal standards" (*Roberts v. State,* 458 P.2d 340 (1969)). In another opinion the court wrote: "The Alaska Supreme Court is free, and it is under a duty, to develop additional constitutional rights and privileges under the Alaska Constitution if it finds such fundamental rights and privileges to be within the intention and spirit of Alaska's local constitutional language…" (*State v. Browder,* 486 P.2d 925 (1971)). High courts in many other states have also used the declaration of rights in their own state constitutions to protect their citizens beyond the limits of the federal courts relying on federal law.

Thus, the declaration of rights in Alaska's constitution, though traditional in most respects, is an independent source of political liberty for citizens of the state.

Section 1. Inherent Rights

> **This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.**

The first phrase is similar to the U.S. Declaration of Independence ("life, liberty and the pursuit of happiness") but does not create enforceable rights. When a person sued the state on the grounds that the state personal income tax violated his right to life, liberty, the pursuit of happiness, and the rewards of his own industry, the Alaska Supreme Court ruled his claim "devoid of merit." Quoting the last phrase of this section ("that all persons have corresponding obligations to the people and to the state"), the Court wrote that "One of the 'corresponding obligations' is that of paying taxes should the legislature impose them" (*Cogan v. State,* 657 P.2d 396(1983)).

The second phrase incorporates the fundamental right of "equal protection" under the law from the Fourteenth Amendment to the U.S. Constitution. Alaska's version of this traditional guarantee

mentions equal rights and opportunities, followed by "[equal] protection under the law." The courts have not yet found any practical application of equal rights and equal opportunities, but there is a substantial body of state constitutional jurisprudence applying the concept of equal protection under the law.

Because various statutes, regulations, and ordinances often affect people differently, there are frequent legal challenges to their constitutionality on the grounds that a person or group is denied equal protection under the law. The principle of equal protection is not that distinctions between people in law are forbidden but that any differential treatment must be just and reasonable.

The courts use a balancing test to determine whether a law will withstand an equal protection challenge. Basically, they look at the purpose of the law in question and how it is implemented and weigh it against the individual right it impairs. If the law advances an important government objective and a less-significant personal right is involved, the court will be more tolerant toward upholding the law. Conversely, when the personal liberty at stake is significant, the court will provide less deference to the law that infringes it.

For example, the courts have held that the state's local option law, which permits communities to ban the sale and consumption of alcohol, does not violate the equal protection clause even though residents of some communities have greater access to alcoholic beverages than do residents of others. "Given the state's compelling interest in curbing alcohol abuse, the provisions of the local option law are reasonable and sufficiently related to the legislative goal of protecting the public health and welfare." (*Harrison v. State,* 687 P.2d 332, Alaska Ct. App. (1984)). Likewise, a state law requiring disclosure of campaign contributions was upheld because "the objective of an informed electorate is sufficiently compelling to overcome an interest in anonymous political expression" (*Messerli v. State,* 626 P.2d 81(1980)). The court struck down a school regulation against long hair because the state's interest in such matters did not outweigh the right of an individual to wear his hair according to personal preference *(Breese v. Smith,* 501 P.2d 159 (1972)). In contrast, it upheld a dress code for attorneys (who are "officers of the court") that required wearing a coat and tie on the grounds that minimum standards of dress were a traditional and reasonable rule of courtroom decorum (*Friedman v. District Court,* 611 P.2d 77 (1980)).

Durational Residency Requirements

Efforts by the legislature to link various state benefits and privileges to Alaska residency have raised equal protection issues. Because durational residency requirements interfere with a citizen's fundamental right of interstate migration, the courts have required a strong state interest to justify them.

For example, in 1980 the Alaska legislature adopted two popular statutes: one repealed the state personal income tax and the other adopted a plan to distribute to Alaska residents a portion of income

from the permanent fund. Both laws benefitted those with longer periods of residency and were challenged by newcomers to the state who argued they were denied equal protection.

The Alaska Supreme Court agreed that the income tax statute violated the state's equal protection clause because it gave a full repeal to taxpayers who had paid income taxes for the past three years while giving only a partial repeal to those who had paid income taxes for fewer than three years. It found the objectives advanced on behalf of the statute could not justify the discriminatory effect on new residents (*Williams v. Zobel,* 619 P.2d 422 (1980); referred to as *Zobel I).*

However, the Court upheld the permanent fund dividend distribution scheme that gave to each person one cash dividend for each year of residency since statehood (*Williams v. Zobel,* 619 P.2d 448 (1980); *Zobel II).* It ruled the plan for per capita cash payments, which favored longer-term residents, violated neither the state nor federal constitution because the objectives of the government were acceptable, and the plan reasonably served those objectives. The statute's three objectives were to provide a mechanism for equitable distribution to Alaskans of a portion of the state's natural resource wealth; to reduce population turnover by encouraging persons to maintain residency; and to encourage increased awareness and involvement by residents in the management of the Alaska permanent fund.

The U.S. Supreme Court overturned the ruling (*Zobel v. Williams,* 72 L. Ed.2d 672 (1982); *Zobel III*). It found that the state did not have a valid interest rationally served by the distinction it made among people with differing lengths of residency, and consequently the distribution plan violated the federal equal protection clause and the federal "privileges and immunities" clause due to its interference with free interstate travel of U.S. citizens.

Several years later the Alaska Supreme Court heard a challenge to another state program linking benefits with durational residency criteria. The Longevity Bonus Program made cash payments to residents over age 65 who lived in Alaska at the time of statehood and maintained 25 years of continuous domicile in the state. Based on the U.S. Supreme Court's reasoning in *Zobel III,* the state high court upheld the lower court's finding that the plan violated the equal protection clause of the U.S. Constitution (*Schafer v. Vest,* 680 P.2d 1169 (1984)).

State courts use a balancing test to adjudicate challenges to durational residency requirements: Does the nature of the state's purpose in imposing the restriction outweigh the infringement of rights of the person who is adversely affected by them? Thus, for example, the Alaska Supreme Court struck down a state hiring preference given to those with at least one year of residency (*State v. Wylie,* 516 P.2d 142 (1973)) but upheld a one-year requirement for becoming a candidate for city office, finding it justified by the strong public interest in familiarity among candidates and constituency *(Castner v. City of Homer,* 598 P.2d 953 (1979)). In *Peloza v. Freas,* 871 P.2d 687 (1994), the court rejected a three-year residency requirement for local city council, deeming it too long. See the discussion of residency requirements for legislative office under Article II, Section 2.

In 1989, the legislature increased the minimum residency requirement for receiving a permanent fund dividend check from six months to two years. The following year, the superior court ruled the two-year requirement unconstitutional, but a one-year requirement was legally acceptable. The state did not appeal to the Alaska Supreme Court for fear it would find the one-year limit excessive (*Lindly, et al. v. Malone*, Superior Court, 3rd Jud. Dist., 3AN-90-02586 CI (1990)).

Durational residency requirements are found elsewhere in Alaska law. For example, individuals must be domiciled in the state for twelve months to qualify for resident tuition at the University of Alaska or to receive a resident sport hunting and fishing license.

Local Hire Laws

The constitutionality of laws that require employers to give preference to Alaska residents seeking jobs—so-called Alaska hire or local hire laws—have been challenged on the grounds that they violate the equal protection clauses of the state and federal constitutions. In 1988, the legislature approved, and voters ratified, an amendment authorizing preferential treatment of state residents. This amendment is discussed under Section 23 of this article.

Cost of Living Adjustments

A cost-of-living adjustment given to state retirees who remain in Alaska but denied to state retirees who move to high-cost places outside Alaska, was challenged in a class action lawsuit as a violation of the equal protection clause. The Alaska Supreme Court upheld the allowance on the grounds that its purpose of encouraging retirees to continue living in-state by partially offsetting Alaska's higher living costs is legitimate, and that the allowance bears a fair and substantial relationship to the achievement of its purpose *(Public Employees' Retirement System v. Gallant,* 153 P.3d 346 (2007)).

Benefits for Same-Sex Couples

In 1999, several same-sex couples sued the state of Alaska and the Municipality of Anchorage alleging that as public employees they were unconstitutionally denied certain job benefits available to married couples. They argued that because Article I, Section 25 of the state constitution prevented them marrying, they were denied equal protection of the law. The Alaska Supreme Court agreed and directed the state and city governments to treat same-sex couples the same as married couples in their benefit programs *(Alaska Civil Liberties Union v. State,* 122 P.3d 781 (2005)). While there was insufficient support within the legislature to propose a constitutional amendment prohibiting state and municipal governments from providing employment benefits to same-sex partners, there was enough to call for a special election advisory vote asking voters whether the legislature should propose such an amendment. The measure was approved by fifty-three percent of voters, but a constitutional amendment was never proposed, presumably because it was seen to be doomed by challenges under this section.

Section 2. Source of Government

> **All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.**

These are preamble-like passages that state the theory of democratic government upon which American political institutions are based. Most state constitutions contain a similar sentiment.

This section has been interpreted to support the people's right to vote with minimal interference from the state. The Alaska attorney general opined that this section would prevent the government from interfering with write-in voting (1963 Opinion Attorney General No. 30). In throwing out the result of a referendum election possibly tainted by a biased summary of the ballot measure, the Alaska Supreme Court cited this section as evidence of the basic principle that "the people be afforded the opportunity of expressing their will on the multitudinous issues which confront them" *(Boucher v. Bomhoff,* 495 P.2d 77 (1972)).

In 1995, a new law replaced the practice of rotating the order of names on the ballot, resulting in each candidate appearing in each position on the ballot a roughly equal number of times, with ballots printed in the same randomized order. A citizen filed suit, alleging that it gave an unfair advantage to candidates whose names appeared first on the ballot and, thus, violated the requirement of this section that elections reflect the will of the people. The Alaska Supreme Court rejected the challenge, finding that the law represented a "reasonable and nondiscriminatory restriction" (*Sonneman v. State,* 969 P.2d 632 (1998)).

Section 3. Civil Rights

> **No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. The legislature shall implement this section.**

This section makes explicit the prohibitions against discrimination that are implied in the "equal protection" provision of Section 1 and the "due process" provision of Section 7. Few other state constitutions specifically mention civil or political rights, and the *Model State Constitution* was silent on those rights. This provision originated in contemporary versions of congressional statehood bills for Alaska (e.g. H.R. 2535 and H.R. 6178), which required that the new constitution make no distinction in civil and political rights on account of "race or color." The committee revised this language and expanded it to include "creed" and "national origin," similar to a provision of Article I of the New Jersey Constitution: "No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in

the militia or in the public schools, because of religious principles, race, color, ancestry or national origin."

About one-third of state constitutions explicitly prohibit sex-based discrimination (so-called "equal rights" clauses). For the most part, prohibitions against sex discrimination have been added by amendment or adopted in a revised constitution. Women were explicitly included in the original civil rights sections of only the Utah and Wyoming constitutions. Alaska's was amended in 1972. Initially, Alaska delegates chose to omit the word "sex," instead using "person" as inclusive of both sexes, and further specified in Article XII, Section 10 that personal pronouns be construed as including either sex. Nevada is the among the states to recently adopt an equal rights amendment with voter ratification in 2022.

Title 18, Chapter 80 of the Alaska Statutes details unlawful discriminatory practices in employment, public accommodations, the sale and rental of housing, financing, and governmental operations. The statutes establish the Alaska State Commission on Human Rights and authorize it to investigate formal complaints of discrimination and to order a remedy for violation of the law.

In *Bostock v. Clayton County*, 590 U.S. 644 (2020), the U.S. Supreme Court ruled that firing employees following a revelation that they are homosexual or transgender violates Title VII of the Civil Rights Act of 1964. The Court found that employment actions based on these factors necessarily take sex into account, and that "Title VII prohibits all forms of discrimination because of sex, however they may manifest themselves or whatever other labels might attach to them."

Section 4. Freedom of Religion

> **No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.**

All state constitutions contain a declaration of religious freedom, and most of these, like Alaska's, are patterned on the first sentence of the Bill of Rights in the U.S. Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Alaska statehood bills in Congress at the time of the convention required this phrase to be part of any constitution adopted by the new state of Alaska.

Here, as with other basic rights rooted in the U.S. Constitution, two centuries of federal case law have given practical meaning to religious freedom and set guidelines for permissible interference by the government based on compelling reasons. There have been comparatively few Alaska cases construing the freedom of religion. One notable case involved an Athabaskan Indian charged with killing a moose out of season; he asserted a religious necessity to provide moose meat for a funeral potlatch. The Alaska Supreme Court found that moose meat was as important in the celebration of the

sacred funeral potlatch as are sacramental wine and wafers in a Christian communion service, and that the state failed to make a convincing case for prohibiting the taking of moose for this purpose when the hunting season was otherwise closed *(Frank v. State,* 604 P.2d 1068 (1979)).

Another case involved the lease of a Ketchikan hospital to the Catholic church. In upholding the lease, the court noted that the facility, built with public money, operated as a general hospital open to all and would not be used to proselytize *(Lien v. City of Ketchikan,* 383 P.2d 721 (1963)). In contrast, the Alaska Supreme Court held that the City of Seward could lawfully prohibit, through its zoning ordinance, the operation of a church school in a residential neighborhood. Such an ordinance was not an excessive burden on the church members' rights if other areas were available for the school *(Seward Chapel, Incorporated v. City of Seward,* 655 P.2d 1293 (1982)). In *Swanner v. Anchorage Equal Rights Commission*, 874 P.2d 274 (1994), the court ruled that an anti-discrimination ordinance requiring landlords to rent to unmarried couples did not violate a landlord's right to free exercise when the landlord objected on religious grounds. This conclusion was reaffirmed in 2004 (*Thomas v. Anchorage Equal Rights Commission*, 102 P.3d 937 (2004)).

Section 5. Freedom of Speech

> **Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.**

The convention delegates selected this wording from the Idaho constitution, preferring it to the more terse and dramatic language of the first amendment of the federal constitution ("Congress shall make no law abridging the freedom of speech, or of the press") and to the wordy provisions found in numerous state constitutions, which frequently attempt to define libel. The clause "being responsible for the abuse of that right" recognizes that the freedom to speak and publish may be restrained in favor of other legitimate public interests. As the Alaska Supreme Court wrote in *Messerli v. State* (626 P.2d 81 (1980)), "absolute freedom of speech and absolute privacy in all situations and on all occasions would in certain instances be incompatible with the preservation of other rights essential in a democracy."

Nonetheless, courts have generally been reluctant to restrain speech unless it can be shown "likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest" (*Anniskette v. State*, 489 P.2d 1012 (1971)). For example, the Alaska Supreme Court found that freedom of speech was unconstitutionally abridged by a municipality's broad disorderly conduct ordinance *(Marks v. City of Anchorage,* 500 P.2d 644, (1972)); by the exclusion of a homosexual advocacy group from a city directory of public and private organizations *(Alaska Gay Coalition v. Sullivan,* 578 P.2d 951 (1978)); and by a ban on nude dancing in a bar *(Mickens v. City of Kodiak,* 640 P.2d 818 (1982)).

Rights of free speech include rights of political expression, and infringements on those rights must be carefully drawn. Campaign finance and disclosure laws have been the frequent subject of legislation, initiative, and litigation over the years. Historically, campaign disclosure laws requiring campaign contributors and sponsors of media advertising to report their activity do not violate the freedom of speech protected by this section *(Messerli v. State,* 626 P.2d 81 (1980)); *VECO International v. Alaska Public Offices Commission,* 753 P.2d 703 (1988)). The court also upheld most of the provisions of a comprehensive 1996 campaign finance law, enacted, in part, under pressure from a pending citizen's initiative seeking extensive campaign finance reform *(State v. Alaska Civil Liberties Union,* 978 P.2d 597 (1999)). In 2003, the legislature relaxed the limits on contributions to candidates, but a 2006 initiative restored them. The U.S. Supreme Court decision in *Citizens United v. Federal Elections Commission,* 558 U.S. 310 (2010), prohibited limits on campaign contributions by corporations and unions, but various limits on individual contributions continued to be enforced under state law. However, in 2021, both the U.S. 9th Circuit Court of Appeals and the Alaska Supreme Court struck down several campaign contribution limits in separate challenges (*Thompson v. Hebdon*, 7 F.4th 811 (9th Cir 2021) and *Alaska Public Offices Commission v. Patrick*, 494 P.3d 53 (2021)). For current information on campaign contributions and disclosure requirements, visit the Alaska Public Offices Commission website.

Disputes over methods of balloting in primary elections have also invoked free speech rights. Prior to 2000, Alaska had a blanket primary system. Under this system, any voter could cast a ballot for a candidate from any party. The Republican Party of Alaska sought to prevent voters who were registered in another party from voting for its candidates and sued in federal court asserting rights of free speech and association under the U.S. Constitution. The state abandoned the blanket primary for two election cycles, but a suit was filed in state court to restore it. The Alaska Supreme court upheld use of the blanket primary (*O'Callaghan v. State*, 914 P.2d 1250 (1996)), but a U.S. Supreme Court decision (*California Democratic Party v. Jones*, 530 U.S. 567 (2000)), held that it violated the associational rights of political parties. The legislature then adopted a primary system that used separate ballots, with each party designating whether only its own registered members, voters with any registration, or voters with certain registrations could select it. After the first election held under this system in 2002, the Green Party and Republican Moderate Party sued to allow both to appear on a single ballot, alleging a violation of their right of free speech under this section. The Alaska Supreme Court ruled that the prohibition against a combined ballot was a violation of freedom of speech (*State v. Green Party of Alaska*, 118 P.3d 1054 (2005)). In 2016, the Alaska Democratic Party was successful in its challenge to a state statutory provision that required a party nominee to be a registered member of that party. (*State of Alaska v. Alaska Democratic Party*, 426 P.3d 901 (2018)). In 2020, Alaskans voted to adopt ranked choice voting, including a pick-one primary method whereby all candidates, regardless of political party affiliation, appear on one ballot. Voters pick one candidate with the top four proceeding to the general election. A subsequent initiative seeking to repeal ranked choice voting was narrowly defeated in the 2024 general election.

The right of free speech (as well as equal protection of the law) has been invoked in disputes involving restrictions on political parties and on individual candidates seeking inclusion on the ballot. The court has said that two factors facilitate free political speech: relatively easy access to the ballot by candidates for public office, and candidates representing a wide spectrum of views. The Alaska Supreme Court struck down minimum requirements set by statute for independent and party candidates to secure a place on the ballot, finding them unnecessarily restrictive. Independent, unaffiliated candidates had to present a petition signed by voters equal to three percent of the votes cast in the preceding election. To qualify as a candidate of a political party, the party needed at least ten percent of the votes cast for governor in the preceding election. (*Vogler v. Miller*, 651 P.2d 1, 1982; 660 P.2d 1192 (1983)). The legislature then set the thresholds at one percent and three percent respectively, which were upheld (*State, Division of Elections v. Metcalfe*, 110 P.3d 976 (2005); see also *Green Party of Alaska v. State, Div. of Elections,* 147 P.3d 728 (2006)).

Section 6. Assembly; Petition

> **The right of the people peaceably to assemble, and to petition the government shall never be abridged.**

This language is patterned after the First Amendment of the U.S. Constitution. The convention committee commentary that accompanies this section noted: "This right to petition is broader than in the Federal Constitution, which limits the right to petition to grievances."

The only case to reach the Alaska Supreme Court alleging a violation of this section involved a project labor agreement on a borough-funded construction job. Among several claims made by non-union workers was that the requirement to pay union dues and fees violated their right under this section to be free of "forced association." The court found the claims failed to allege a specific allegation or provide evidence that the union was using fees in ways that violated existing laws of members rights (*Laborers Local No. 942 v. Lampkin*, 956 P.2d 422 (1998)). However, a subsequent U.S. Supreme Court ruling in a substantively similar case found the Illinois Public Labor Relations Act violated free speech rights by forcing employees to subsidize a union that took positions in collective bargaining with which they disagreed and therefore did not join (*Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018)). In light of that outcome, it is questionable whether the *Laborers Local* ruling would survive a challenge.

Section 7. Due Process

> **No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.**

Here, the "due process" clause of the Fourteenth Amendment of the Bill of Rights is enshrined in the Alaska Constitution. Through decades of decisions, the courts have given this clause a very broad and expansive meaning. It is not simply that a legislative body must pass a law before it may deprive someone of life, liberty, or property, but rather that no government agency may treat a person arbitrarily or unreasonably. Due process demands justice and fair play at the hands of authority. In the words of the Alaska Supreme Court: "The term 'due process of law' is not susceptible to a precise definition or reduction to a mathematical formula. But in the course of judicial decisions it has come to express a basic concept of justice under law" *(Bachner v. Pearson,* 479 P.2d 319 (1970)).

Guaranteed by this provision are open and impartial official procedures against accused people, whether they are standing trial in a criminal court, being deprived of property by an administrative agency ("property" may include a job, license, or professional certification), or being subjected to an investigation that may tarnish their reputation. For example, the Alaska Supreme Court ruled that the dismissal by a school district of a non-tenured teacher without the opportunity for a hearing was unconstitutional, even though state law did not require one *(Nichols v. Eckert,* 504 P.2d 1359 (1973)). Due process also requires that laws and regulations be sufficiently precise for citizens to understand what actions are prohibited, and for enforcement authorities to clearly recognize a violation. For example, a municipal ordinance against loitering for the purpose of prostitution was found unconstitutionally vague because it arbitrarily subjected former prostitutes to arrest who may have been merely "window shopping, strolling, or waiting for a bus" *(Brown v. Municipality of Anchorage,* 584 P.2d 35 (1978)). Many defendants and plaintiffs have challenged authorities on grounds that they were denied due process of law, and there is a substantial body of case law as a result of these cases.

*"*Due process of law" also means Alaska residents have a right of access to the courts; and agencies of government may not impose unreasonable barriers to litigation, such as filing fees unaffordable by indigents *(Varilek v. City of Houston,* 104 P.3d 849 (2004)).

The second sentence of this section appears only in Alaska's constitution. The convention delegates extended the principle of due process explicitly to legislative proceedings in reaction to Senator Joseph McCarthy's anticommunist investigations in the early 1950s. His hearings violated basic principles of fairness which are well-established in judicial proceedings.

In 2008, five legislators sued two other legislators and the Alaska Legislative Council, alleging a violation of this section and seeking to stop a legislative investigation into the firing of the commissioner of public safety by Governor Sarah Palin. The plaintiffs claimed that the investigation violated the right of the governor and other executive branch employees to fair and just treatment. The Alaska Supreme Court dismissed the suit because the plaintiffs did not have standing to sue to enforce rights of other people who were fully capable of bringing suit themselves *(Keller v. French,* 205 P.3d 299 (2009)).

Section 8. Grand Jury

> **No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces in time of war or public danger. Indictment may be waived by the accused. In that case the prosecution shall be by information. The grand jury shall consist of at least twelve citizens, a majority of whom concurring may return an indictment. The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.**

The grand jury helps protect against unfounded criminal charges. In the federal system, a grand jury of unbiased citizens must fairly consider the evidence before the accused may be put on trial for a high federal crime. An indictment, or formal accusation, is thus issued by the grand jury, not the prosecutor, as required by the U.S. Bill of Rights. The grand jury, like the rest of our legal institutions, is rooted deep in the history of English jurisprudence.

The U.S. Supreme Court has held that this federal procedure does not apply to the states via the Fourteenth Amendment. Thus, states are not required to use the grand jury indictment procedure; about half, including Alaska, require grand jury indictments in felony cases. Notably, Connecticut and Pennsylvania have abolished grand juries for indictment purposes but still utilize them for investigations.

While the delegates to the constitutional convention decided to incorporate criminal grand jury procedures, they recognized the right of a person to waive a grand jury indictment in favor of indictment by the prosecutor (called indictment by "information"). At the time, the grand jury might sit for only a few weeks each year in smaller towns. A person charged with a serious crime soon after the grand jury adjourned might wait for most of a year before the new grand jury would convene. Even if the accused was released on bail in the meantime, the delay conflicted with the right to a speedy trial. Thus, an accused person might waive a grand jury indictment to get on with the matter.

Critics of the grand jury process argue that it is archaic and lacks purpose. They favor less cumbersome procedural and professional safeguards that prevent the abuse of official power.

The final sentence of this section allows grand juries to investigate crime, which is particularly important in cases of white-collar crime and political corruption where no victim is available to help police develop a case. Investigative grand juries might also study the operation of public offices and institutions, for example, the condition of jails or mental hospitals. This type of grand jury still functions in many states, including some that have dropped the indicting grand jury.

In 1985, an investigative grand jury led to impeachment proceedings against Governor William Sheffield (see Article II, Section 20). In that case the grand jury declined to indict the governor but recommended that the legislature consider impeachment. This episode led to additional controversy about the public release of grand jury investigation reports that do not result in indictments. The Alaska Judicial Council (Article IV, Sections 9 and 10) studied the matter and recommended guidelines for the release of such information which were adopted by the Alaska Supreme Court in its Rules of Court.

In 2022, the Alaska Supreme Court amended the rules of court to clearly delineate how citizen requests should be handled after three individuals in different locations requested an investigative grand jury. Supreme Court Orders 1993 and 2000 reiterate the constitutional authority of the grand jury to investigate issues of public welfare and safety, to issue reports, and establish procedures for investigative grand jury requests.

Section 9. Jeopardy and Self-Incrimination

> **No person shall be put in jeopardy twice for the same offense. No person shall be compelled in any criminal proceeding to be a witness against himself.**

This section states the two long-established principles of Anglo-American law that no person may be tried twice for the same crime ("double jeopardy") and that an accused person has the right to remain silent in the face of criminal accusations. Both are incorporated into the Alaska Constitution nearly verbatim from the U.S. Bill of Rights.

As the Alaska Supreme Court has stated: "The double jeopardy clause protects against a second prosecution for the same offense after acquittal; it protects against a second prosecution for the same offense after conviction; and it protects against multiple punishments for the same offense" *(Calder v. State,* 619 P.2d 1026 (1980)).

This protection does not, however, prohibit an individual from being retried in the event of a mistrial. Nor does it prevent the government from seeking both civil and criminal penalties for an offense, as this sentence has been interpreted to apply only to criminal proceedings. For example, a person may be subject to criminal proceedings for driving under the influence and administrative license revocation proceedings with the Division of Motor Vehicles.

The right of an accused individual to stand silent ("taking the Fifth Amendment" to the U.S. Bill of Rights) is a reaction to the inquisitorial methods of medieval church courts. Immunity from testifying against oneself is now fundamental to modern criminal proceedings in the United States: the accused is presumed innocent at trial and must be acquitted unless the government presents enough evidence to prove guilt beyond a reasonable doubt.

The privilege against self-incrimination, which applies only to statements by the accused, may be waived voluntarily. Confessions made freely, untainted by any coercion or intimidation, are admissible evidence in the courtroom. Incriminating statements made by suspects during custodial situations are valid only if the police made clear the rights to remain silent and have the advice of an attorney ("Miranda warning").

Although the clause mentions only criminal proceedings, it has been interpreted to extend the privilege against self-incrimination to other types of government investigations (e.g., legislative investigations) in which statements might later be used in a criminal case against the witness.

Section 10. Treason

> **Treason against the State consists only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.**

This language is taken from Article III, Section 3 of the federal constitution. It defines treason and establishes the minimum evidence required to support a conviction; the intent was to prevent the government from prosecuting its opponents on fabricated charges of treason. Most state constitutions contain an identical provision. There is no Alaska statute making treason a crime.

Section 11. Rights of Accused

> **In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of twelve; except that the legislature may provide for a jury of not more than twelve nor less than six in courts not of record. The accused is entitled to be informed of the nature and cause of the accusation; to be released on bail, except for capital offenses when the proof is evident or the presumption great; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.**

This section incorporates several basic safeguards against oppressive criminal prosecution that are enunciated in the sixth amendment of the U.S. Bill of Rights. These safeguards have been delineated over the years by federal and state courts, and considerable legal doctrine exists on each one.

Right to Jury Trial

The right of the accused to a trial by a jury of fellow citizens anchors the judicial process in common sense notions of justice. In the words of the Alaska Supreme Court, a jury trial "holds a central position in the framework of American justice" *(State v. Browder,* 486 P.2d 925 (1971)); it is a "barrier to the exercise of arbitrary power," and "a fundamental right, recognized as such throughout the nation by the constitutions of all the states and the federal government" *(Green v. State,* 462 P.2d 994 (1969)). Furthermore, the institution of the jury, like the right to vote, "offers our citizens the opportunity to participate in the workings of our government, and serves to legitimize our system of justice in the eyes of both the public and the accused" *(Alvarado v. State,* 486 P.2d 891 (1971)).

A defendant has a right to a jury trial in "criminal prosecutions," which have been defined as crimes that are serious enough to send someone to jail or signify criminal conduct in the traditional sense of the term. Minor offenses do not require jury trials. These include such things as parking citations, minor traffic infractions, and violations of regulatory measures relating to property, sanitation, building codes, and fire codes *(Baker v. City of Fairbanks,* 471 P.2d 386 (1970)).

Alaska's constitutional requirement for a jury trial differs from federal standards in that it allows the legislature to provide for a jury of between six and twelve people in courts "not of record"—that is, in the district courts. Delegates at the constitutional convention were mindful of the expense of jury trials, and they were confident that six people could deliver just verdicts. Similar provisions can be found in the constitutions of several other states, including Arizona, California, Colorado, Idaho, and Missouri. Thus, the delegates permitted the legislature to allow smaller juries for trials of less serious criminal offenses, and it further exercised this discretion to set district court juries at six members (AS 22.15.150).

Right to a Speedy Trial

The Alaska Supreme Court has identified three main purposes of the speedy trial guarantee:

> (1) it prevents harming a defendant through a weakening of his case as evidence and witnesses' memories fade with the passage of time; (2) it prevents prolonged pretrial incarceration; and (3) it limits the infliction of anxiety upon the accused because of long-standing charges *(Nickerson v. State,* 492 P.2d 118 (1971)).

However, excessive haste may subvert justice:

> While an adult defendant in a criminal case must be brought to trial within a reasonable time, due process requires that he may not be brought to trial too soon. He must be given a reasonable time to consult with his counsel and to prepare his defense *(John Doe v. State,* 487 P.2d 47 (1971)).

The court has observed that "the essential ingredient is orderly expedition and not mere speed" *(Glasgow v. State,* 469 P.2d 683 (1970)). Recognizing that each criminal case has its own circumstances (including delays sought by the defendant), the legislature has not imposed a strict quantitative definition of "speedy." Criminal Rule No. 45 normally requires trial within 120 days of being charged; however, the rule also provides that some types of delays will not count against the deadline ("tolling"). In one case, the Alaska Supreme Court found that a pre-trial delay of 14 months violated the constitutional right of the accused to a speedy trial *(Whitton v. State,* 506 P.2d 674 (1973)).

Public Trial

Fairness cannot be assured unless trials are public. Indeed, the Anglo-American abhorrence of secret trials is so ingrained that we presume all secret criminal trials are unfair; although some exceptions are recognized, such as certain juvenile proceedings. "A public trial safeguards against attempts to employ the courts as instruments of persecution, restrains abuse of judicial power, brings the proceedings to the attention of key witnesses not known to the parties, and teaches the spectators about their government and gives them confidence in their judicial remedies" *(RLR v. State,* 487 P.2d 27 (1971)).

The guarantee of a public trial gives the media extensive, but not unfettered, access to the courtroom. However, widespread or sensational coverage of a crime and information about the suspect in mass media can create a potential source of bias for or against an accused person. In these situations, it may become necessary to move the trial away from a community saturated with potentially prejudicial press coverage (a so-called "change of venue").

Location of Trial

Seeking a fair trial by removing a case to another jurisdiction may well be justified by the circumstances, but it must be done with circumspection. According to the longstanding doctrine of "vicinage," local trials are considered superior to trials held far from the community where the crime occurred. Distant trials are not, in effect, public trials, and their verdicts do not rest on the common-sense judgment of the local populace. Among the grievances of the American colonists against the king of England, expressed in the Declaration of Independence, was for "transporting us beyond seas to be tried for pretended offenses."

Alaska's constitution is unusual because it lacks an explicit requirement for a jury trial within the county or locale where the crime was committed. The federal constitution and most state constitutions contain such language. The sixth article of the U.S. Bill of Rights guarantees an impartial jury trial "of the state or district wherein the crime shall have been committed." The Alaska Legislature has specified in statute the circumstances in which a trial may be moved within a judicial district or to another judicial district (AS 22.10.040).

Composition of Jury

Even a local trial may not be impartial if the composition of the jury is poorly representative of that community. These concerns led the Alaska Supreme Court to order a new trial for an Alaska Native man convicted by an Anchorage jury of a crime committed in the rural community of Chignik. The court found that the urban culture of Anchorage was fundamentally dissimilar *(Alvarado v. State,* 486 P.2d 891 (1971)). In contrast, the Alaska Supreme Court denied a new trial to a rural Alaska Native man convicted by an Anchorage jury because the defendant was instrumental in moving the trial away from Dillingham, the regional center closest to the village in which the crime occurred *(Tugatuk v. State,* 626 P.2d 95 (1981)).

The court has rejected claims that a jury must include members of the subgroup to which the accused belongs (for example, the Russian Orthodox Church in *Kelly v. State,* 652 P.2d 112 (Alaska Ct. App., 1982)). Generally speaking, the state and federal courts have held that juries must be selected randomly so no identifiable groups are excluded from the selection process (see, for example, *Erick v. State,* 642 P.2d 821 (Alaska Ct. App., 1982)). Thus, juries drawn in a manner that excludes a specific racial minority are unconstitutional; but an all-white jury properly drawn that convicts a member of a minority race is not.

Jury composition may further be altered by circumstances unique to Alaska's geography and limited infrastructure. For example, under administrative rules, prospective jury pools typically include citizens who live within a fifty-mile radius of the trial site. However, due to the "inordinate expense" incurred for airfare, lodging, and feeding prospective jurors from the fifty-mile radius surrounding the courthouse in Kotzebue, a superior court judge was justified in reducing the radius to five miles, which had the effect of excluding the defendant's home community where the crimes were committed (*Smith v. State*, 484 P.3d 610 (2021)).

Right to Information

A defendant's right to information about the accusation in a criminal proceeding is unquestionable in Western jurisprudence. Without such knowledge the accused could not mount an effective defense, nor would there be an ascertainable standard of guilt. Defendants are entitled to know the evidence and witnesses that will be presented in court, as well as any evidence held by the prosecution that tends to exonerate them. Likewise, laws may not be so vague (e.g., a prohibition against "hooliganism") that the accused does not know what constitutes criminal conduct, and effectively be deprived of the right to conform their behavior accordingly.

Right to Bail

Unlike the U.S. Constitution, most state constitutions guarantee the right to be released on bail and limit the government from imposing excessive bail, which is found in Section 12. Bail is a sum of

money posted by a person who has been arrested; it is forfeited to the court if the person does not appear at trial or otherwise abide by orders of the court. The right to release before trial stems from the fundamental notion that an accused person is innocent until proven guilty. That is, a defendant should not generally be incarcerated for a crime until after guilt has been established. Also, a person accused of a crime will have an easier time preparing a defense if not incarcerated. There is an exception to the bail requirement for capital crimes, which are those crimes that carry the death penalty. Because the death penalty was abolished in Alaska in 1957, all criminal offenses in Alaska carry the right to bail.

Alaska's Supreme Court has ruled that the right to bail guaranteed by this section of the state constitution applies only to the period before trial; it does not extend to the post-conviction period (for example, between conviction and sentencing, or pending a hearing to revoke probation; *State v. Wassillie,* 606 P.2d 1279 (1980); *Martin v. State,* 517 P.2d 1389 (1974)). It has also ruled the right to bail does not mean an indigent person has a right to be released on his or her own recognizance because the person cannot afford to post bond *(Reeves v. State,* 411 P.2d 212 (1966)).

Confrontation Clause

The right of an accused person to be "confronted with the witnesses against him" secures the opportunity to disprove the government's case by questioning adverse witnesses, or cross-examination. This protection applies to documentary evidence as well as testimony by individuals. "The right of confrontation protects two vital interests of the defendant. First, it guarantees him the opportunity to cross-examine the witnesses against him so as to test their sincerity, memory, ability to perceive and relate, and the factual basis of their statements. Second, it enables the defendant to demonstrate to the jury the witness's demeanor when confronted by the defendant so that the inherent veracity of the witness is displayed in the crucible of the courtroom" *(Lemon v. State,* 514 P.2d 1151 (1973)).

Hearsay evidence (statements made by persons who do not appear as witnesses in court) is generally inadmissible because it violates the right of confrontation. For example, in the trial of two men accused of robbing a bar, two police officers testified that they heard a "Mr. Hyatt" say that he had been told by a third person that the two men were the robbers. Neither Mr. Hyatt nor the third person testified at the trial and therefore they could not be cross-examined. The Alaska Supreme Court ruled the testimony hearsay evidence violated the right of confrontation *(Blue v. State,* 558 P.2d 636 (1977)). However, a host of exceptions to the general prohibition against hearsay can be found in Evidence Rule 803.

The constitutional right of confrontation in this section applies primarily to criminal proceedings. Judges may exercise discretion in granting requests for witnesses and evidence in civil cases, as the Alaska Supreme Court has declared that it is an important element of "due process" in administrative procedures, such as a hearing to revoke a driver's license for drunk driving: "The right to confront

and cross-examine witnesses is one right, founded upon due process and fundamental fairness, which civil defendants do enjoy" *(Thorne v. Department of Public Safety,* 774 P.2d 1326 (1989)).

Subpoena Power

The right of an accused person "to have compulsory process for obtaining witnesses in his favor" enables a defendant to summon to trial (by subpoena or court order) persons and documentary evidence needed to establish innocence. Without this right, the defendant would be no match for the state, which has ample legal and financial resources to bring its case.

Right to an Attorney

The right of an accused person "to have the assistance of counsel for his defense" protects a defendant from a wrongful conviction stemming from a lack of understanding of the law and the workings of the judicial system. Without assistance of counsel, "even the intelligent and educated layman . . . may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he has a perfect one" *(Alexander v. City of Anchorage,* 490 P.2d 910 (1971)).

Before taking a statement from a person who has been arrested, or who is subject to custodial interrogation, the police must inform the person of the constitutional right to remain silent and to be assisted by a lawyer appointed by the state if necessary (the *Miranda* rights, named after the U.S. Supreme Court case enunciating these principles). The court must be satisfied that a person who waived these rights did so knowingly and voluntarily.

If the defendant cannot afford to hire a lawyer, the state must provide one or drop its case. In Alaska, indigent defendants are represented by lawyers working for the Public Defender Agency (AS 18.85), or the Office of Public Advocacy (AS 44.21), executive branch agencies funded by the state government. The courts have said that this representation may not be perfunctory: "The mere fact counsel represents an accused does not assure this constitutionally guaranteed assistance. The assistance must be 'effective' to be of any value" *(Risher v. State,* 523 P.2d 421 (1974)).

To be meaningful, a lawyer's assistance often must begin well before the trial. Federal and state courts have required that defendants be represented at all "critical stages" in the prosecution; this may be as early as a preindictment lineup of suspects immediately after a crime (see, for example, *Merrill v. State,* 423 P.2d 686 (1967); and *Blue v. State,* 558 P.2d 636 (1977)). In *Roberts v. State,* 458 P.2d 340 (1969), the Alaska Supreme Court ruled that the defendant was unconstitutionally denied his right to counsel when he reluctantly gave handwriting samples to police after they refused his request to consult his lawyer.

Section 12. Criminal Administration

> **Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crime, restitution from the offender, and the principle of reformation.**

The first sentence of this section is drawn verbatim from Article VIII of the U.S. Bill of Rights.

There has been little litigation over the constitutionality of fines and bail at either the federal or state level. The provision is understood to mean that bail may not be set higher than the amount necessary to assure the defendant's presence at trial *(John Doe v. State,* 487 P.2d 47 (1971)). Thus, a judge may not seek to keep a person incarcerated by setting an unreasonably high bail.

Some state constitutions contain, in addition to or instead of a prohibition against cruel and unusual punishment, an explicit requirement that penalties be scaled to the offense. The Alaska Supreme Court has said that this section does not require punishments to be strictly proportional to the seriousness of the crime, but along with Article I, Section 1, it requires that they not be grossly disproportional (*Green v. State,* 390 P.2d 433 (1964)). While a definition of "cruel and unusual punishment" clearly includes torture and other forms of barbarous treatment, it has been expanded over the years to encompass such things as the denial of essential medical treatment and psychiatric care to prisoners.

A Yup'ik man convicted of murder claimed that his imprisonment in any facility other than the Yukon Kuskokwim Correctional Center in Bethel amounted to cruel and unusual punishment because he spoke Yup'ik and virtually no English, ate a subsistence diet which was unavailable in other prisons, and had no experience outside his traditional life in southwest Alaska. The court rejected his claim *(Abraham v. State,* 585 P.2d 526 (1978)), and that of another prisoner that the denial of conjugal visits was a form of cruel and unusual punishment *(McGinnis v. Stevens,* 543 P.2d 1221 (1975)).

The second sentence was amended in 1994 by changing the word "penal" to "criminal" and adding "community condemnation of the offender, the rights of victims of crimes, restitution from the offender." Underlying the change was a pervasive opinion that the courts put the interests of the prisoners ahead of those of the public. The commitment to reformation in this section has no counterpart in the U.S. Constitution. It expresses a view of incarceration that became popular in the late 1800s. Several other state constitutions, including Oregon, recognize a right to humane and rehabilitative treatment in prison.

The record is clear that, while embracing the principle of reformation, delegates to Alaska's constitutional convention did not intend to abolish capital punishment (by using the argument, in the words of Delegate George McLaughlin, "that you cannot reform a dead man"). Delegate James Doogan stated that the reformation language "was more or less advisory or instructive to the penal institutions." The Alaska Supreme Court has held that state prisoners in Alaska have a constitutional right to rehabilitation services *(Rust v. State,* 584 P.2d 38 (1978)). This right was clarified in the *Abraham* case: although the defendant failed to convince the court that his incarceration outside of the Bethel area was unconstitutional, his claim to a constitutional right to rehabilitative treatment while in prison for alcoholism was successful, because such treatment was key to reforming his criminal behavior.

Prior to the 1994 amendment, the Alaska Supreme Court had enunciated specific sentencing goals it found inherent in the original twin constitutional principles of prisoner reformation and public protection. Known as the "Chaney criteria," these are the "rehabilitation of the offender into a noncriminal member of society, isolation of the offender from society to prevent criminal conduct during the period of confinement, deterrence of the offender himself after his release from confinement or other penological treatment, as well as deterrence of other members of the community who might possess tendencies toward criminal conduct similar to that of the offender, and community condemnation of the individual offender, or in other words, reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves" *(State v. Chaney,* 477 P.2d 441 (1970)). Thus, the supreme court had established community condemnation of the offender as a sentencing objective prior to the adoption of the amendment in 1994. It has declared, however, that this objective may not be used as a guise for retribution *(Smothers v. State,* 579 P.2d 1062 (1978)).

The court has upheld presumptive sentences adopted by the legislature (AS 12.55.125) against challenges that they conflict with this section of the constitution and unconstitutionally infringe on the power of the judiciary *(Nell v. State,* 642 P.2d 1361 (Alaska Ct. App.1982)).

A class action suit brought by prisoners alleging that overcrowding and other substandard prison conditions violated state statutes and regulations as well as federal and state constitutional provisions, including this section, had a significant impact on prison administration in Alaska. Originally filed in 1981, the suit eventually ended with a consent decree in 1990 after years of litigation and negotiation. The agreement contained guidelines and standards for operating prisons, established ceilings on prison populations, enumerated rights and opportunities of prisoners, specified procedures for handling grievances, and guaranteed the availability of rehabilitation programs (*Cleary v. Smith*, *Final Settlement and Order*, No. 3AN-81-5274 CI (1990); see also *Smith v. Cleary*, 24 P.3d 1245 (2001)). In response to these orders, the legislature adopted in 1999 the Alaska Prison Litigation Reform Act (AS 09.19.200) sharply curtailing the ability of the courts to intervene in the administration of prisons through civil litigation.

For a discussion of the rights of crime victims, see Article I, Section 24.

Section 13. Habeas Corpus

> **The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or actual or imminent invasion, the public safety requires it.**

A writ of habeas corpus is a means by which a prisoner may have the legality of his detention reviewed by a court. It is not a device to determine guilt or innocence; rather it ensures due process was observed. Protection from the suspension of the writ of habeas corpus is found in the constitutions of the U.S. (Article I, Section 9) and the other states. This version differs from conventional statements of the right by the addition of "actual or imminent" before invasion to account for the conditions of modern warfare.

Section 14. Searches and Seizures

> **The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.**

This is the search-and-seizure article of the U.S. Bill of Rights (Article IV) with the addition of the words "and other property" and altered punctuation. Although this constitutional protection has at times resulted in popular outrage when defendants have gone free after illegally obtained evidence was suppressed at trial, it is one of the bulwarks of personal freedom. "The primary purpose of the constitutional guarantees furnished by this section is the protection of personal privacy and dignity against unwarranted intrusion by the state" *(Woods & Rohde, Incorporated* v. *State,* 565 P.2d 138 (1977)).

Many defendants have appealed their convictions on the grounds that the evidence used against them violated this constitutional safeguard. Thus, judicial interpretation has been crucial to define such subjective concepts as "probable cause" and "search" and to balance the practical necessity of police work with the underlying principle of personal privacy.

Evidence discovered as a result of an illegal search or seizure may not be used in court. This is the "exclusionary" doctrine that has thwarted many criminal convictions. It is not meant to protect against conviction of innocent people; it is rather, in the words of the Alaska Supreme Court, "a prophylactic device to curb improper police conduct and to protect the integrity of the judicial process" *(Moreau v. State,* 588 P.2d 275 (1978)).

To obtain a search warrant from the court, or to arrest (seize) a criminal suspect, the police must have more than a good hunch: the facts and circumstances known to the officer "must be sufficient to warrant a man of reasonable caution to believe that an offense has been or is being committed" (a federal standard cited in numerous state cases, for example *Keller* v. *State,* 543 P.2d 1211 (1975)).

The courts have delineated exceptions to the general rule that a warrant is required before the police may search a person or a person's belongings. These exceptions include searches of abandoned property, in hot pursuit of a fleeing felon, to prevent destruction of a known seizable item, a limited pre-incarceration "inventory" search, those undertaken with voluntary consent, in the rendition of emergency aid, a "stop and frisk," and searches incident to arrest.

Alaska constitutional delegates considered, but ultimately rejected, an additional clause to extend this to include protection against electronic surveillance and wiretapping. In the end, delegates decided to avoid restriction of legitimate law enforcement activities and trusted the legislature to establish safeguards against official abuse of electronic surveillance. However, the lingering apprehension of threats to personal privacy from modern technology found expression in the "right to privacy" amendment (Section 22) adopted in 1972. This amendment became a partial basis for the rule requiring police to obtain prior court approval for many electronic monitoring situations *(State v. Glass,* 583 P.2d 872 (1978)).

Section 15. Prohibited State Action

> **No bill of attainder or ex post facto law shall be passed. No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed. No conviction shall work corruption of blood or forfeiture of estate.**

Article I, Section 10 of the U.S. Constitution prohibits states from passing laws of the type mentioned in the first two sentences of this section, thus rendering them technically unnecessary. This reaffirmation of the prohibition nonetheless appears in most state constitutions, often in the legislative article because it limits the scope of legislative action.

A "bill of attainder" is an act of the legislature that singles out a person or group for punishment without a trial. Bills of attainder are prohibited because prosecutions are the business of the judicial branch with its many procedural safeguards. Bills of attainder are a rarity, but an instance occurred in Alaska. A member of the senate finance committee inserted a provision in the 1980 appropriation bill that eliminated a state personnel number assigned to an agency administrator whom the senator sought to remove. The attorney general advised the governor against accepting the rider because it was legislative punishment of a specific individual.

An "ex post facto*"* law is one that makes an act that was lawful at the time it was committed a crime or increases the punishment for a crime after the fact. Without this protection, citizens would be vulnerable to vengeful prosecutors or legislatures. Also, the dictates of due process demand that people know whether their actions are considered criminal and, if so, the severity of punishment they may suffer as a result.

Litigation at the federal and state levels over ex post facto laws has primarily concerned measures that stiffen criminal penalties. For example, following a third conviction for drunk driving, the offender's license was revoked for three years. The offender sued, arguing the first two convictions occurred prior to the enactment of a law requiring a three-year license revocation for a third offense. The Alaska Supreme Court, citing federal precedent, ruled the revocation was not "an unconstitutional ex post facto law because a sentence for a habitual offender" was neither double jeopardy nor an additional penalty for earlier crimes. *(Danks v. State,* 619 P.2d 720 (1980); also see *Carter v. State*, 625 P.2d 313 (Alaska Ct. App. 1981)). In another case, the Alaska Supreme Court ruled that a man indicted for sexual abuse could be prosecuted under a law that extended the time limit for charging a person for that crime (the statute of limitation), even though he could not have been indicted under the old statute *(State v. Creekpaum,* 753 P.2d 1139 (1988)). The court upheld a statute denying permanent fund dividends to convicted felons when challenged as an *ex post facto* law by a felon who was convicted before the law was adopted (*State v. Anthony,* 816 P.2d 1377 (1991)). In an Alaska case appealed to the federal 9th Circuit Court, convicted offenders successfully challenged the state's sex offender registry act as *ex post facto* law, claiming it punitive. However, on appeal, the U.S. Supreme Court overturned, finding the act was "clearly intended as a civil, non-punitive means of identifying previous offenders for the protection of the public, properly based on the high incidence of recidivism of such offenders" (*Smith v. Doe*, 538 U.S. 84 (2003)).

The federal prohibition against state laws "impairing the obligation of contracts" was originally intended to block legislation that forgave debtors their debts. Seemingly far-reaching, federal and other state courts have interpreted this prohibition to be more permissive of state action than the text suggests. States frequently adopt laws that interfere with the obligation of contracts to protect the public health and welfare or the economic interest of the state. For example, the taking of property under a state's power of eminent domain (see Section 18), tax laws, and economic regulations often impair existing contracts.

A prohibition on "grants of special privileges or immunities" is found in many state constitutions and was present in the Territorial Organic Act of 1912 (see also Article II, Section 19). Its genesis was the tendency of nineteenth century legislators to dispense favors to special interests. The provision has not been interpreted to mean, however, that laws may never selectively confer benefits on certain groups or classes of people. Laws benefitting members of society differentially are not objectionable, provided there is legitimate basis for the distinction; just as the "equal protection" clause does not prohibit laws from affecting people differently. This provision has not kept state and local

governments from issuing franchises for the operation of public utilities, transportation services, and other businesses. Such franchises are, among other things, terminable and revocable. The "common use" clause of Article VIII, Section 3 prohibits special privileges in connection with the use of natural resources.

No provision comparable to the last sentence of this section is in the U.S. Constitution, but it does appear in roughly 20 state constitutions. "No corruption of blood or forfeiture of estate" rejects the feudal doctrine under which a person convicted of treason or a felony lost his estate to his lord and could not inherit property from his ancestors or pass it on to his heirs. The section instead adopts the modern principle that punishment for a crime should neither reach beyond the guilty individual, nor affect the right to property acquired legitimately.

Section 16. Civil Suits; Trial by Jury

> **In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent it existed at common law. The legislature may make provision for a verdict by not less than three-fourths of the jury and, in courts not of record, may provide for a jury of not less than six or more than twelve.**

Many state constitutions guarantee the right to a jury trial in both civil and criminal cases in the same provision; Alaska's separates those rights between this section and Section 11.

The basis for this section is the Seventh Amendment of the U.S. Bill of Rights which says, in part: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . ." But the Alaska delegates reworded it slightly, substituting "civil cases" for "suits at common law," and "a jury of twelve" for "a jury." By specifying that the jury trial in civil cases be "preserved to the same extent as it existed at common law," the delegates followed long-standing tradition and precedent in avoiding creation of a new right to a jury trial where one was not already recognized. The delegates debated at some length the wisdom of establishing a minimum dollar figure in the constitution, and decided it was the best way to effectively guarantee the right to a jury trial. Otherwise, the legislature could set a high threshold, thus excluding many people from exercising this right.

The practice of allowing non-unanimous jury verdicts in civil cases is not unusual. The Missouri Constitution, for example, allows verdicts in certain courts by two-thirds majority, and the New Jersey Constitution by five-sixths. Alaska law allows five-sixths of any jury to render a verdict in civil cases (AS 09.20.100).

In territorial Alaska, it was common practice to allow civil cases to be heard by juries of fewer than 12 in the lower courts. The Alaska legislature has specified a jury of six in the district courts for both civil and criminal cases (AS 22.15.150).

Section 17. Imprisonment for Debt

> **There shall be no imprisonment for debt. This section does not prohibit civil arrest of absconding debtors.**

This protection is found in most state constitutions and reflects the common law abhorrence of "debtors' prison." The U.S. Constitution does not contain an explicit protection against imprisonment for debt, but the U.S. Supreme Court has held it unconstitutional to incarcerate individuals solely due to inability to pay a public debt (*Williams v. Illinois*, 399 U.S. 235 (1970) and *Tate v. Short*, 401 U.S. 395 (1971)).

The committee draft of this section contained an exception for fraud, which is found in most other states' versions of this protection. The delegates preferred the exception for those who skipped town even though they had the money to pay. Courts have generally interpreted this protection from imprisonment for debt to apply only to private contracts. Thus, it applies neither to willful avoidance of fines and similar criminal penalties, nor to the defiance of court orders to pay child support or divorce settlements.

Section 18. Eminent Domain

> **Private property shall not be taken or damaged for public use without just compensation.**

Eminent domain is the inherent right of government to take private property for public purposes. The state must fairly compensate the owners of property it condemns under the power of eminent domain (see also Article VIII, Section 18). This requirement is found in the U.S. Constitution and those of every state.

The most common eminent domain action is acquisition of rights-of-way for road and highway construction, although the power is occasionally exercised to acquire land for schools, public buildings, pipelines, and utility transmission lines. The state has delegated its power of eminent domain to municipalities, public corporations, and utilities, but all are bound by the requirement to pay just compensation.

Property taken by the state is usually land, but the term has been held to apply to personal property and even intangible property. For example, the Alaska Supreme Court ruled that a lawyer could not be required to provide counsel to an indigent defendant without reasonable compensation, as "labor is property" *(DeLisio v. Alaska Superior Court,* 740 P.2d 437 (1987)). However, the court two years later denied a claim by state workers that the executive branch's unilateral increase of the hours in a work week constituted an unlawful taking of property under this section *(Alaska Public Employees Assn. v. Department of Administration,* 776 P.2d 1030 (1989)).

Whether property has been "taken" is not always a straightforward matter. Governments routinely adopt regulations in the interest of public health and safety that indirectly cost people money. Zoning ordinances and building codes, for example, burden property owners economically. Can the exercise of the government's police powers, which diminish the value of private property, constitute a "taking" of private property that must be compensated? It can if the effect is confiscatory or unduly burdensome. These issues were presented in a suit brought after the state changed to one-way the flow of traffic in front of a business that depended on easy accessibility to vehicle traffic. The Alaska Supreme Court noted that "the difference between a non-compensable exercise of the police power and a compensable taking is often one merely of degree," but did not consider the flow of traffic in front of a business a property right that required compensation *(B & G Meats, Incorporated v. State,* 601 P.2d 252 (1979)). However, the court upheld a claim that airplane noise following the state's construction of a new airport runway amounted to the condemnation of an aerial easement, thus lowering the value of residential property (*State v. Doyle*, 735 P.2d 733 (1987)).

Damage to property by the state must be compensated for as well. Approximately half of the state constitutions include damage in their requirement for eminent domain compensation; but it is absent from the Fifth Amendment of the U.S. Constitution. There has been little judicial interpretation of this term. The Alaska Supreme Court has said, however, that it includes the temporary loss of profits from a business that must be relocated because of an eminent domain action *(State v. Hammer,* 550 P.2d 820, 1976; see also *Bakke v. State*, 744 P.2d 655 (1987)).

The Alaska Supreme Court has defined "just compensation" to mean fair market value, "or the price a willing buyer would pay a willing seller for property" *(State v. Alaska Continental Development Corporation,* 630 P.2d 977 (1980)). The property owner is entitled to an appraisal of fair market value at the highest and best use of the property, but not to a valuation based on speculative future use. Nor may the property owner assert a value based on the use to which the property will be put by the state: "It is a basic tenet of eminent domain law that just compensation is determined by what the owner has lost and not by what the condemnor has gained" *(Gackstetter v. State,* 618 P.2d 564 (1980)).

Section 19. Right to Keep and Bear Arms

> **A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. The individual right to keep and bear arms shall not be denied or infringed by the State or a political subdivision of the State.**

The second sentence of this section was added by amendment in 1994. It makes explicit that the first sentence, which comes directly from the Second Amendment of the U.S. Bill of Rights, creates a personal right to possess a firearm unconnected with service in an official militia.

For much of the nation's history, federal and state courts have ruled consistently that these constitutional guarantees do not prevent states from the reasonable regulation of firearms, such as requiring registration of handguns, prohibiting convicted felons from possessing firearms, and prohibiting concealed weapons. The Alaska Court of Appeals has upheld the state's prohibition against felons possessing a concealable firearm (*Wilson v. State,* 207 P.3d 565 (2009)). It has also ruled that a state law prohibiting a felon from living in a house where there is a firearm, and a state law prohibiting an intoxicated person from possessing a firearm, do not violate this section (*Morgan v. State*, 943 P.2d 1208 (Alaska Ct. App. 1997); and *Gibson v. State*, 930 P.2d 1300 (Alaska Ct. App. (1997)).

However, between 2008 and 2024, U.S. Supreme Court rulings in several cases redefined the rights of citizens and the authority of governments pursuant to the Second Amendment. In summary, those cases found the Second Amendment provides: 1) the right of *individuals* to possess firearms for certain purposes, including self-defense in the home; 2) the right to bear arms is "fundamental" and, accordingly, the amendment applies to federal laws *and* those enacted at the state and local levels; 3) the definition of "arms" includes devices that did not exist when the amendment was drafted, such as "stun guns;" and 4) the right to bear arms extends beyond the home. (1) *District of Columbia v. Heller*, 554 U.S. 570 (2008); 2) *McDonald v. City of Chicago*, 561 U.S. 742 (2010); 3) *Caetano v. Massachusetts*, 577 U.S. 411 (2016); 4) *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022)).

Further, in *Bruen*, the court established the following judicial standard for assessing firearms restrictions: "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct, and to justify a firearm regulation the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation."

Collectively, these cases expanded the circumstances under which citizens may possess firearms and curtailed substantially the authority of governments to impose restrictions. In *United States v. Rahimi*, 602 U.S. 680 (2024), however, the U.S. Supreme Court let stand a federal law prohibiting individuals

who are the subject of a restraining order, and who pose a credible threat to the safety of an intimate partner, from possessing firearms.

At the time of this writing numerous cases challenging firearms restrictions are underway, and more are likely in the coming years to determine what other limitations are consistent with historical U.S. firearm regulation.

Section 20. Quartering Soldiers

> **No member of the armed forces shall in time of peace be quartered in any house without the consent of the owner or occupant, or in time of war except as prescribed by law. The military shall be in strict subordination to the civil power.**

This archaic provision about the quartering of soldiers is derived from the Third Amendment of the U.S. Bill of Rights and stems from a grievance of the American colonists against British rule. Most states have a similar provision, and its inclusion in the Alaska Constitution reveals the strong influence of tradition on the convention delegates. This section requires consent of the owner, or "occupant," of the house. While it was never litigated, there has been one documented incident of quartering in Alaska. During World War II, Unangax̂ people from villages along the Aleutian chain were forcibly relocated to internment camps in Southeast Alaska. In their absence, troops took up residence in some of the homes, and vacated and burned others preemptively against a possible Japanese invasion. In 1988, Congress enacted the Aleutian and Pribilof Islands Restitution Act, which recognized and apologized for the irreparable harm suffered by those interned and granted a restitution award of $12,000 to each eligible individual.

The second sentence has no direct counterpart in the U.S. Constitution, but the principle is embodied in the federal provision that the president is the commander and chief of the army and navy (Article II, Section 2). Virtually all state constitutions contain a similar statement, which expresses a basic tenet of democratic government.

Section 21. Construction

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

That Article I may omit mention of some rights does not mean that these rights are surrendered. This provision is common in state constitutions, and it is a principle recognized by the Ninth Amendment of the Bill of Rights: "The enumeration in the Constitution of certain rights shall not be construed to

deny or disparage others retained by the people." State or federal courts have very seldom used these provisions.

In Alaska, it has only been recognized as protecting the right to represent oneself in court proceedings. The Alaska Supreme Court allowed a prisoner to act as his own attorney in post-conviction proceedings if he was capable of presenting his case in a rational and coherent manner, recognized what he was giving up by declining the assistance of counsel, and could conduct himself with a minimum of courtroom decorum. "At the time that the Alaska Constitution was enacted and became effective, the right of self-representation was so well established that it must be regarded as a right 'retained by the people'" *(McCracken v. State,* 518 P.2d 85 (1974)).

Section 22. Right of Privacy

> **The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.**

This section was added to the constitution by amendment in 1972, prompted by the potential for misuse of computerized information systems, which were then in their infancy. Constitutional delegates had also been concerned about the potential for technological intrusion in the lives of ordinary citizens using electronic surveillance and wiretapping. They considered, but ultimately rejected, inclusion of the following language in the section dealing with unreasonable searches and seizures:

> The right of privacy of the individual shall not be invaded by use of any electronic or other scientific transmitting, listening or sound recording device for the purpose of gathering incriminating evidence. Evidence so obtained shall not be admissible in judicial or legislative hearings.

In the early 1970s, the Alaska Department of Public Safety was developing a computerized database of criminal history information that would eventually become the Alaska Public Safety Information Network (APSIN). Fearful that such a system was the precursor of a "Big Brother" government information bureaucracy, legislators responded with this constitutional amendment, which was handily ratified by the voters.

Alaska is one of a small group of states with a constitutional right of privacy: similar provisions can be found in the constitutions of Arizona, California, Florida, Hawaii, Illinois, Louisiana, Montana, South Carolina, and Washington. (Some of these were added by amendment at approximately the same time as Alaska's.) The U.S. Constitution does not contain an explicit right of privacy. However, the U.S. Supreme Court has ruled that basic privacy rights are inferred from the First, Third, Fourth, Fifth and Ninth Amendments.

Like other basic constitutional rights, the right of privacy is not absolute. To judge the acceptability of government interference with citizens' privacy, the courts use the same balancing test applied in other cases where it is alleged that the state has violated a person's rights: the more significant the right involved, the more important the state's interest must be in adopting the restrictive law or regulation.

The first major judicial interpretation of the constitutional right of privacy in Alaska arose from a case not involving electronic intrusion but the use of marijuana in the home. In this landmark case that overturned a state law making it illegal to possess marijuana under any circumstances, the Alaska Supreme Court found privacy in the home to be of the highest importance and the most deserving of constitutional protection. It further found the state's rationale for regulating the personal use of small amounts of marijuana to be uncompelling *(Ravin v. State,* 537 P.2d 494 (1975)). In subsequent cases, however, the court upheld state laws against the possession of small amounts of marijuana in public, deeming the right of personal privacy in public places is of lesser constitutional significance (*Belgarde v. State,* 543 P.2d 206 (1975)); and against the possession of small amounts of cocaine in the home, because the harmful societal effects of cocaine justify the state's regulation of the substance, even in the home (*State v. Erickson,* 574 P.2d 1 (1978)). More recently, the Alaska Supreme Court upheld a Juneau ordinance prohibiting smoking in private clubs that served food or alcohol. The court found that a club was not an extension of the home, and that the ordinance did not violate the state constitutional right to privacy *(Fraternal Order of Eagles v. City and Borough of Juneau,* 254 P.3d 348 (2011)).

Alaska's constitutional right to privacy has also been interpreted to protect a woman's access to an abortion and has been the subject of much litigation. In 1992, the governing board of a private hospital in the city of Palmer adopted a policy to prohibit abortions in their facility, relying on a state law that said neither a person nor hospital would be liable for refusing to participate in an abortion. A lawsuit successfully contested the board's decision, resulting in the Alaska Supreme Court ruling the hospital, which was licensed by the state and received substantial public funding, must allow abortions to be performed *(Valley Hospital Association v. Mat-Su Coalition for Choice,* 948 P.2d 963 (1997)).

The court has ruled in subsequent cases that reproductive rights protected by this section extend to minors *(State v. Planned Parenthood of Alaska,* 35 P.3d 30 (2001)), and that the reproductive right cannot be conditioned on another's consent (*State v. Planned Parenthood of Alaska*, 171 P.3d 577 (2007)). At issue in these cases was a 1997 state law requiring a minor to obtain parental consent to obtain an abortion. The court ruled that the law violated the minor's right of privacy but suggested that a law simply requiring notification of the minor's parents prior to an abortion might not offend privacy protections. A law requiring parental notification was adopted by initiative in 2010 and subsequently challenged. The Court held that it violated the equal protection clause of Article I, Section 1 because it treated differently minors who seek an abortion and those who carry their pregnancy to term (*Planned Parenthood of the Great Northwest v. State*, 35 P.3d 1122 (2016)).

Another court decision prohibited the state from denying medically necessary abortions to Medicaid recipients, was also decided on the basis of a violation of the equal protection *(State v. Planned Parenthood of Alaska,* 28 P.3d 904 (2001)).

Most privacy cases arise, however, in the context of searches and seizures (see Section 14). Of these, a leading case is *State v. Glass* (583 P.2d 872 (1978)), which held that the state could not use as evidence a recording, made without a warrant, of a conversation between the defendant and an informant who possessed a wireless transmitter. Although the U.S. Supreme Court had ruled that recordings of this type were admissible evidence, the Alaska Supreme Court found that Alaska's constitutional protection was broader than the inferred right of privacy under the federal constitution: "Were that not the case, there would have been no need to amend the constitution." Eighteen years after *Glass*, the court of appeals ruled that a warrantless, surreptitious video recording without sound also violated the right to privacy (*State v. Page,* 911 P.2d 513 (Alaska Ct. App. (1996)).

In these and similar cases, the court uses a test enunciated in *Glass* that asks if the defendant had a subjective expectation of privacy in the place and activity at issue, and whether society would recognize that expectation as reasonable. For example, the court has determined that fishermen do not have a reasonable expectation that catches stored in the holds of their vessels will be protected from warrantless searches *(Dye v. State,* 650 P.2d 418 (Alaska Ct. App. 1982)). A theater box office employee caught stealing on a hidden surveillance camera did not have a reasonable expectation of privacy while selling tickets to the public (*Cowles v. State*, 23 P.3d 1168 (2001)).

Section 23. Resident Preference

> **This constitution does not prohibit the State from granting preferences, on the basis of Alaska residence, to residents of the State over nonresidents to the extent permitted by the Constitution of the United States.**

This section was passed by the legislature and ratified by the voters in 1988. Efforts by the legislature to impose a local hire law on employers had been repeatedly frustrated in the courts and this amendment was intended to prevent the equal protection clause of Article I, Section 1 from defeating new local hire legislation in subsequent litigation.

The first Alaska hire effort to be declared unconstitutional was a set of regulations promulgated under the State Personnel Act (AS 39.25) giving a preference for state government jobs to applicants who had lived in the state for 12 months or more. The Alaska Supreme Court nullified the regulations in 1973 on the grounds that they unreasonably restricted interstate travel, a fundamental right protected by the privileges and immunities clause of the U.S. Constitution *(State v. Wylie,* 516 P.2d 142 (1973)).

Contemporaneously, the legislature adopted two Alaska hire laws in 1972. One was AS 38.40, "Local Hire Under State Leases," a provision of the land laws requiring all state oil and gas leases, and easements or right-of-way permits for oil or gas pipelines, to contain a clause giving a preference to qualified Alaskans in employment arising from the lease or permit. An Alaska resident was defined as a person who had been physically present in the state for 12 months, who maintained a place of residence in the state, who was registered to vote, who had not claimed residency elsewhere, and who intended to be a permanent resident.

Not long after the Alaska Department of Labor began to enforce the measure by issuing residency cards in 1975, several nonresidents sued arguing the law violated the equal protection clauses of the state and federal constitutions and the privileges and immunities clause of the federal constitution. The Alaska Supreme Court ruled that the one-year durational residency requirement violated the latter, but it did not find the preference for residents over nonresidents offensive to either the state or federal constitutions. The court justified Alaska hire by the principle that "a state may prefer its residents in dealing with natural resources that it owns" *(Hicklin v. Orbeck,* 565 P.2d 159 (1977)).

On appeal, the U.S. Supreme Court unanimously reversed the ruling, striking down the Alaska hire law. The court ruled the state failed to show that nonresidents were a source of Alaska's high unemployment (in contrast to such factors as lack of education and job training and geographic remoteness from job opportunities). Moreover, the law was not sufficiently related to the issue of nonresident competition for jobs, as the law discriminated in favor of both employed and unemployed Alaskans. Further, Alaska's ownership of resources was insufficient justification for discrimination against nonresidents as the law affected employers who had no connection with the state's oil and gas, performed no work on state land, held no contractual relationship with the state, and received no payment from the state. The U.S. Supreme Court wrote: "If Alaska is to attempt to ease its unemployment problem by forcing employers within the State to discriminate against nonresidents—again, a policy which may present serious constitutional questions—the means by which it does so must be more closely tailored to aid the unemployed the Act is intended to benefit" *(Hicklin v. Orbeck,* 57 L.Ed.2d 397 (1978)).

The other Alaska hire law enacted in 1972 was AS 36.10, which required that 95 percent of the work force on state-funded construction projects be *bona fide* Alaska residents. In 1983, a Montana ironworker was fired from a state-funded school construction project after his employer received notice that it was violating the 95 percent resident employment standard. He sued the state, alleging that the Alaska hire law violated the equal protection clauses of the state and federal constitutions and the federal privileges and immunities clauses. The Alaska Supreme Court, in accordance with the *Hicklin* precedent*,* held that the law violated the U.S. privileges and immunities clause. It said the state failed to prove by a preponderance of evidence that nonresidents were a significant source of unemployment in Alaska and that "the preference . . . is closely tailored to alleviate unemployment in the construction industry in the State of Alaska" *(Robison v. Francis,* 713 P.2d 259 (1986)).

In response, the legislature amended AS 36.10 in 1986 to give hiring preferences only to Alaska residents who needed them most. Preferential treatment on public works projects was to be granted only to residents of areas of underemployment or economic distress, and to economically disadvantaged minority or female residents of those areas. Specific preconditions necessary to trigger these preferences had to be certified by the state labor commissioner.

Advocates of Alaska hire believed the new measure had a better chance of being upheld by the U.S. Supreme Court than by the Alaska Supreme Court. A separate concurring opinion of Alaska Supreme Court Justice Edmond Burke in *Robison v. Francis* argued that the state high court should have decided that case based on the law's violation of "the clear and unambiguous language" of Article I, Section I of the Alaska Constitution: "A decision by this court that the local hire law violates the Alaska Constitution would bring this case to an immediate end...." Defeat in state courts based on the state constitution would preclude the federal court from reviewing the new Alaska hire law. Alarmed that the equal protection clause of the state constitution would not tolerate Alaska hire legislation, lawmakers moved to amend the constitution with this section.

However, the amendment failed to save a key provision of the 1986 local hire law from a successful challenge under the equal protection guarantee: namely, AS 36.10.160, a preference for eligible residents of an economically distressed zone. A contractor on a state-funded construction project in a zone declared economically distressed challenged the provision and was later joined by two Alaska residents who alleged their jobs were threatened by the measure. The Alaska Supreme Court overturned the law, ruling that the discrimination was too loosely related to the purpose of the law to satisfy the equal protection guarantee (*State v. Enserch*, 787 P.2d 624 (1989)). Because the case concerned the rights of a resident corporation and resident workers, the federal privileges and immunities clause was irrelevant, as was this section, which authorizes discrimination only against nonresidents. Other provisions of the 1986 law giving public works hiring preferences to certain individuals who reside in zones of underemployment were implemented by the state until 2019, when the Alaska Attorney General issued an opinion that it violated the state and federal constitutions (2019 Op. Alaska Att'y Gen. (Oct. 3)).

Section 24. Rights of Crime Victims

> **Crime victims, as defined by law, shall have the following rights as provided by law: the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to confer with the prosecution; the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process; the right to timely disposition of the case following the arrest of the accused; the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present; the right to be**

> **allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; the right to restitution from the accused; and the right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication.**

This section was added by an amendment in 1994, which also inserted new language into Section 12. It enshrines rights that were previously recognized only in statute, if at all. In general, the amendment reflects a common perception that the rights of crime victims tended to be overlooked in the criminal justice system. The legislature implemented this amendment by creating the Office of Victims' Rights within the legislative branch (AS 24.65), headed by an advocate who assists crime victims in obtaining the rights guaranteed under Alaska's constitution and laws regarding contacts with the justice agencies of the state. Statutory victims' rights are enumerated primarily in AS 12.61 but also elsewhere (for example, AS 18.66.110 regarding *ex parte* and emergency protective orders).

There is, at times, tension between the rights of crime victims and those of the defendant. For example, although a victim has the right to be present at the trial of the defendant, the prosecutor may not exploit that presence to arouse sympathy or compassion in a manner that could prejudice jurors' fair consideration of the evidence in a case (discussed in *Phillips v. State,* 70 P.3d 1128 (2003)). Another case held that this section grants neither a crime victim nor the Office of Victims' Rights a right to appeal a defendant's sentence *(Cooper v. District Court*, 133 P.3d 692 (2006)).

The desire to emphasize the rights of the public over those of criminals was also behind an unsuccessful attempt to amend the constitution in 1998 to explicitly deny prisoners' civil rights under Article I of the Alaska Constitution. The Alaska Supreme Court removed that amendment from the ballot in *Bess v. Ulmer*, 985 P.2d 979 (1999), as discussed in Article XIII, Section 1.

Section 25. Marriage

> **To be valid or recognized in this State, a marriage may exist only between one man and one woman.**

This section was added by amendment in 1998. It was the reaction to a preliminary ruling by a superior court judge suggesting that the state constitutional right to privacy may confer on Alaskans a fundamental right to choose marriage partners regardless of gender (*Brause v. Vital Statistics*, No. 3AN-95-6562CI (Alaska Super. Ct. Feb. 27, 1998)). The legislative resolution for this amendment originally contained a second sentence which read: "No provision of this constitution may be interpreted to require the State to recognize or permit marriage between individuals of the same sex." The Alaska Supreme Court ordered it be deleted from the ballot because it was unnecessary to

harmonize the first sentence with other parts of the constitution, and it could be interpreted to criminalize same sex marriages. (See *Bess v. Ulmer*, 985 P.2d 979 (1999))

Alaska's ban on same-sex marriage, like those in other states, was nullified by a series of decisions. In 2005, the Alaska Supreme Court held that that state benefit programs unconstitutionally discriminate against same-sex couples barred from marriage under this section (*ACLU v. State*, 122 P.3d 781 (2005)). Then, in 2013, the U.S. Supreme Court struck down portions of the federal Defense of Marriage Act in *United States v. Windsor*, 570 U.S. 744 (2013). In October 2014, the U.S. District Court declared this section an unconstitutional violation of the due process and equal protection clauses of the fourteenth amendment of the U.S. Constitution (*Hamby v. Parnell,* 56 F. Supp. 3d 1056 (D. Alaska 2014). The next year, the U.S. Supreme Court held that same-sex couples have a fundamental right to marry under the Due Process and Equal Protection clauses of the federal constitution, thus invalidating same sex marriage bans across the country (*Obergefell v. Hodges*, 576 U.S. 644 (2015)).

ARTICLE II

THE LEGISLATURE

The legislature is one of three branches of government in the American constitutional system. This system is built around the twin doctrines of "separation of powers" and "checks and balances." Separation of powers refers to the principle that the three functions of government—legislative, executive, and judicial—should be performed by separate and equal bodies. Checks and balances are limited exceptions to the separation of powers that permit one branch to have a specific role in the activities of another. These exceptions, authorized by the constitution or sanctioned by tradition, are intended to prevent the concentration of excessive power in one branch.

Thus, under the separation of powers doctrine, the legislature makes laws, the executive implements them, and the judiciary interprets and applies them in specific situations. Under the principle of checks and balances, the constitution authorizes the executive to exercise certain functions in the legislative and judicial areas, such as vetoing bills and appointing judges. It authorizes the legislature to exercise certain functions in the executive and judicial areas, such as approving appointments to major executive departments and changing certain court rules. It authorizes the judiciary to exercise oversight over legislative and administrative (executive) actions to ensure their conformity with the laws and constitution of the state. One consequence of the separation of powers is an inherent tension between the three branches of government as each guards against unauthorized encroachments on its power by the others.

There is no formal statement of the separation of powers doctrine in the Alaska Constitution, but it has been recognized by the Alaska Supreme Court (*Public Defender Agency v. Superior Court,* 534 P.2d 947 (1975)). In some state constitutions, however, a "distribution of power" clause sets forth the doctrine. For example, Article III, Section 1 of New Jersey's constitution states:

> The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

In constitutional theory, the "sovereign" power of the state resides in the legislature. Accordingly, the legislature does not need a grant of power: it may do anything that is not expressly prohibited by the constitution. All state constitutions prohibit legislative invasion of basic rights, which is usually

enumerated in the first article, as in Alaska's constitution. Virtually all state constitutions prohibit local and special acts (Article II, Section 19) and the borrowing of money for capital projects without prior approval of the voters (Article IX, Section 8). However, many state constitutions go further, limiting legislative power by explicitly prohibiting action or through detailed, statute-like provisions. This is not the case in Alaska.

Convention delegates created a strong legislature with the power and resources to act decisively and effectively. Thus, while many state constitutions reflect profound suspicion of the legislature, Alaska's constitution declares confidence in the legislative body: it is small, meets annually, members are paid a salary, and may arrange for its own supporting services. Most importantly, the legislature has broad discretion to fashion the details of government structure and operation—details which are specified in the constitutions of many other states.

This article of Alaska's constitution vests the legislative power of the state in a bicameral legislature and provides basic structure, composition, and procedures. It also specifies the use of the veto, which is the main legislative power conferred on the governor. Two important amendments restraining legislative prerogatives have, however, been ratified by sizable majorities of the electorate, one in 1982 and the other in 1984. The first imposed a ceiling on annual appropriations (see Article IX, Section 16); the second imposed a 120-day limit on the length of regular legislative sessions (see Section 8). Both amendments express a more skeptical view of the legislature than that held by the convention delegates.

Section 1. Legislative Power; Membership

> **The legislative power of the State is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives with a membership of forty.**

All state constitutions have a vesting provision. Such a provision implies that no other authority, public or private, may exercise legislative power. But, in fact, all legislatures routinely delegate legislative powers to agencies of the executive branch that are charged with implementing laws. When agencies adopt regulations, they are performing a legislative function.

Delegation of Legislative Authority

The legislature may delegate power to the executive if this power is accompanied by explicit guidelines and policy directions. Delegations of legislative power must be sufficiently narrow and specific to give the agency reasonable standards and the courts a basis for determining when the agent has exceeded the bounds of the delegated authority. Measures that fail this test are unconstitutional. For example, the Alaska Supreme Court struck down a section of the Executive Budget Act (AS

37.07.080(g)(2)), which authorized the governor to withhold or reduce expenditures if estimated receipts and surpluses were insufficient to fulfill appropriations. In 1986, facing a budgetary crisis due to collapsing oil prices, Governor William Sheffield used this authority to restrict spending. The Fairbanks North Star Borough sued, alleging the statutory authority for the governor's action was unconstitutional because it represented an illegal delegation of legislative power. The supreme court agreed, finding that the statute provided inadequate standards and principles to guide the governor in reducing spending in a fiscal emergency *(State v. Fairbanks North Star Borough,* 736 P.2d 1140 (1987)). The legislature subsequently passed an appropriation bill that validated the governor's reductions and repealed the statutory provision.

In contrast, the Alaska Supreme Court has upheld the legality of several legislatively created boards that were challenged, in part, on the grounds that the legislature impermissibly delegated its power. Specifically, the court ruled the laws creating these entities were explicitly limited and directive in delegating powers (see, *DeArmond v. Alaska State Development Corporation,* 376 P.2d 717 (1962); and *Walker v. Alaska State Mortgage Association,* 416 P.2d 245 (1966)).

Bicameral vs. Unicameral Legislature

Alaska's legislature is bicameral: it has a house of representatives and a senate. The alternative to bicameral structure is a unicameral (one house) legislature, which was considered but ultimately rejected at the Alaska constitutional convention. Alaska has considered two ballot propositions on the unicameral concept. In 1937, voters rejected a measure that urged Congress to amend the Territorial Organic Act of 1912 by eliminating the territorial senate. In 1976, they approved an advisory ballot proposition urging the legislature to put before them a unicameral constitutional amendment for ratification. Although the proposition passed, the legislature did not pursue the matter.

Alaska's constitution is unusual in its frequent use of joint legislative sessions, which are required for the confirmation of executive appointments, overriding vetoes, and other purposes (see, for example, Article II, Section 16; Article III, Sections 19, 20, 23, 25 and 26; Article IV, Sections 8 and 10; Article X**,** Section 12).

Composition of Membership

At 60 members, Alaska's legislature is among the smallest in the United States: only Nebraska, with 49 members in its unicameral legislature, is smaller. New Hampshire is the largest with 424; the average is about 150. Alaska had a small territorial legislature, which was created by Congress in 1912 with only twenty-four members—eight senators and sixteen representatives. The body was increased to forty members—sixteen senators and twenty-four representatives—by an act of Congress in 1942. (This measure also reapportioned the house of representatives based on population; until then, each of the four judicial divisions had the same number of representatives regardless of population.) Alaska's delegate to Congress, Anthony J. Dimond, promoted this enlargement of the

territorial legislature out of frustration with the small size of the senate and the inordinate power it conferred on a handful of conservative members to kill progressive legislation. In a senate of eight, four members (one-sixth of all legislators) could thwart the will of the legislative majority.

Currently, any ten senators may prevent a bill from passing. (Notably, this still equates to one-sixth of all legislators.) Even fewer can reject measures requiring a supermajority—for example, procedural motions and resolutions proposing constitutional amendments, which require more than a simple majority of votes to pass. That a minority of the legislature can stymie bills favored by a majority of the legislature is an inherent feature of bicameral systems that accounts, in part at least, for the periodic renewal of interest in the unicameral idea. For example, in 2002, former attorney general John Havelock supported unicameralism in a newspaper opinion piece; former governor Walter J. Hickel did the same in 2007 and 2009. Since 1993, at least seven measures intending to place before voters an amendment to this section implementing a unicameral model have been considered and rejected by the legislature.

At the 2010 general election, voters rejected a proposed amendment to increase the number of representatives by four and senators by two. The intent was to decrease the geographic size and socioeconomic diversity of districts by increasing their total number to 44, as drawn by the redistricting board following the decennial census in 2010 (see Article VI).

Section 2. Members' Qualifications

> **A member of the legislature shall be a qualified voter who has been a resident of Alaska for at least three years and of the district from which elected for at least one year, immediately preceding his filing for office. A senator shall be at least twenty-five years of age and a representative at least twenty-one years of age.**

These qualifications for holding legislative office are typical of those in other states, although some state constitutions have no formal state residency requirement. While these qualifications omit mention of U.S. citizenship (compare Article III, Section 2), Article V, Section 1 requires U.S. citizenship to be a qualified voter. Therefore, a legislator must be a U.S. citizen.

In Alaska the minimum age for a representative (21) is younger than for a senator (25). These particular age qualifications are found in approximately one-quarter of the states. Several other states also specify different ages for the two legislative bodies (the state with the widest spread is New Hampshire, where a representative must be at least 18 years old and a senator at least 30). About half the states require a minimum age of 18, 21, or 25 years for both offices.

Alaska, and roughly half of the states, require a legislator to have lived for at least one year in the election district for which he or she files for office. Many constitutions do not specify a district

residency requirement as a qualification for legislative office but usually require a minimum district residency to qualify as a voter (which a legislator must be).

A candidate for the senate in Alaska once challenged the residency requirements in this section, arguing they abridged his rights of equal protection and effective petition of the government. Although usually skeptical of residency requirements, the Alaska Supreme Court determined the three years of residency served a legitimate interest in ensuring legislators had resided in the state long enough to understand its history, geography, and issues. Further, the court ruled the one-year residency requirement in the election district is appropriate not only for the candidate to be familiar with his district, but for voters to learn the candidate's character, habits, and reputation *(Gilbert v. State,* 526 P.2d 1131 (1974)).

Several attempts to impose term limits on legislative and congressional candidates by initiative occurred during the 1990s. The attorney general deemed the initiatives invalid because the constitution may not be amended by initiative. The courts addressed the issue in 1994, ruling in favor of the state, after the lieutenant governor denied certification of one such initiative petition and the sponsors sued (*Alaskans for Legislative Reform v. State*, 887 P.2d 960 (1994)). (See Article XI, Section 1.)

Section 3. Election and Terms

> **Legislators shall be elected at general elections. Their terms begin on the fourth Monday of the January following election unless otherwise provided by law. The term of representatives shall be two years, and the term of senators, four years. One-half of the senators shall be elected every two years.**

A two-year term for representatives is standard in all but six states, five of which have four-year terms and one state with one-year terms. A four-year term for senators is the standard in all but 13, which have two-year terms.

The legislature has exercised its discretion to set the beginning of these terms. The law now specifies: "The term of each member of the legislature begins on the third Tuesday in January" (AS 24.05.080), coinciding with the dates of the convening of the legislature (see Section 8). With a handful of exceptions, other state legislatures convene in either January or February.

Section 4. Vacancies

> **A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment.**

The legislature has enacted procedures delineating how vacant seats may be filled (AS 15.40.320-470). Under those provisions, the governor appoints a person to serve the remainder of the term, although vacancies have been left open under some circumstances. If a vacancy in the senate leaves an unexpired term of more than two years, five months, the governor must call a special election. The law also provides that appointees must be a member of the same political party of the predecessor and be subject to confirmation by a majority of the legislators of that party within the affected chamber.

Generally, the filling of vacancies engenders little controversy; however, in 1987, Governor Steve Cowper's appointee to fill the unexpired term of a deceased Fairbanks senator was rejected by senate Republicans in a caucus called during the interim. Governor Cowper challenged the constitutionality of the confirmation provisions of the statute, arguing the legislature could not delegate responsibility for confirmation to a committee, that the entire senate had to vote, and it had to do so in open session. These legal issues were never resolved, however, because the parties agreed on a compromise appointee and the suit was dropped. Questions about the legality of a nominee being confirmed by a political caucus were again raised in a conflict between Governor Sarah Palin and a senate Democratic caucus over filling a vacancy in 2009, but a compromise again averted judicial intervention.

In 1988, an interim appointment was confirmed by the entire house of representatives, rather than by the party caucus. In that instance, a closely contested election for an Anchorage house seat was set aside and a new election called by the Alaska Supreme Court. As an interim measure, the governor appointed an individual to serve until the winner of the special election was certified. Because the definition of "vacancy" in AS 15.80.010(44) —death, resignation, impeachment, recall and so on— does not include this cause of vacancy, the entire body voted to confirm. Although this section suggests that the governor's appointee need not be confirmed by the legislature when "no provision is made" in law to the contrary, under Article II, Section 12 the legislature remains the sole arbiter of its members.

Section 5. Disqualifications

> **No legislator may hold any other office or position of profit under the United States or the State. During the term for which elected and for one year thereafter, no legislator may be nominated, elected, or appointed to any other office or position of profit which has been created, or the salary or emoluments of which have been increased, while he was a member. This section shall not prevent any person from seeking or holding the office of governor, secretary of state, or member of Congress. This section shall not apply to employment by or election to a constitutional convention.**

The first sentence of this section is a prohibition against "dual office holding" by legislators common in state constitutions, some of which also prohibit employment by a foreign government or by another state. Dual office holding is also prohibited by the Alaska Constitution for the governor (Article III, Section 6) and judiciary (Article IV, Section 14; see also Article IV, Section 8). The constitution recognizes only two exceptions: Article XII, Section 3 exempts service in the armed forces, and the last sentence of the present section exempts employment by or election to a constitutional convention.

Members of the 1955 territorial legislature were prevented by a prohibition on dual office holding from running for election to the constitutional convention (*Kederick v. Heintzleman*, 132 F. Supp. 582 (1955)), which is doubtless why the delegates thought to include the exception in the last sentence of Section 5.

In ruling that a legislator could not also be employed as a teacher in the state-operated school system, the Alaska Supreme Court described the prohibition against dual office holding as an effort "to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers." The underlying rationale is to preserve independence and integrity of state government officials *(Begich v. Jefferson,* 441 P.2d 27 (1968)).

Alaska legislators may not serve on committees, boards or commissions in the executive branch that exercise executive power (such as the state bond committee) or that have attributes of state agencies (such as the Alaska Statehood Commission). Such service violates the prohibition against dual office holding and the separation of powers doctrine. Membership on a joint legislative-executive committee is permissible if its only purpose is to exchange ideas or information, or to give advice (1980 Opinion of the Attorney General No. 21, September 24).

The second sentence of this section seeks to prevent improper motives on the part of legislators when creating positions and raising salaries. In 1975, Governor Jay Hammond's appointee for commissioner of the Department of Administration had served within one year in a legislature that raised the salary for that office. His appointment was challenged in court as a violation of this provision, and he argued, in part, that a showing of improper intent was necessary before this section could be applied. The Alaska Supreme Court upheld the challenge, saying this provision of the constitution is designed not merely to prevent an individual legislator from profiting by an action taken with bad motives, but to prevent all legislators from being influenced by either conscious or unconscious motives *(Warwick v. State,* 548 P.2d 384 (1976)).

Over the years, several legislators have resigned to take a position in the executive branch that was technically created by the governor after the legislator left office. Public criticism after Governor Sean Parnell appointed a former legislator in 2010 prompted the attorney general to advise that a court might view the practice as an evasion of the prohibition in this section. The appointee subsequently resigned.

General pay raises for state employees are common, and because the legislature approves those raises, many legislators are barred from state employment for a year after leaving office. In 1980, an amendment to the constitution was put before the voters that would have eliminated this restriction, but it was defeated.

When a 1970 amendment to the constitution changed the title secretary of state to lieutenant governor, this section was inadvertently left unchanged and still refers to the secretary of state.

Section 6. Immunities

> **Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session. Members attending, going to, or returning from legislative sessions are not subject to civil process and are privileged from arrest except for felony or breach of the peace.**

Immunities of this kind are granted to members of state legislative bodies as a general principle of law, although the federal constitution (Article I, Section 6) and most state constitutions explicitly extend them to legislators. They protect the public's interest in having members express themselves freely without fear of retribution and devote themselves to state business without the distraction of legal harassment. It also buttresses the principle of separation of powers by protecting legislators from inquiries and actions by the executive and judicial branches.

The first sentence ensures free speech and debate in the legislative assembly by protecting members from civil and criminal prosecutions for all things said and done in pursuit of legislative duties, whether occurring in open meetings or behind closed doors (*Breck v. Ulmer*, 745 P.2d 66 (1987)). The court emphasized that the long-standing principle of parliamentary immunity should be interpreted literally in the decision of *State v. Dankworth* (672 P.2d 148 (Alaska Ct. App. 1983)). Here the attorney general prosecuted a state senator for attempting to secure an appropriation for the state to purchase property of which he was part owner. The state argued that because the senator's action was covert, and his intent criminal, legislative immunity was forfeit. The justices determined that the senator's actions were clearly legislative in nature, and he was immune from prosecution by the terms of this section. They wrote: "If the motives for a legislator's legislative activities are suspect, the constitution requires that the remedy be public exposure; if the suspicions are sustained, the sanction is to be administered either at the ballot box or in the legislature itself."

Immunity extends to the activities of legislators in preparation for their core legislative duties. Thus, the senate president could not be compelled to give testimony about his meeting with the governor prior to calling a joint session of the legislature (*Kerttula v. Abood*, 686 P.2d 1197 (1984); see commentary on Article III, Section 17). Further, a claim of defamation by a state employee against

legislators who released a committee report containing information about his dispute with his employer was dismissed by the court on the grounds that the legislators were engaged in the legislative process (*Whalen v. Hanley*, 63 P.3d 254 (2003)).

Alaska's constitution is unusual in that it explicitly limits the grant of immunity to specific timeframes, namely legislative sessions, and the travel to and from session, including that within the capital city. The original committee draft of this section presented to the constitutional convention was amended on the floor to insert the phrase "while the legislature is in session."

Section 12 of the Territorial Organic Act of 1912 was the predecessor to this provision and stated:

> That no member of the legislature shall be held to answer before any other tribunal for any words uttered in the exercise of his legislative functions. That the members of the legislature shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance upon the sessions of the respective houses, and in going to and returning from the same: Provided, that such privilege as to going and returning shall not cover a period of more than ten days each way, except in the second division, when it shall extend to twenty days each way, and the fourth division to fifteen days each way.

Section 7. Salary and Expenses

> **Legislators shall receive annual salaries. They may receive a per diem allowance for expenses while in session and are entitled to travel expenses going to and from sessions. Presiding officers may receive additional compensation.**

Issues of legislative compensation have been troublesome since territorial times, vexing Congress when it authorized a legislature for Alaska in 1912, the delegates to the state constitutional convention, and those involved with the issue in recent times. The difficulty is not simply one of placing the proper value on legislative service; it also concerns the effect of legislative pay on the composition and performance of the legislature. While most people agree that legislative membership should be motivated by a call to public service, they are also reluctant to make it a wholly volunteer affair, for then legislative service would devolve to the rich and privileged. Thus, public sentiment is that legislative pay should be sufficient to attract qualified, capable citizens from all walks of life, yet it should not be such that it becomes the primary motivation for seeking and retaining office.

The question of how compensation impacts the length and efficiency of legislative sessions has dominated debate about whether to pay legislators for the number of days spent on legislative business, or to pay them an annual salary. The former method may create an incentive for unduly long sessions and the latter for unduly short sessions. After considerable discussion in 1912, Congress opted for per diem payments for Alaska's territorial legislators. In 1956, the constitutional convention

opted for an annual salary, which was considered the progressive approach at the time (the *Model State Constitution* called for annual salaries). The convention delegates, however, declined to establish the salary level in the constitution, either as an amount or as a formula (such as a percentage of the governor's salary), thus allowing the legislature to set its own salary.

Public opinion is not indifferent to legislative salaries, however, and it has tended to keep them depressed. Public reaction twice thwarted efforts by legislators to increase their pay. In 1975, the legislature enacted a bill increasing salaries and retirement benefits for legislators, judges, and the heads of principal departments (ch. 205, SLA 1975). A referendum rejecting the measure passed by an overwhelming majority at the primary election in August 1976 (see additional commentary under Article XII, Section 7). In 1983, the legislature substantially increased its annual salary and eliminated per diem (ch. 83, SLA 1983). Opponents circulated an initiative petition to reduce legislators' pay to pre-1983 levels. It was certified for the ballot, but before the election in 1986, the legislature enacted a law substantially the same as the initiative (ch. 124, SLA 1986) and the lieutenant governor withdrew the initiative (see Article XI, Section 4).

In 1976, because of these conflicts regarding compensation, the legislature created a salary commission of public members—the Alaska Salary Commission. The commission was repealed in 1980, but a similar entity, the State Officers Compensation Commission was established in 1986. These commissions reviewed legislative salaries and made recommendations but were only advisory, so their work had little impact. Legislators' annual salaries remained static for years but were augmented by per diem payments claimable during sessions and for work on legislative business between sessions.

In 2008, the legislature restructured the State Officers Compensation Commission, and this time empowered it to set salaries for legislators, the governor, and executive cabinet (AS 39.23.540). The commission's recommendations become law unless the legislature passes a bill rejecting them. In 2009, the commission recommended an annual salary of $50,400 for legislators and the suspension of per diem payments during the interim. At the time annual legislative salaries were $24,012 (set in 1991), but total average compensation was considerably higher due to per diem claims. It also varied widely among legislators because some claimed little or no interim per diem and others claimed it for many days. The commission's recommendations were not rejected and became law.

In 2023, legislative salaries increased to $84,000 after a series of somewhat convoluted events. The commission recommended raises for executive branch officials; however, because the recommendations failed to address legislative salaries, the legislature voted to reject the commission's recommendations and prepared to introduce a bill raising salaries. Subsequently, two members of the commission quit, and the other three were fired by the governor. After a new slate of commissioners was appointed, it voted to amend the earlier recommendations already rejected by the legislature to include a raise for legislators. The governor then vetoed the bill passed by the legislature rejecting the original recommendation, thus, reverting to the commission's amended recommendations. Although

members in both houses called for a joint session to attempt an override of the governor's veto, neither were successful and the commission's recommendation became law. Legislators may still claim per diem, in addition to the set salary.

Section 8. Regular Sessions

> **The legislature shall convene in regular session each year on the fourth Monday in January, but the month and day may be changed by law. The legislature shall adjourn from regular session no later than one hundred twenty consecutive calendar days from the date it convenes except that a regular session may be extended once for up to ten consecutive calendar days. An extension of the regular session requires the affirmative vote of at least two-thirds of the membership of each house of the legislature. The legislature shall adopt as part of the uniform rules of procedure deadlines for scheduling session work not inconsistent with provisions controlling the length of the session.**

The first sentence of this section provides for annual sessions of the legislature. Virtually all states now have annual legislative sessions, and roughly two-thirds impose constitutional limits on their length. At the time of the constitutional convention biennial sessions with a limit of 90 days were common. The ability to meet annually, to keep abreast of current developments and administrative activity, is generally considered necessary for a legislature to be an effective policy-making body and to avoid being dominated by the executive branch. Alaska delegates addressed this concern through this section.

Effective in 2008, regular sessions of the legislature begin on the third Tuesday in January at 1:00 p.m. (AS 24.05.090). Prior to this change, the beginning of the legislature in gubernatorial election years was set a week later than other years to give the new governor extra time to prepare.

As originally enacted, legislative sessions were not limited in length. The framers of the constitution believed the legislature should not be rushed in its deliberations, as the business of state government is too complex to be transacted in hurried, infrequent sessions.

In the early years of statehood, legislative sessions of 70 to 80 days were typical. The first session to exceed 90 days was in 1969. Thereafter, they became progressively longer, in large part due to the availability of oil revenue. In 1978, the legislature asked Alaskans to cast an advisory vote on whether a constitutional amendment limiting sessions to 120 days should be placed on the ballot at the 1980 election. The voters responded strongly in the affirmative. In 1981, the regular session lasted 165 days. Alaskans both inside and outside the legislature grew increasingly skeptical that all of this time was spent productively. When the legislature put an amendment on the 1984 general election, it was ratified by a large majority (150,999 to 46,099).

In May 1986 at the end of the Fourteenth Legislature's 120th day of the second regular session, legislative leaders stopped the clock in order to complete business before the adjournment deadline. A suit was filed challenging the legality of the 29 laws passed after midnight. The Alaska Supreme Court rejected the challenge, holding that the day the legislature convenes should not be counted against the 120-day limit, so the legislature has, in effect, a total of 121 days in which to transact business *(Alaska Christian Bible Institute v. State*, 772 P.2d 1079 (1989)).

Even with an extra day, the legislature often fails to complete its business on time; however, there are several means to allow the body to continue its work. The governor can call it into special session (Section 9 of this article and Article III, Section 17); it can call itself into special session (Section 9 of this article); or extend the session for a ten-day period under this section.

In 2006, voters approved an initiative limiting regular legislative sessions to 90 days. The law took effect in 2008 but is not typically observed. The legislature could formally repeal the measure because two years have passed since its adoption (Article XI, Section 6), but it is generally assumed that the courts would not intervene or question the legality of anything passed between the statutory and constitutional deadlines. In view of judicial deference to the internal procedures of the legislature, a court would likely recognize only the constitutional limit of 121 days.

The call for deadlines on scheduling session work, found in the last sentence of this section, is an effort to mitigate the perennial problem of a logjam of legislation at the end of the session. Still, many of the bills passed by the legislature are enacted in the closing days of the session.

Section 9. Special Sessions

> **Special sessions may be called by the governor or by vote of two-thirds of the legislators. The vote may be conducted by the legislative council or as prescribed by law. At special sessions called by the governor, legislation shall be limited to subjects designated in his proclamation calling the session, to subjects presented by him, and the reconsideration of bills vetoed by him after adjournment of the last regular session. Special sessions are limited to thirty days.**

All constitutions make allowance for special sessions so the legislature can respond quickly to emergencies. This section authorizes the governor and the legislature to call special sessions. During territorial days, only the governor could call the legislature into extraordinary session, which is still the case in 12 states today. This authority was another way the constitutional convention delegates sought to equalize powers between the legislative and executive branches. (Note that the governor is also authorized by Article III, Section 17 to convene the legislature at any time, including in a joint session.)

When the governor calls a special session, the legislature is limited to the subjects provided for in the proclamation. The delegates included this restriction to keep special sessions within bounds while not seriously handicapping the legislature, which may call its own session with its own agenda. Also, in theory, the proper subject matter of a special session is a true emergency; routine legislation should be dealt with during regular sessions. The 30-day limit reinforces the expectation that special sessions have a narrow focus.

In the third sentence, "and the reconsideration of bills vetoed by him after adjournment of the last regular session" was added in 1976 by amendment. The legislature sought this amendment to expand its opportunity to override the governor's vetoes, and perhaps to discourage the governor from calling special sessions (see Section 16).

Procedures for calling special sessions are clarified in statute (AS 24.05.100). A call by the governor must give legislators 30 days' notice; with exceptions for disasters or calls made while the legislature is still in session or within one hour after the second house has adjourned from a regular or special session. A call by the legislature must be preceded by a poll of the members conducted by the presiding officer of each house if they jointly agree to do so. However, they must conduct a vote if one-quarter of their members request one in writing. A session will be held if 40 of the 60 total legislators vote in favor; a two-thirds majority in each house is not required. By law, special sessions may convene at any location in the state.

Special sessions are now common in Alaska; they have become more frequent, and their duration greater, in recent years. In the first ten years of statehood, only two special sessions were held: one lasted three days and the other six. In the ten years 2015-2024, sixteen were called, half of which lasted the 30-day limit. Although intended for emergency or extraordinary situations, special sessions are now routinely held to finish business not completed within the time limit of the regular session. Most special sessions have been called by the governor; only eight have been called by the legislature. Subsistence has been the topic of six special sessions. A special session was called by the legislature in 1985 to consider impeaching Governor Bill Sheffield (see Section 20).

Article III, Section 17 authorizes the governor to "convene the legislature" whenever the governor considers it in the public interest to do so. The relationship of that provision to this one is ambiguous (see commentary under Article III, Section 17).

Section 10. Adjournment

> **Neither house may adjourn or recess for longer than three days unless the other concurs. If the two houses cannot agree on the time of adjournment and either house certifies the disagreement to the governor, he may adjourn the legislature.**

The first sentence prevents one house from halting legislative business by unilaterally adjourning. The second prevents the two houses from becoming deadlocked over the matter of adjournment. Thus, one house cannot keep the legislature in session if the other house *and* the governor want the legislature to adjourn. These safeguards against the possibility of stalemate over adjournment are found in many constitutions. Article II, Section 3 of the U.S. Constitution gives to the president the power to adjourn Congress "to such time as he shall think proper."

This mechanism for certifying disagreement over adjournment to the governor has been used several times. In 1993, the house certified disagreement over adjournment, but the governor did not act. In 2011, both houses independently requested the governor adjourn the session, after reaching impasse over the capital budget. Governor Sean Parnell issued an executive proclamation both adjourning the legislature and calling a special session. Other disagreements between the two houses over adjournment have happened from time to time. Occasionally one house will simply adjourn out from under the other. So far, a constitutional crisis has been avoided by one house reconvening within three days or the other house adjourning within three days.

Section 11. Interim Committees

> **There shall be a legislative council, and the legislature may establish other interim committees. The council and other interim committees may meet between legislative sessions. They may perform duties and employ personnel as provided by the legislature. Their members may receive an allowance for expenses while performing their duties.**

This section authorizes the legislature to carry on business between sessions with the help of staff. This power was considered essential for an effective legislature and to counterbalance a strong governor. At the time of the constitutional convention, the concept of a legislative council was becoming popular nationwide as a means of strengthening the legislative branch by giving it organizational continuity between sessions, leadership in the area of policy making, and professional research and bill-drafting services. The Alaska Territorial Legislature created a legislative council in 1953, and the delegates considered it too successful to leave to chance its continuation under statehood. (The *Model State Constitution* devoted four separate sections to the subject of a legislative council in its otherwise short legislative article.)

Today, the Legislative Council oversees the work of the Legislative Affairs Agency, which performs administrative functions for the legislature such as accounting, property management, data processing, public information, teleconferencing, printing, bill drafting, research, and maintaining a reference library. It is composed of fourteen legislators, including the presiding officers and six members from each house. The council is one of four permanent interim committees of the legislature. The others are the Select Committee on Legislative Ethics, the Joint Armed Services

Committee, and the Legislative Budget and Audit Committee, which houses the divisions of legislative audit and legislative finance.

The second sentence of this section allows interim committees to meet between sessions. The legislature has not read this section to restrict the activities of standing or special committees, which routinely work between sessions.

During the 1970s, controversy arose over the Legislative Budget and Audit Committee meeting with the governor to jointly review and approve budget revisions when the legislature was not in session. This had been a common practice in Alaska and elsewhere until questions about its constitutionality were raised around the country. State courts elsewhere ruled that it violated the separation of powers doctrine and constituted an improper delegation of legislative power to a committee.

In 1977, the legislature amended the Executive Budget Act to authorize the practice, but the governor vetoed the bill as "clearly unconstitutional" (ch. 74, SLA 1977). The legislature overrode the veto and took the administration to court over the matter *(Kelley v. Hammond,* Civil Action No 77-4, Juneau Superior Court). The lower court sided with the governor, who then persuaded the legislature to put the matter before the voters as a constitutional amendment, and the suit was dismissed. Voters defeated the proposed amendment at the general election in 1978. A second attempt was made in 1980, when the voters rejected, by an even wider margin, essentially the same amendment. Consequently, the entire legislature must generally act on all appropriations and any subsequent modifications of them.

Something of an exception to this standard is provided through the "revised program legislative" process (AS 37.07.080) when, during the interim, additional federal funds or program receipts become available for an appropriation item *previously approved* by the legislature. The increased funding may be expended 45 days after the governor submits the revision to the Legislative Budget and Audit Committee or upon the committee's approval. If the committee rejects the revision within 45 days, the governor must provide a statement providing justification before additional expenditures are made.

Section 12. Rules

> **The houses of each legislature shall adopt uniform rules of procedure. Each house may choose its officers and employees. Each is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members. Each shall keep a journal of its proceedings. A majority of the membership of each house constitutes a quorum to do business, but a smaller number may adjourn from day to day and may compel attendance of absent members. The legislature shall regulate lobbying.**

All legislative bodies have rules of procedure to give order to the conduct of business and protect the rights of minority factions. Rules establish the priority and manner of considering questions, and they assure members have adequate notice of meetings and an opportunity to participate. This section, requiring both legislative chambers to operate under "uniform rules of procedure," is understood to apply only to actions that involve both chambers. These rules are adopted by the houses early in the first regular session. Each house also adopts its own procedures that govern its internal operation.

The courts generally refuse to enforce legislative rules except in extraordinary circumstances; for example, if a violation infringed upon the constitutional rights of a person who is not a member of the legislature. The Alaska Supreme Court refused to review an allegation that leaders of a 1981 legislative "coup" to replace the speaker of the house violated the joint rules, stating:

> [W]e can think of few actions which would be more intrusive into the legislative process than for a court to function as a sort of super parliamentarian to decide the varied and often obscure points of parliamentary law which may be raised in the course of a legislative day. Thus, even though the Uniform Rules . . . may have been violated, such violation is solely the business of the legislature and does not give rise to a justiciable claim *(Malone v. Meekins,* 650 P.2d 351 (1982)).

Under this reasoning, the court has similarly refused to review allegations that a joint session to confirm executive appointees violated the joint rules *(Abood v. Gorsuch,* 703 P.2d 1158 (1985)); or that closed meetings of the legislature violated the joint rules *(Abood v. League of Women Voters of Alaska,* 743 P.2d 333 (1987)).

The second sentence provides that each house has the exclusive power to choose and remove its own officers by a majority vote without participation by the other body (see the *Malone v. Meekins* decision).

The third sentence enshrines the legislature's traditional prerogative to seat or expel members. That power remains undiminished even though Article V, Section 3 directs the legislature to establish procedures in law for resolving contested elections, including the right of appeal to the courts. The legislature has codified such procedures at AS 15.20.540-560. The sole instance of an Alaska legislator being expelled occurred on March 2, 1982, when the senate removed a member who had been convicted of attempting to bribe another legislator.

The journals kept by the house and senate are official records of actions taken during each day of the session but are not verbatim reports of discussion and debate.

In Alaska, a quorum is a majority of each house, which is the minimum number of members required to be present before a legislative chamber can conduct official business. A quorum has the unquestioned right to compel the attendance of absent, unexcused members, known as a call of the

house. According to the authoritative *Mason's Legislative Manual,* "The absence of the power of a legislative body to compel the attendance of all members at all times would destroy its ability to function as a legislative body." This section of the constitution gives the right to compel attendance to fewer members than a quorum. A similar provision is found in most state constitutions.

Alaska's constitution does not specify a quorum requirement for joint sessions of the legislature. By implication, therefore, a quorum consists of a simple majority of all legislative members, or 31. When in joint session, each house loses its separate identity and the body becomes unicameral. The question of a quorum for joint sessions was among the issues litigated in the aftermath of the joint session called by Governor Sheffield in 1983 (see *Abood v. Gorsuch*, 703 P.2d 1158 (1985)).

The mandate to regulate lobbying reflects the convention's strong distrust of special interests. Lobbyists must register and disclose their incomes and expenses for lobbying under AS 24.45. Further, under the Legislative Ethics Act (AS 24.60), legislators must disclose any "close economic association" with and "gifts" from lobbyists, as defined in statute.

Section 13. Form of Bills

> **Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."**

These provisions help safeguard the integrity of the legislative process. The first sentence states the "single subject rule," which requires that differing subjects be dealt with in separate bills. In the words of the Alaska Supreme Court, the purpose of the single subject rule is to bar "the inclusion of incongruous and unrelated matters in the same bill to get support for it which the several subjects might not separately command [logrolling], and to guard against inadvertence, stealth and fraud in legislation" *(Suber v. Alaska State Bond Commission,* 414 P.2d 546 (1966)).

The single-subject rule has been broadly construed, however, deferring to the legislature on how best to structure individual pieces of legislation. For example, the Alaska Supreme Court upheld the legality of a bill authorizing the sale of bonds for correctional facilities and public safety buildings. It said that complying with this section required only that the matters treated in legislation fall under one general idea and be so connected with or related, either logically or in popular understanding, as to be one general subject *(Short v. State,* 600 P.2d 20 (1979)). In this vein, the court upheld the constitutionality of a bill dealing with the general subject of "lands," although its several sections were otherwise unrelated *(State v. First National Bank of Anchorage,* 660 P.2d 406 (1982)); the court of appeals found an amendment that changed a driving-while-intoxicated statute to be sufficiently

germane to a bill changing liquor laws, since both dealt with "intoxicating liquor" *(Van Brunt v. State,* 646 P.2d 872 (Alaska Ct. App. 1982)); and the Alaska Supreme Court upheld a bill that authorized bonds to finance flood control and small boat harbor projects on grounds that both pertained to the development of water resources and were funded by grants from the same federal agency *(Gellert v. State,* 522 P.2d 1120 (1974); see also *Galbraith v. State,* 693 P.2d 880 (Alaska Ct. App. (1985)).

The single-subject rule works in conjunction with the provision in Section 15 specifying the governor may veto bills only in their entirety (except appropriation bills). If bills could embrace more than one subject, the governor's veto power would be compromised because the legislature could pair a subject that the governor opposed with one that he favored.

The second sentence states the "confinement rule" that requires appropriation bills to be confined to appropriations, although they may encompass many subjects. Thus, substantive law may not appear in, or be changed by, an appropriation bill. The purpose of this rule is to prevent logrolling, to protect the governor's veto power, and to prevent substantive law from being enacted, either unintentionally or intentionally, in the guise of an appropriation. An example of logrolling in this situation might be combining with a popular appropriation a proposed law that would be defeated if it stood alone, or the combination of an appropriation and a statutory measure, neither of which would be approved individually.

The rule also prevents fraud and carelessness. The connection between an appropriation and substantive law may be subtle, such that only a few legislators may perceive it when the roll is called. This subtlety is illustrated by an appropriation made in 1980 to the Department of Health and Social Services for a study of minority hire. The superior court found that it violated the confinement rule because the department had no statutory authority in that area. "Because the appropriation purports to confer on that department a power which it has not been given, it attempts to amend general law" *(Alaska Legislature v. Hammond,* Case No. 1JU-80-1163CI (1983)). To ensure that legislators comprehend the consequences of their action, the confinement rule required, in this case, two separate acts: a statutory expansion of the powers of the department to encompass the subject of the study, and an appropriation for it.

The legislature often attaches a statement of intent to specific appropriations to explain how the money is to be spent. However, it is not enforceable beyond an expression of the general intent of the legislature. The Alaska Supreme Court has said that intent language violates the confinement rule if it has the effect of administering a program; if it enacts or amends existing law; if it is more than the minimum necessary to explain how the appropriation is to be spent; if it is not germane to an appropriations bill; or if it extends beyond the life of the appropriation. Thus, for example, the court struck from certain appropriations to the Alaska Seafood Marketing Institute a statement of intent requiring the agency to relocate high-salary employees from Washington state to Alaska (*Alaska Legislative Council v. Knowles*, 21 P.3d 367 (2001)).

The third sentence, requiring the subject of each bill to be stated in its title, further safeguards against misleading legislation and facilitates their grasp of matters under consideration.

Requiring the explicit clause, "Be it enacted by the Legislature of the State of Alaska," guarantees uniformity and continuity in the format of legislation. Further, it notifies that the measure at hand does not merely express an opinion, state a sentiment, or offer advice of the body but is a bill that when enacted becomes the law of the land.

Section 14. Passage of Bills

> **The legislature shall establish the procedure for enactment of bills into law. No bill may become law unless it has passed three readings in each house on three separate days, except that any bill may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it. No bill may become law without an affirmative vote of a majority of the membership of each house. The yeas and nays on final passage shall be entered in the journal.**

These formalities and those required by Section 13 give ordered procedure to the enactment of bills, to "engender a responsible legislative process worthy of the public trust" *(Plumley v. Hale, M.D.,* 594 P.2d 497 (1979)). The three-reading rule helps assure that bills will receive deliberation and that the legislature knows what it is being voted on. Bill titles are read during each reading. Amended bills must be read anew three times only if the subject of the original bill is changed *(Van Brunt v. State,* 653 P.2d 343 (Alaska Ct. App. 1982)). Delegates at the constitutional convention debated the wisdom of allowing legislators to advance a bill from second to third reading on the third day, some fearing more the prospect of steamrolling legislation than the inconvenience of delay. They compromised with the provision that a bill could be advanced from second to third reading on the same day if three-fourths of the body, the highest voting threshold, agreed to do so; a mechanism that is used often.

The last sentence of this section assures that the required majority has voted to pass a bill, and that there is a public record of the vote cast by each legislator. The meaning of "final passage" is the subject of the *Plumley* case that challenged the legality of a free conference committee measure adopted by the house with a voice vote instead of a roll call. The court said that final passage:

> refers to that vote which is the final one in a particular house with regard to a particular bill. Such a final vote may occur at various stages. It may be on the third reading of a bill; it may be the vote to concur in the amendments adopted by the second house; it may be the vote to recede from amendments not concurred in by the other house; or it may be the vote to adopt the amendments proposed by a conference committee.

Whether the vote one chamber takes on a bill is its final passage may be uncertain until the other chamber acts on it. Thus, each chamber must call the roll whenever the vote has the potential of being the last one taken on the measure.

A bill is a proposed law. A resolution is an expression of the will of the legislative chamber that enacts it. It does not become law; therefore, the constitution does not require a resolution to follow the procedures of this and other sections dealing with the enactment of laws. Proposed constitutional amendments, for example, are handled by the legislature as resolutions, and they are not subject to the governor's veto (see Article XIII, Section 1).

A long-standing dispute between the legislative and executive branches concerned the legislature's use of joint resolutions to annul administrative regulations that it believed not to comport with the intent of the statutes that the regulations implement. The Alaska Supreme Court sided with the executive, ruling that acts of the legislature which bind others outside the legislature must take the form of a bill, follow the procedures required by this section and Section 13, and be subject to the governor's veto *(State v. ALIVE Voluntary,* 606 P.2d 769 (1980)). The court's ruling prohibits an unauthorized legislative veto, at least by means of a resolution (the legislative veto is explicitly authorized for specific purposes by Article III, Section 23, and Article X, Section 12). In response to this setback, the legislature put before the voters in 1980 a constitutional amendment to permit the annulment of regulations by joint resolution, but it was not ratified. Similar amendments were rejected by voters in 1984 and 1986.

Section 15. Veto

> **The governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills. He shall return any vetoed bill, with a statement of his objections, to the house of origin.**

The veto is an important restraint on the legislative branch. It allows the blocking, or at a minimum to forcing reconsideration of, legislation that the governor opposes on policy or fiscal grounds. It doubtless is used on occasion for less high-minded reasons, such as retribution. The U.S. president and the governors of all states possess veto power.

Alaska's governor may veto only an entire bill, not individual parts of it, except in the case of appropriation bills, which he may veto in full, in part, or reduce individual "line-item" amounts.

The power to veto line items in appropriation bills is common among the states; 36 state constitutions grant it to the governor. By contrast, the president does not possess line-item veto power. Line-item veto power greatly enhances the governor's influence over the appropriation process. Without the power to veto line items, the governor would not be able to efficiently control spending in the budget

bill, as he might let objectionable items become law rather than veto entire appropriation bills, which could mire the legislative process and deny state agencies their operating funds.

Two cases have delineated what constitutes an "item" that may be struck or reduced in an appropriation bill. In 1977, the court ruled Governor Jay Hammond could not reduce the amount of a general obligation bond bill passed by the legislature because it is not an appropriation measure, and its amount is not an item. As such, he could only veto the entire measure (*Thomas v. Rosen,* 569 P.2d 793 (1977)). In 2001, the court defined an "item" in an appropriation bill as "a sum of money dedicated to a particular purpose." Thus, the governor may not strike descriptive intent language that accompanies an item in an appropriation bill (*Alaska Legislative Council v. Knowles*, 21 P.3d 367 (2001)).

The governor may not, however, use the veto in a manner that violates the separation of powers doctrine. In 2019, Governor Mike Dunleavy reduced appropriations to the judicial branch by the amount spent by the executive branch on abortion services through the state's Medicaid program after the Alaska Supreme Court held that the state must pay those costs. The American Civil Liberties Union sued, alleging that the reduction undermined the independence of the judiciary. The superior court agreed; the governor did not appeal, and the money was restored to the court system budget (*American Civil Liberties Union of Alaska et al. v. Dunleavy*, Case No. 3AN-19-08349CI).

The authority of a governor to *reduce* items in appropriation bills, rather than simply striking them, is granted by only a few other states' constitutions. The provision did not appear in the committee draft of this section at the constitutional convention; it was added by a floor amendment. The power to reduce, as well as veto, line items was recommended in the *Model State Constitution* and was considered by many of the delegates to be an enhancement of the governor's powers of fiscal management.

This section requires the governor to explain vetoes, so legislators may determine what, if any, modifications to the bill will make it acceptable to the governor, and whether the governor's objections are sufficiently persuasive to let the veto stand. The Alaska Supreme Court has set a low standard for the governor's explanation, stating that it must only be "minimally coherent". It expressed a reluctance to referee this type of dispute: "The legislature, through knowledge accumulated in dealing with the governor, is capable of interpreting the sufficiency of an objection, and is thus able to decide whether to enact an amended appropriation or to seek a veto override" (*Alaska Legislative Council v. Knowles,* 21 P.3d 367 (2001)).

The governor's veto authority under the Territorial Organic Act of 1912, in Section 4, was similar to this section but did not allow the reduction of appropriations.

Section 16. Action Upon Veto

> **Upon receipt of a veto message during a regular session of the legislature, the legislature shall meet immediately in joint session and reconsider passage of the vetoed bill or item. Bills to raise revenue and appropriation bills or items, although vetoed, become law by affirmative vote of three-fourths of the membership of the legislature. Other vetoed bills become law by affirmative vote of two-thirds of the membership of the legislature. Bills vetoed after adjournment of the first regular session of the legislature shall be reconsidered by the legislature sitting as one body no later than the fifth day of the next regular or special session of that legislature. Bills vetoed after adjournment of the second regular session shall be reconsidered by the legislature sitting as one body no later than the fifth day of a special session of that legislature, if one is called. The vote on reconsideration of a vetoed bill shall be entered on the journals of both houses.**

This section allows the legislature to override the governor's veto of a bill or appropriation. The override procedures work in conjunction with Section 17, which specifies the time limits for the governor's veto action.

The override procedures envision two situations: one is the return of a vetoed bill while the legislature is still in session; the second is the return of a vetoed bill after the legislature has adjourned. In the first case, the procedure is straightforward: the legislature "immediately" convenes in joint session to reconsider the bill. The requirement for an immediate joint session to reconsider a vetoed bill is to permit those who favored the bill to begin working on a substitute that would accommodate the objections of the governor, should the veto be sustained.

In the second case, where the legislature has adjourned, the situation is more complicated. It is also more common, as many bills are passed in the last few days of the session, so the governor has not considered them until after legislators have left the capital.

Originally, the constitution did not specify procedures for reconsidering bills after adjournment. Presumably, the legislature would have to call a special session to reconsider the vetoed bills. This ambiguity led to a constitutional amendment in 1976 which inserted the words "during a regular session of the legislature" in the first sentence and added the fourth and fifth sentences (it also amended Section 9).

The legislature must reconsider by the fifth day of the second regular session bills vetoed after the end of the first session. For bills vetoed after the end of a second regular session the legislature must call a special session because a new legislature may not reconsider previously vetoed bills. Legislatures in

some other states are required to reconvene in an "automatic special session" to consider bills vetoed after adjournment (see, Article 3, Section 2 of Connecticut's constitution for an example).

What if the vetoed bill is not transmitted by the governor to the house of origin by the end of the fifth day of the special session? In that situation, must the legislature act within five days of receiving the bill? These questions were presented in *Legislative Council v. Knowles*, 988 P.2d 604 (1999). The lower court answered yes, but the supreme court dismissed the suit on the grounds that the governor could not sue the legislature (see the discussion of this case under Article III, Section 16) so there is not a definitive answer to date.

Requiring the legislature to vote as one body is unusual among the states; most require a two-thirds or three-fifths supermajority in each house of either the total membership or of those present. The provision in Alaska's constitution for a joint session was meant to make overriding a veto easier than requiring a supermajority in each house, but the two houses must first agree to meet in a joint session or convene a special session. Thus, one reluctant chamber may thwart the intent of this provision by declining to do so.

Another unusual feature of this section is the requirement for a larger supermajority—three-fourths of the membership—to override a vetoed appropriation item. Few other states make the distinction between a bill dealing with substantive law and an appropriation bill.

The question of what constitutes an appropriation under this section was answered in litigation over a bill passed by the legislature that granted state land to the University of Alaska. Governor Tony Knowles vetoed the bill. The legislature voted to override the veto, by a two-thirds margin. The governor asserted that the bill constituted an appropriation because it transferred a state asset (land), and therefore the vote to override required a three fourths majority. The court disagreed, holding that, in the context of this section and the preceding section, an appropriation bill means one that transfers money *(Legislative Council ex rel State Legislature v. Knowles,* 86 P.3d 891 (2004)). This monetary definition of an appropriation differs from a broader one the court has given to the term in the context of initiatives, where the transfer of state land is considered an appropriation and disallowed (Article XI, Section 7).

Comparatively few vetoed bills are reconsidered by the legislature because of the difficulty of obtaining a supermajority vote. By 2024, roughly 475 bills had been vetoed by Alaska governors since statehood, either in full or in part, and fewer than 100 of these vetoes were reconsidered. Of those reconsidered, about half were overridden and half sustained. Only a few vetoed appropriations have been overridden.

Section 17. Bills Not Signed

> **A bill becomes law if, while the legislature is in session, the governor neither signs nor vetoes it within fifteen days, Sundays excepted, after its delivery to him. If the legislature is not in session and the governor neither signs nor vetoes a bill within twenty days, Sundays excepted, after its delivery to him, the bill becomes law.**

This section establishes time limits within which the governor must act on a bill after it is passed and transmitted by the legislature. Some state constitutions allow a bill to die if the governor neither signs nor vetoes it within a certain number of days ("pocket veto"). Here, the reverse occurs – a bill becomes law without the governor's signature if he takes no action.

Alaska's governor has 20 days, excluding Sundays, to act after the transmittal of a bill if the legislature has adjourned; 15 days if it has not. The governor has 20 days, except Sundays, to act on a bill transmitted before adjournment but still held by the governor at the time of adjournment. The 15-day limit is a generous one, comparatively speaking. Most states limit the governor to five or ten days to return a bill to the legislature if the legislature is still meeting. This enhances the ability of the legislature to override vetoes, as the tendency is for legislation to be passed late in the session.

State constitutions typically give the governor more time to act on a bill after the legislature adjourns. This is because many bills are passed in the closing days of the session, and the governor presumably needs more time to review this deluge of legislation.

Note that these limits begin to run from the date a bill is presented to the governor, not, as in some states, from the date of passage or adjournment. In practice, bills may not be delivered to the governor for days or weeks. Sometimes this delay occurs by agreement between the governor and house speaker or senate president.

Section 18. Effective Date

> **Laws passed by the legislature become effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date.**

The 90-day interval between the date a law is enacted and date it takes effect is intended to provide citizens a fair opportunity to learn of the new law and prepare for it. Several other state constitutions specify a 90-day interval; however, methods of establishing effective dates vary substantially among other states. Some state constitutions specify an interval that begins to run with adjournment of the legislature, but because Alaska's constitutional convention delegates did not set a limit on the length

of the legislative session, they preferred an interval that began to run from enactment because it offered more certainty to the public about when a law takes effect.

"Enactment" is different from passage by the legislature; it occurs when the governor signs the bill, when the legislature overrides a veto of the bill, or when the deadline for the governor to either sign or veto lapses (AS 01.10.070).

Special circumstances are necessary to justify an effective date other than the standard one set out here. This presumption is behind the requirement for a supermajority vote to deviate from the 90-day interval. Here again there exists substantial variability in approaches among the states. Some constitutions require the legislature to formally find that a state of emergency exists in order to hasten the effective date of a law; others are silent altogether on effective dates and leave the matter to the legislature.

Occasionally, laws will contain a section that explicitly makes them retroactive to a certain date, such as a tax law to take effect from the beginning of the year. This retroactive clause is distinct from the effective date clause and does not need a two-thirds majority vote (*Arco Alaska, Inc. v. State*, 824 P.2d 708 (1992)). A retroactive law does not violate the constitution on its face, even in the several states that have an explicit prohibition against retroactive legislation. However, such laws may be struck down as violating due process and equal protection guarantees. Alaska Statute 01.10.090 declares: "No statute is retrospective unless expressly declared therein." Article I, Section 15 prohibits *ex post facto* laws, which retroactively criminalize conduct that was legal at the time it occurred or increase the penalties for an offense after it was committed.

Section 19. Local or Special Acts

> **The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected.**

For the most part, special and local acts amounted to legislative dispensation of favors and preferences to powerful interests—personal, corporate, or municipal. That a prohibition against special and local legislation is found in about three-fourths of the state constitutions suggests the seriousness of the problem that this type of legislation caused in the past.

Several state constitutions explicitly enumerate forbidden subjects of private, special, and local laws. For example, the New Jersey Constitution lists fourteen prohibited subjects (Article IV, Section 7, paragraphs 1 and 9), including the "granting to any corporation, association or individual any special

or exclusive privilege, immunity or franchise whatever." In the interests of brevity and flexibility, the drafters of the Alaska Constitution preferred the general statement of this section, which follows closely the language suggested in the *Model State Constitution.*

Alaska courts have held this prohibition against local acts does not invalidate laws that operate only on limited geographical areas if the laws are reasonably related to a matter of statewide concern or common interest—for example, the location of the state capital *(Boucher v. Engstrom,* 528 P.2d 456 (1974)). In cases where no statewide or common interest is involved, a law is invalid under this section if a general law is possible. Thus, in 1975, the Alaska Supreme Court struck down as "local and special" legislation establishing special procedures for the formation of the proposed Eagle River-Chugiak Borough in the Anchorage area (*Abrams v. State,* 534 P.2d 91 (1975)). However, in a subsequent case, the high court upheld a law regarding a land trade between the state, the Cook Inlet Regional Corporation, and the federal government. The law dealt with specific lands and specific groups, but the court considered the circumstances unique and the law acceptable as "a general legislative treatment of complex problems of pressing importance and of statewide concern" *(State v. Lewis,* 559 P.2d 630 (1977)). In contrast, *Walters v. Cease*, 394 P.2d 670 (1964), held the Mandatory Borough Act of 1963, which incorporated eight specifically designated and defined areas as organized boroughs, was "local and special" legislation, and therefore could not be subject to a referendum under Article XI, Section 7.

The Alaska Supreme Court has also upheld acts which focus on a single entity, and are not of general or statewide application, if they "fairly and substantially relate to legitimate state purposes." On this basis, the court ruled that a law altering specific oil leases on the North Slope was not special legislation *(Baxley v. State,* 958 P.2d 422 (1998)).

Among the limitations on legislative power enumerated in Section 9 of the Territorial Organic Act of 1912 was the following: "nor shall the legislature pass local or special laws in any of the cases enumerated in the Act of July thirtieth, eighteen hundred and eighty-six," which was reproduced in each edition of the territorial session laws. The act listed 24 subjects removed from the ambit of the legislature, including the grant of any special or exclusive privilege, immunity, or franchise. For many years this prohibition against local and special acts was interpreted by the attorney general of the territory to prohibit the legislature from making a public works appropriation to a specific city. Rather, the legislature was required to make a general appropriation to an executive department which would then allocate funds to specific projects.

Presumably, the prohibition in this section applies to appropriations as well as to other types of legislation. The attorney general warned, for example, that designating loan recipients would be illegal (memorandum of the attorney general, "Appropriating Money for a Loan to the White Pass and Yukon Route," May 14, 1980).

Section 20. Impeachment

> **All civil officers of the State are subject to impeachment by the legislature. Impeachment shall originate in the senate and must be approved by a two-thirds vote of its members. The motion for impeachment shall list fully the basis for the proceeding. Trial on impeachment shall be conducted by the house of representatives. A supreme court justice designated by the court shall preside at the trial. Concurrence of two-thirds of the members of the house is required for a judgment of impeachment. The judgment may not extend beyond removal from office, but shall not prevent proceedings in the courts on the same or related charges.**

Except for Oregon, every state constitution grants the legislature the power to remove the governor and other principal elected and appointed officials by means of impeachment. A smaller number provide for the impeachment of certain judicial officers, and some constitutions also allow removal of lesser officials for cause by concurrent resolution—a process called joint address or legislative address—rather than impeachment, but the Alaska constitutional convention delegates rejected this option.

Unusual features of Alaska's impeachment provision are its application to "all civil officers of the state" rather than just the highest elected and appointed officeholders; origination of impeachment in the senate and trial in the house, opposite of the U.S. Constitution and most state constitutions; and omission of a definition of impeachable offenses (compare Article IV, Section 12, which specifies "malfeasance and misfeasance" as impeachable offenses for judges).

Impeachment is rarely used at either the federal or state level. However, in 1985, a grand jury recommended the legislature initiate impeachment proceedings regarding allegations that Governor William Sheffield attempted to steer a state office lease to a political supporter. The legislature convened a special session; however, since there is no statutory implementation of this constitutional section, it was first necessary to deal with such important preliminary questions as what constitutes an impeachable offense; what standard of proof is required; what procedures should be followed by the senate and house; and whether the impeachment was reviewable by the courts.

At its first hearing in late July, the Senate Rules Committee adopted a framework based on the rules and procedures used in congressional hearings on the Watergate scandal in 1973. Further, the Senate hired veterans of the Watergate hearings to assist in its deliberations, including Samuel Dash, the chief counsel for the U.S. Senate committee investigating President Richard Nixon. After hearing evidence over the course of two weeks, the committee, on a bipartisan vote, did not find sufficient cause for the legislature to proceed with the matter.

Section 21. Suits Against The State

The legislature shall establish procedures for suits against the State.

The long-standing common law doctrine of sovereign immunity ("The king can do no wrong") prevents the government from being sued. However, the federal and state governments have waived through statute their immunity from suit in certain types of cases. A few state constitutions still prohibit all suits against the state, with various exceptions. This section commands the legislature to establish procedures for suits against the state. In contrast, most other state constitutions allow for the waiver of sovereign immunity.

Alaska law allows a person or corporation to bring a contract, quasi-contract, or tort claim against the state (AS 09.50.250). Like its counterpart, the Federal Tort Claims Act, the state statute contains certain exceptions to the waiver of immunity, one of which is for the exercise of policy-making discretion by state officials. That is, if a state official adopts a discretionary policy, the state may not be sued over its consequences. For example, the state could not be sued for its decision not to regulate traffic near a school that allegedly contributed to the death of a pupil (*Jennings v. State*, 566 P.2d 1304 (1977)). On the other hand, once a decision is made to act, the state is obligated to do it with reasonable care, such as maintain a road in winter (*State v. Abbott*, 498 P.2d 712 (1972)). The court uses a "planning-operational test, under which decisions that rise to the level of planning or policy-making are considered discretionary acts which do not give rise to tort liability, while decisions that are merely operational in nature are not considered to be discretionary acts and therefore are not immune from liability" *(Carlson v. State*, 598 P.2d 969 (1979)).

The state's limited waiver of sovereign immunity does not extend to suits against the state in federal court, nor does it mean that money judgments against the state are paid automatically as they may require a legislative appropriation (AS 09.50.270).

ARTICLE III

THE EXECUTIVE

Article III creates the executive branch of government and vests the governor with the executive authority of the state. It specifies the method of electing the governor and lieutenant governor, the powers and duties of these officers—including some legislative powers of the governor—and the framework of the executive branch. This article endows Alaska's governor with exceptionally strong formal powers. For example, the governor appoints or approves all department heads. Typically, several department heads, including the attorney general, are popularly elected in other states. Commentary by the committee of delegates who drafted the article said: "The intention throughout the article is to centralize authority and responsibility for the administration of government and the enforcement of laws in a single elected official." The constitutional convention delegates created a strong governor for the same reason they created a strong legislature: they believed that effective and responsible state government required that each branch have broad and uncomplicated powers to carry out its respective duties.

Few state constitutions grant as much authority to the governor as does Alaska's. This is because most of the other constitutions were written with a history of tyrannical or corrupt executives in mind. Alaska's experience was different. Historically, government authority was diffuse and remote from the people. Alaska's territorial governor was an employee of the U.S. Department of the Interior appointed by the U.S. president; he shared executive authority with large federal bureaucracies; and his influence was deliberately diluted by the territorial legislature through its creation of commissions or elected offices to oversee administrative functions which fell within its purview. The convention delegates sought to remedy these defects with a hierarchical administrative system overseen by one elected official.

Also, at the time of the convention, strong executives were the modern constitutional ideal as they localize political accountability (when things go awry, there is someone to blame), and facilitate the management of large organizations. Strong executive powers were the centerpiece of the National Municipal League's *Model State Constitution,* and were recommended in studies prepared for the Alaska constitutional convention. Two recent constitutions of the day, those of New Jersey (1947) and Hawaii (1950), created strong executives. Indeed, the key provisions of Article III, Sections 22-25, which create a centralized administrative structure directly accountable to the governor, follow closely the New Jersey and Hawaii precedents.

Article III is the primary, but not the exclusive, source of the governor's formal powers. Additional grants of executive power are found, for example, in Article II (veto power in Section 15 and authority to call special legislative sessions in Section 9) and Article IX (responsibility for preparation of an executive budget in Section 12).

Unlike the first two articles of the constitution, this article has been the subject of comparatively little judicial interpretation.

Section 1. Executive Power

> **The executive power of the State is vested in the governor.**

This section and Section 16 directly grant the governor the executive power of the state. All of the powers necessary for the governor to carry out the executive function, except those that are explicitly prohibited, are implied by these two sections. In practice, such functions include, for example, enforcing the state's laws, administering the executive branch, submitting annual budgets to the legislature, proposing legislation, exercising veto power, serving as commander in chief to state military entities, and conducting trade and diplomacy with foreign governments, among other powers and duties.

Section 2. Governor's Qualifications

> **The governor shall be at least thirty years of age and a qualified voter of the State. He shall have been a resident of Alaska at least seven years immediately preceding his filing for office, and he shall have been a citizen of the United States for at least seven years.**

These qualifications for the office of governor are typical of those found in other state constitutions. The large majority of states establish the same minimum age qualification; only one has a higher minimum (Oklahoma, 35 years); the lowest minimum age is 18 years (Wisconsin, Vermont, and Washington); and only a few states do not specify a minimum age.

While most states require the governor to be a U.S. citizen, only a few, including Alaska, require a minimum number of years of U.S. citizenship (New Jersey and Mississippi require 20). State residency requirements in other states range from two to 10 years. The U.S. president must be at least 35 years old, a natural-born citizen, and a U.S. resident for 14 years.

Section 3. Election

> **The governor shall be chosen by the qualified voters of the State at a general election. The candidate receiving the greatest number of votes shall be governor.**

Voters directly elect all state governors. This section allows a plurality rather than a majority of the votes cast in the election to be decisive; that is, the candidate for governor who receives the highest number of votes wins, regardless of whether the total exceeds 50 percent of votes cast. Plurality elections are prevalent in this country because they are considered a bulwark of the two-party system. A majority rule requires the winning candidate to receive at least one more than half of the votes cast, and usually involves a run-off election, is used in only a few states for executive offices. About half of the gubernatorial elections in Alaska since statehood were won with pluralities. On two occasions that plurality was less than 40 percent: in 1978, Jay Hammond received 38.2 percent of the votes cast and, in 1990, Walter Hickel received 38.8 percent.

Although elections by plurality vote have historically been the standard in Alaska, this section does not require that method. In 2020, voters approved a ballot measure adopting "ranked choice voting"—also known as "instant runoff" elections—in general elections for Alaska's congressional delegation, governor, lieutenant governor, and all legislators. Under this method, the top four candidates selected by voters in open, non-partisan, pick-one candidate primaries appear on the general election ballot. Voters then have the option to rank candidates in order of preference. If a candidate receives more than 50 percent of first-choice votes, they are declared the winner. If no candidate receives a majority, the candidate with the fewest first place votes is eliminated. The votes of people who ranked the eliminated candidate as their first choice are then counted for their second choice. This process continues in subsequent rounds until a single candidate receives a majority, or until two candidates remain and the individual with the most votes wins.

Ranked choice voting is not without controversy, however. Supporters contend the process mitigates extreme partisanship by forcing candidates to the political center in order to secure votes from outside their political base. Proponents also believe the approach reduces the likelihood of "spoiler" candidates with the support of a small percentage the electorate from changing the outcome of elections. Opponents of the method claim it is overly complicated, reduces transparency and accountability, and may eliminate candidates in the early round of vote counting who would have been the winner in a two-candidate race.

Gubernatorial elections in Alaska occur in even-numbered years between presidential elections. This schedule is a coincidence of the timing of statehood, but it is considered desirable. Constitutional reformers recommended it as a means of focusing the attention of the electorate on state issues and rendering a judgment on the performance of the state administration rather than a judgment on the national administration.

Section 4. Term of Office

> **The term of office of the governor is four years, beginning at noon on the first Monday in December following his election and ending at noon on the first Monday in December four years later.**

All but two states have a four-year term for governor; in New Hampshire and Vermont the term is two years. A measure often discussed but not yet adopted anywhere is a single six-year term for governor. It is thought this would eliminate the political pressures associated with running for reelection. However, it could also reduce the electoral accountability of the governor's office.

Alaska's constitution sets the beginning of the governor's term early in December to give the incoming governor some time to prepare a budget and legislative proposals before the legislature convenes in January. Like Alaska, Hawaii's constitution provides for a December inaugural, but most state constitutions begin the governor's term in January.

Section 5. Limit on Tenure

> **No person who has been elected governor for two full successive terms shall be again eligible to hold that office until one full term has intervened.**

The prohibition against serving more than two successive terms seeks to prevent the accumulation of excessive power, encourage political competition, and increase access to the political process. Many state constitutions limit an individual to two four-year terms as governor; others, like Alaska's, limit an individual to two *successive* terms (that is, two terms one after the other). Several states have no term limits.

Alaska's limit applies to two full terms to which the person was elected. Thus, a person who succeeds to the office of governor in Alaska is eligible for two full elected terms immediately after completing their predecessor's unexpired term. The Twenty-second Amendment to the U.S. Constitution (ratified in 1951) limits the U.S. president to two terms and counts as one of those terms any service longer than two years as president through succession.

William Egan, Alaska's first governor, served three terms (1959-1962; 1962-1966; and 1970-1974). Although elected in November 1958, Egan's first term did not begin until after Alaska officially became a state on January 3, 1959. This term was about one month short of a full term because, according to Section 4, the term of office of the governor begins on the first Monday in December following the election. Governor William Egan stood for re-election in 1966. His apparent violation of the spirit of this term limit, if not its letter, may have contributed to his defeat by Walter Hickel,

who made a campaign issue of the matter. As authorized by this section, Governor Egan was reelected for a third time in 1970 following Governor Hickel's term.

In contrast, Article II does not limit the number of terms that a legislator may serve, although a number of initiatives have proposed, unsuccessfully, to impose such a limit (see Article XI, Section 1).

Section 6. Dual Office Holding

> **The governor shall not hold any other office or position of profit under the United States, the State, or its political subdivisions.**

The prohibition against dual office holding is intended to prevent conflicts of interest that may compromise independent judgment, to prevent the accumulation of excessive power, and to protect the separation of powers. A similar provision applies to legislators (see Article II, Section 5; see also Article IV, Section 14).

Section 7. Lieutenant Governor Duties

> **There shall be a lieutenant governor. He shall have the same qualifications as the governor and serve for the same term. He shall perform such duties as may be prescribed by law and may be delegated to him by the governor.**

The primary purpose of a lieutenant governor is to provide a line of succession in the event the governor becomes temporarily or permanently unable to serve. An amendment to the constitution in 1970 changed the title of this office from secretary of state to lieutenant governor, because the new title was thought to carry more prestige and was the title of comparable offices in other states. Some states elect both the lieutenant governor and secretary of state.

The *Model State Constitution* recommended against including either office, and the delegates to the convention questioned whether a second elective executive position was necessary. Indeed, at one point in the extensive debate on this section, they voted to eliminate the office altogether. In the end, the delegates decided it was desirable to have an elected successor to the governor. The alternative would be an appointed successor, or one of the presiding officers of the legislature, who are elected but only by the voters of one district. All but six states have a lieutenant governor.

The delegates envisioned a busy lieutenant governor whose work would be an integral part of executive branch operations but would not preside over the senate, as is the case in many states. They left to the governor and legislature the task of specifying the duties. However, the delegates clearly

assumed that the lieutenant governor (secretary of state) would be involved in the administration of elections—a traditional function of the office of secretary of state—because Article XI, Sections 2-6; and Article XIII, Sections 1 and 3 charge that office with responsibilities for preparing the ballot.

Contrary to the expectation of those who drafted the constitution, Alaska's governors have not delegated significant administrative duties or policy-making responsibilities to the lieutenant governor. Nor has the legislature prescribed much for that officeholder to do. By statute, the lieutenant governor administers state election laws, appoints notaries public, serves as custodian of the state seal, and performs certain ministerial duties relating to the promulgation of regulations under the Administrative Procedure Act.

Section 8. Lieutenant Governor Election

> **The lieutenant governor shall be nominated in the manner provided by law for nominating candidates for other elective offices. In the general election the votes cast for a candidate for governor shall be considered as cast also for the candidate for lieutenant governor running jointly with him. The candidate whose name appears on the ballot jointly with that of the successful candidate for governor shall be elected lieutenant governor.**

Beginning in 2022, with the implementation of ranked choice voting, candidates for governor and lieutenant governor appear as running mates on primary election ballots. The tandem method of electing the governor and lieutenant governor is currently used by about half the states.

Prior to that, candidates for the office of lieutenant governor appeared on the primary ballot. The party candidate with the highest number of votes became that party's nominee, was then paired with the party's nominee for governor and the two of them stood in the general election together. The delegates rejected a proposal submitted by the committee on the executive branch, by which candidates for governor would have handpicked a running mate much the way candidates for U.S. president handpick their running mates for vice-president. The delegates also rejected a proposal for the lieutenant governor to be elected independently of the governor, because this method might produce a governor and lieutenant governor of different parties.

Section 9. Acting Governor

> **In case of the temporary absence of the governor from office, the lieutenant governor shall serve as acting governor.**

This section provides for the temporary assumption of the duties of governor by the lieutenant governor, in contrast to the permanent succession to office in Sections 10, 11 and 12. Most state constitutions make a similar allowance, but usually for a temporary absence "from the state" by the governor, rather than "from office," as in this section. The phrase "from office" was substituted for the more traditional words by an amendment on the floor of the convention because it was recognized that with modern communications it was possible for the governor to fulfill the duties of office while temporarily out of the state, and that a governor could be absent from office while remaining in state. However, the vagueness of the term "absence from office" could conceivably create problems in applying this section.

Alaska's first elected governor, William Egan, fell ill shortly after he assumed office in January 1959. His illness kept him in a Seattle hospital until April, during which time Lieutenant Governor Hugh Wade served as acting governor.

Section 10. Succession; Failure to Qualify

> **If the governor-elect dies, resigns, or is disqualified, the lieutenant governor elected with him shall succeed to the office of governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor elected with him shall serve as acting governor, and shall succeed to the office if the governor-elect does not assume his office within six months of the beginning of the term.**

The delegates sought to anticipate all possible contingencies in the succession provisions. Here they dealt with the possibility of a governor-elect failing to assume office. If the governor-elect does not assume office within six months after the term begins, the office is forfeited to the lieutenant governor.

Section 11. Vacancy

> **In case of a vacancy in the office of governor for any reason, the lieutenant governor shall succeed to the office for the remainder of the term.**

If a permanent vacancy in the office of governor should occur, the lieutenant governor becomes governor (in contrast to acting governor, as in the case of a temporary vacancy) for the remainder of the term. Some constitutions provide for a special election to fill the office for the remainder of the term, but Alaska's only allows this in the unusual situation in which a non-elected lieutenant governor succeeds to the governorship (see Section 13). A permanent vacancy could arise from death,

resignation, impeachment, conviction of a felony, or from a disability that resulted in a declaration of vacancy under Section 12.

In 1969, Governor Walter Hickel resigned the office of governor to become Secretary of the U.S. Department of the Interior, and Lieutenant Governor Keith Miller succeeded him. In 2009, Governor Sarah Palin resigned and Lieutenant Governor Sean Parnell became governor.

Section 12. Absence

> **Whenever for a period of six months, a governor has been continuously absent from office, or has been unable to discharge the duties of his office by reason of mental or physical disability, the office shall be deemed vacant. The procedure for determining absence and disability shall be prescribed by law.**

This section deals with the potentially thorny issue of a disabled chief executive (the thorniness being the officeholder who does not recognize or consider his condition disabling). To avoid a tedious recitation of procedures found in several state constitutions and in the Twenty-fifth Amendment to the U.S. Constitution, this section directs the legislature to specify in statute how the office of governor could be declared vacant. The legislature has not yet done so, which could complicate a scenario in the future where it becomes necessary to utilize this section.

Section 13. Further Succession

> **Provision shall be made by law for succession to the office of governor and for an acting governor in the event that the lieutenant governor is unable to succeed to the office or act as governor. No election of a lieutenant governor shall be held except at the time of electing a governor.**

Pursuant to this section, the legislature has codified that, after taking office, the governor shall appoint a successor to the lieutenant governor "from among the officers who head principal departments of the state government or otherwise," who must be confirmed by a majority of the legislature meeting in joint session (AS 44.19.040). If a vacancy occurs in the office of lieutenant governor, the designee succeeds to that office. If the regularly elected lieutenant governor succeeds to the office of governor and then vacates that office for some reason, the appointed lieutenant governor becomes acting governor only until a special election is held to elect a new governor and lieutenant governor (AS 44.19.044).

In July 2009, Sarah Palin resigned the office of governor. At the same time, the Corrections Commissioner, and designated successor to the lieutenant governor, also resigned. Governor Palin

designated a new successor, but this created confusion because the new designee had not been confirmed by the legislature. The matter was resolved by a compromise that allowed the new appointee to function as "acting lieutenant governor" until he could be confirmed.

Section 14. Title and Authority

> **When the lieutenant governor succeeds to the office of governor, he shall have the title, powers, duties, and emoluments of that office.**

This section removes any ambiguity about the power and role of the person who occupies the position of governor by virtue of permanent succession. In some states a person who succeeds to the office of governor becomes "acting governor" for the remainder of the term, and there have been disputes about the range of his powers.

Section 15. Compensation

> **The compensation of the governor and the lieutenant governor shall be prescribed by law and shall not be diminished during their term of office, unless by general law applying to all salaried officers of the State.**

The legislature may not attempt to pressure the governor or drive him from office by reducing his compensation. A similar provision protects judges (see Article IV, Section 13). This protection is a safeguard for the separation of powers. In 2008, the legislature created the Alaska State Officers' Compensation Commission with authority to set the salary for legislators, the governor, the lieutenant governor, and the heads of the principal departments, subject to a legislative veto (AS. 39.23.540; see also Article II, Section 7). In 2011, the commission recommended an annual salary for the governor of $145,000 and for the lieutenant governor a salary of $115,000. These recommendations were not rejected by the legislature and became law. Another raise became effective in July 2023, increasing the salaries of the governor to $176,000, lieutenant governor to $140,000, commissioners to $168,000, and legislators to $84,000 (not including per diem).

Section 16. Governor's Authority

> **The governor shall be responsible for the faithful execution of the laws. He may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions. This**

authority shall not be construed to authorize any action or proceeding against the legislature.

The first sentence is a common provision, derived from the U.S. Constitution, found in virtually every state constitution. The governor must also sign an oath of office to uphold the U.S. and Alaska constitutions (see Article XII, Section 5). The second sentence augments the governor's inventory of powers to assure the faithful execution of the laws. It was first adopted in the 1947 New Jersey constitution, and thereafter it was carried as a recommendation in the *Model State Constitution.* To this day, only a few states have such a provision. It authorizes the governor to sue to enforce the constitution and the law, and to restrain state agencies from unconstitutional conduct.

The last sentence bars the governor from suing the legislature. This was made clear in the case *Alaska Legislative Council v. Knowles*, 988 P.2d 604 (1999). Here the governor sued the Legislative Council seeking a judicial determination that a legislative vote to override a veto was untimely under Article II, Section 16 and therefore invalid (see discussion under Article II, Section 16). The Alaska Supreme Court rejected the governor's assertions that he was suing in his own name as head of the executive branch, not in the name of the state, and that he was suing the Legislative Council, an agent of the legislature, not the legislature itself. For the governor to litigate disputes with the legislature about the constitutionality of its actions, it is now clear that he must do so indirectly, for example, by suing the commissioner whose job it is to enforce the law (as in *State ex rel. Hammond v. Allen*, 625 P.2d 844 (1981)), or by failing to enforce the measure altogether and provoking a suit by the legislature (as in *Bradner v. Hammond*, 553 P.2d 1 (1976)). There is no constitutional prohibition against the legislature suing the governor.

Section 17. Convening Legislature

Whenever the governor considers it in the public interest, he may convene the legislature, either house, or the two houses in joint session.

It is clear the governor can use this section to get both houses of the legislature to meet jointly, or to get one or both houses to meet separately, while a session of the legislature is underway. For example, Governor William Sheffield used this authority to call a joint session of the legislature in June 1983 for the purpose of considering the confirmation of his cabinet appointments. As it happened, tensions ran high in the joint session; the governor's appointees were confirmed, but only after the senate president compelled the attendance of absent members with the help of the state troopers (see *Kerttula v. Abood,* 686 P.2d 1197 (1984); and *Shultz v. Sundberg,* 759 F.2d 714 (1985)).

Less clear is whether this section provides an independent source of power for the governor to convene meetings of the legislature if it is not already in session. Presumably, the governor would use Article II, Section 9 to convene a special session if a regular session had adjourned (note that special

sessions are limited to 30 days; no limits are specified here). In 1987, on the 120th day of the regular session, Governor Steve Cowper issued a proclamation invoking this section to "convene the Legislature into session" so the two houses could complete work on budget bills. This had the effect of extending the regular session, although the only explicit authority to extend a regular session is given to the legislature in Article II, Section 8. Special sessions have subsequently been called by governors to give the legislature time to finish its work, citing this section and Article II, Section 9.

Section 18. Messages to Legislature

> **The governor shall, at the beginning of each session, and may at other times, give the legislature information concerning the affairs of the State and recommend the measures he considers necessary.**

In Alaska, as in most states, the governor is required to address the legislature at the beginning of each session. Here he is authorized to address it at other times as well. While this power is not, on its face, a substantive one, it enhances the governor's authority because it provides the opportunity to raise public policy issues and initiate debate about them. The governor's message may help set the agenda of the legislature.

The power of the governor to introduce bills in the legislature derives from this provision and from statute (AS 24.08.060(b)). Letters transmitting bills from the governor to the legislature typically begin with a reference to Article III, Section 18.

Section 19. Military Authority

> **The governor is commander-in-chief of the armed forces of the State. He may call out these forces to execute the laws, suppress or prevent insurrection or lawless violence, or repel invasion. The governor, as provided by law, shall appoint all general and flag officers of the armed forces of the State, subject to confirmation by a majority of the members of the legislature in joint session. He shall appoint and commission all other officers.**

This is a common constitutional provision. It reasserts the subordination of military to civilian power that appears in Article I, Section 20. The governor is commander-in-chief of the Alaska Air National Guard and Army National Guard, which constitute the armed forces of the state. However, when the guard are activated by a call to federal service, the governor ceases to have control over them. National Guard units are only nominally state organizations; standards for their training, equipping and organizing, as well as most of their financial support, come from the federal government.

The governor has broad power to use the National Guard to help "execute the laws," including authorizing the National Guard to assist local police in enforcing drug laws (*Wallace v. State*, 933 P.2d 1157 (Alaska Ct. App. 1997)). Use of the guard under this section must be under all the constraints of civil law. Backing up police with National Guard troops to restore public order, for example, is different from declaring martial law under Section 20.

Section 20. Martial Law

> **The governor may proclaim martial law when the public safety requires it in case of rebellion or actual or imminent invasion. Martial law shall not continue for longer than twenty days without the approval of a majority of the members of the legislature in joint session.**

The right to declare martial law is a basic attribute of sovereignty. Under a declaration of martial law, military authority supersedes normal civil authority, and officers of the militia may take all action that is reasonably necessary to restore public order and civil government.

Here the governor of Alaska is authorized to proclaim martial law but only to suppress rebellion or cope with an actual or imminent invasion. Martial law may not last beyond 20 days without the legislature affirming its necessity. If the legislature were not in session at the end of the 20 days, the governor could convene a special joint session to secure permission to prolong the condition of martial law. It is difficult, however, to imagine federal military authorities relying on state troops to repel an actual invasion of Alaska.

Section 21. Executive Clemency

> **Subject to procedure prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures. This power shall not extend to impeachment. A parole system shall be provided by law.**

Granting pardons and reprieves is a traditional executive function. The phrase "subject to procedure prescribed by law" or its functional equivalent is included in many state constitutions to encourage the creation of some kind of public process for the exercise of executive clemency as a safeguard against its abuse for political or other reasons. The New Jersey constitution, for example, provides that "a commission or other body may be established by law to aid and advise the governor in the exercise of executive clemency."

The legislature has prescribed procedures for the governor's use of the clemency power at AS 33.20.080. Before granting a clemency application, the governor is required to provide notice to the Board of Parole, which is then required to investigate and provide a report to the governor within 120 days of receiving the notice. The investigation must include providing notice and the opportunity to comment to the Department of Law, the Office of Victims' Rights, and to the victim if the conviction involved a crime against a person, domestic violence, or arson.

Note that parole is not a form of clemency; it relaxes the requirement of physical confinement for the duration of a sentence, but it does not commute or curtail the sentence itself. A detailed system of parole has been established by the legislature, including a parole board (AS 33.16). Additionally, Alaska law does not contain a mechanism for criminal convictions to be expunged.

Section 22. Executive Branch

> **All executive and administrative offices, departments, and agencies of the state government and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department.**

Limiting the number of executive departments to 20 expresses the objective of keeping the executive branch streamlined, efficient, and manageable. It reflects modern notions of integrating all administrative units engaged in essentially the same activity and giving administrators relatively few direct subordinates. The *Model State Constitution* recommended this restriction and had already been incorporated into several constitutions at the time of Alaska's constitutional convention. This version is similar to one in the New Jersey constitution.

Most state constitutions create specific executive offices (such as state treasurer, auditor or comptroller, attorney general, commissioner of land, insurance commissioner, superintendent of public instruction, and others) and impose directly or indirectly a basic organizational scheme on the executive branch. Except for the mandate to create an agency for local government affairs (see Article X**,** Section 14), Alaska's constitution leaves the organization of the executive branch to the discretion of the legislature, with the sole limitation that there be no more than 20 principal departments. Alaska presently has 15 principal departments, excluding the office of the governor.

Section 23. Reorganization

> **The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.**

This provision bolsters the governor's management powers by simplifying the task of altering the organization of the executive branch. It does not apply to the organization of the legislative or judicial branches. The organization of the executive branch is a legislative function, and without this provision, the governor would be required to introduce a bill to accomplish any organizational changes. A bill would require the expenditure of time and political resources; it would require a majority vote in both houses; and in the end it might not be entirely to the governor's liking. While the procedure in this section does not guarantee success, it increases the odds for an outcome in favor of the governor's plan.

Use of the executive order to restructure the administrative system, subject to the legislature's review, was first adopted by Congress in the Reorganization Act of 1932. It became a popular modernization reform in the states thereafter. Today, most governors and the U.S. president possess it, as a matter of either constitutional or statutory law. Changes to those aspects of executive agency structure and organization that are not set in statute do not require the use of this procedure by the governor.

Over the years, several agencies have been restructured – specifically the current Department of Commerce, Community, and Economic Development represents the product of several former agencies, consolidated at different times. Additionally, the Departments of Highways and Public Works were merged into the Department of Transportation and Public Facilities in 1977. In 2022, Governor Dunleavy split the Department of Health and Social Services into the Department of Health and Department of Family and Community Services via executive order.

Apart from the legislature's power to confirm certain executive appointments (Section 25), this is one of two authorizations of the "legislative veto" in Alaska's constitution; the other is in Article X**,** Section 12 regarding decisions of the local boundary commission (also note the legislature's power over court rules in Article IV, Section 15). Exercise of the legislative veto is easier here than under Article X, Section 12, because the vote occurs in joint session (that is, 31 legislators are required to disapprove an executive reorganization, rather than the 11 senators and 21 representatives required to disapprove a boundary change). The State Officers Compensation Commission, whose

recommendations become law unless rejected by the legislature, is an example of a statutory legislative veto (AS 39.23.500).

Section 24. Supervision

> **Each principal department shall be under the supervision of the governor.**

This short, unadorned sentence gives the governor unambiguous supervisory power over the agencies of the executive branch. A result of this provision is that the governor is answerable for the actions of his subordinates. Accountability of the governor is greatly diminished in those states with "plural executives," that is, those with directly elected department heads and commissioners.

Section 25. Department Heads

> **The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the secretary of state. The heads of all principal departments shall be citizens of the United States.**

This section elaborates the design of the executive branch, concentrating administrative authority in the governor. The first sentence requires departments be headed by one person, rather than by a board or commission, to facilitate efficient decision making, administration and agency accountability, yet it leaves potential for an entity rather than an individual to head a department with the phrase "unless otherwise provided by law." At the time of the convention, two boards were operational (education and fisheries). Rather than sort through the contentious issues of which departments should be run by boards with what membership and formal powers, and prescribing them, the delegates left discretion to the legislature.

Immediately after statehood, the legislature created a Board of Education (now the Board of Education and Early Development) within the Department of Education, and a Board of Fish and Game (now two separate boards) within the Department of Fish and Game. These boards had certain policy oversight and rule-making authority, but they were explicitly denied "administrative, budgeting, or fiscal" powers, which were assigned to the respective commissioners (ch. 64, SLA 1959). In 1967, the powers of the Board of Education were expanded, and it was formally elevated to head of the Department of Education (ch. 96, SLA 1967; AS 14.07.075). It is the only board that currently serves as the head of a principal department.

This section grants the governor the authority to appoint the head of each principal department, subject to confirmation by the legislature, which is also reiterated at AS 39.05.020. However, statutory provisions of two departments appear to undermine the governor's authority under this section. For example, AS 14.07.145(a) states: "the board shall appoint the commissioner of education and early childhood development subject to the approval of the governor." Furthermore, subsection (c) of that statute says the commissioner serves at the pleasure of the board and may not be appointed by the board for a fixed term," despite the language of this section and AS 39.05.030, which says: "Each principal executive officer serves at the pleasure of the governor." And, AS 44.39.030 requires the governor to appoint the commissioner of the Department of Fish and Game from a list of qualified persons nominated by the Board of Fisheries and Board of Game meeting in joint session.

A proposal made unsuccessfully at the convention, and one that surfaces from time to time as a possible constitutional amendment, is to require that the attorney general be popularly elected. (The attorney general is appointed by the governor in only a few other states.) Because the attorney general advises the governor on legal matters, it is thought by some that political independence from the governor would result in a more objective legal perspective. The rejection of this idea by successive legislatures reaffirms the constitutional ideal of an appointed, hierarchical, accountable executive organization.

The governor's department heads must be confirmed by a majority vote in a joint session of the legislature. Confirmation of executive appointees is a key legislative check on the executive branch. Typically, state constitutions assign the task to the senate only, as does the U.S. Constitution. In Alaska, there was a territorial tradition of confirming executive appointments in joint session and this was carried over in the state constitution.

Other executive branch appointments may not be subjected to legislative confirmation. In 1975, the legislature passed a law subjecting deputy commissioner and division director appointees to legislative confirmation. The governor did not submit these appointments to the legislature and the legislature sued. The Alaska Supreme Court held that the power to confirm did not extend beyond the express limits of the constitution and that the legislature's action violated the principle of separation of powers (*Bradner v. Hammond,* 553 P.2d 1 (1976)). In 1980, the legislature placed a proposed constitutional amendment before the voters that would give the legislature explicit authority to determine which executive appointees would be subject to confirmation, but it was rejected.

Section 24 specifies that each department serves at "the pleasure of the governor," thus granting the governor means of effective supervision. In removing a department head, the governor does not, for example, have to show cause (such as incompetence, neglect of duty, or moral turpitude) or provide a public hearing, nor may the legislature impose conditions on the removal of department heads. (However, it may do so on the removal of certain commission members, as authorized in Section 26.)

Department heads (and commission members covered by Section 26) must be citizens of the United States, but they do not have to be residents of Alaska. After acrimonious debate, the delegates removed a durational residency requirement from the qualifications for department head on the grounds that a governor should be allowed to search for administrative talent outside Alaska if necessary. This section and Section 26 are patterned on the New Jersey constitution (Article V, Section 4 (2) and (4)). Provisions in the Hawaii constitution are also similar (Article V, Section 6).

The appearance of "secretary of state" in this section rather than lieutenant governor has no significance: it is the result of an oversight at the time a constitutional amendment changed the title of the position.

Section 26. Boards and Commissions

> **When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.**

This section governs the appointment and removal of members of two classes of boards and commissions: those that are head of a principal department, of which there is only one—the Board of Education and Early Development—and those that are head of a "regulatory or quasi-judicial agency." Among the latter are regulatory boards such as the Regulatory Commission of Alaska and the numerous occupational licensing boards, such as the Alaska State Medical Board. Excluded are the many advisory boards (such as the Recreation Rivers Advisory Board) and the public corporations of the state (such as the Alaska Permanent Fund Corporation, the Alaska Housing Finance Corporation, the Alaska Railroad Corporation, and the Alaska Industrial Development and Export Authority).

The governor has the power to appoint and the legislature the power to confirm the members of boards within the purview of this section (so-called "Section 26 boards"), However, these members may or may not serve at the pleasure of the governor because the legislature is given the power to establish conditions for the removal of board members. Thus, in the case of the state Board of Education and Early Development, for example, the law provides that the members serve at the pleasure of the governor (AS 14.07.115). But in the cases of the Board of Fisheries and the Board of Game, for example, the law restricts the governor's power of removal to cases of "inefficiency, neglect of duty, or misconduct in office" (AS 16.05.280).

This section is silent about the boards of public corporations and advisory boards. The governor appoints the members of these boards; their names are not submitted to the legislature for confirmation; and they serve at the pleasure of the governor. A constitutional amendment appeared on the 2000 general election ballot that would have required legislative confirmation of appointees to all public corporations of the state "that manage significant state assets," except the Permanent Fund Corporation, but it was defeated.

The governor must approve the choice of a principal executive officer made by a Section 26 board—that is, the commissioner of education and early development, and the executive directors of various regulatory and quasi-judicial boards. (Because members of the Board of Education and Early Development serve at the pleasure of the governor, their choice of commissioner may simply be the person the governor wants in the position.)

Although it is part of the executive branch, the University of Alaska is neither a principal department nor a regulatory or quasi-judicial agency, and therefore these provisions pertaining to the removal of board members (regents) and selection of the principal executive officer (the president of the university) do not apply. However, similar appointment and confirmation provisions apply to the regents in a separate provision of the constitution (Article VII, Section 3).

In addition to the University of Alaska Board of Regents, the constitution creates four other boards and commissions: the Judicial Council (Article IV, Section 8), the Commission on Judicial Conduct (Article IV, Section 10), the Redistricting Board (Article VI, Section 8), and the Local Boundary Commission (Article X**,** Section 12).

Section 27. Recess Appointments

> **The governor may make appointments to fill vacancies occurring during a recess of the legislature, in offices requiring confirmation by the legislature. The duration of such appointments shall be prescribed by law.**

Underlying the attention to "recess appointments" in this section and in other state constitutions is a suspicion that the governor will circumvent the confirmation power of the legislature by making appointments when the legislature is not in session and cannot reject them. First adopted by the territorial legislature of Alaska in 1955, AS 39.05.070 states:

> It is the purpose of [these statutes] to provide procedural uniformity in the exercise of appointive powers conferred by the legislature to eliminate, insofar as possible, recess or interim appointments except in the event of death, resignation, inability to act or other removal from office and the exercise, insofar as possible, of appointive powers only when the legislature is in session.

This section permits recess appointments, but the legislature may limit their duration. In 1994, outgoing Governor Walter Hickel made an appointment to a seat on the Alaska Public Utilities Commission (now the Regulatory Commission of Alaska), but did not send the name to the legislature for confirmation because the legislature was not in session. The person assumed office, but incoming Governor Tony Knowles preferred another person in the position. As such, he directed the appointed person to resign. Because Hickel's appointee had not been sent to the legislature for confirmation, Governor Knowles asserted that the original appointment was invalid. However, the legislature confirmed Hickel's appointee, who then refused to vacate his seat, and the attorney general sued. The Alaska Supreme Court ruled in favor of the appointee, saying that once a person has been appointed to an office and assumes the powers of that office, the governor's role in the appointment process is complete. The validity of an appointment does not hinge on submission of the name to the legislature, and the legislature's power of confirmation is not contingent upon the governor submitting names to it (*Cook v. Botelho*, 921 P.2d 1126 (1996)).

In the aftermath of this dispute, the legislature extensively revised AS 39.05.080 in 1996 to limit the terms of recess appointees, to clarify the procedures for presenting names to the legislature for confirmation, and to create a process for unconfirmed recess appointees between governorships. The law also prohibits the governor from appointing during the recess a person previously rejected for confirmation by the legislature.

ARTICLE IV

THE JUDICIARY

Alaska's judiciary article, like the legislative and executive articles, is short, flexible and incorporates modern constitutional concepts. It creates a unified court system with centralized administration; provides for merit selection of judges; balances the need for judicial independence with the need for accountability to the people; and allows the legislature to expand the court system to keep pace with a growing state.

Alaska's court system is efficient when compared to many others because it is unified. This means that all the courts are part of a single state system. They are administered from one place, operate under the same rules, and are financed by the state legislature. We recognize this type of organization in the federal courts. Indeed, Alaska's judicial experience before statehood was with the federal court system. In many states, the court system is fragmented into municipal courts, courts of special jurisdictions, county courts, and state appellate courts, each with its own peculiar jurisdiction, rules and procedures, administration, and source of funding. Also, in many states, legislative power to create new courts or modify the jurisdiction of constitutional courts is restricted or ambiguous. Judicial reforms long sought in these older states are embodied in Alaska's constitution.

Alaska's system of merit selection for judges seeks to produce a competent and independent judiciary. Article IV requires the governor appoint judges from a list of nominees recommended by the independent Judicial Council, described in Section 8. Also, judges are not elected. The convention delegates had no confidence in the electoral process to produce qualified judges. Appointed judges do not need to worry that unpopular decisions will affect their immediate chances of re-election, nor do they need to finance campaigns funded by donations from private interests (including attorneys who appear before them).

Accountability of appointed judges to the people is provided by periodic "retention elections" in which judges stand before the electorate on their own records, without party labels. The question before the voters is simply whether a particular judge should remain in office. Retention elections occur at regular intervals, depending on court level. A judge may not be recalled by the voters (see Article XI, Section 8), but the legislature can impeach a judge for "malfeasance or misfeasance" in the performance of duties. The Alaska Supreme Court can also remove judge from the bench, after a review by the Commission on Judicial Conduct, for mental or physical incapacitation or breach of ethics.

Article IV is flexible because it specifies only the rudimentary structure of the court system and gives the legislature wide latitude to expand and shape the system to meet the needs of the state. The delegates created only two constitutional courts—the superior court (a trial court of general jurisdiction) and the supreme court (an appellate court). Unlike the supreme court, which is a single body with all of the justices sitting together to hear cases, the superior court has many judges in each of the four judicial districts who hear cases sitting alone. At the time, a more elaborate (and more costly) structure was unnecessary. Yet the delegates anticipated the future by authorizing the legislature to expand the court system by adding judges and creating new courts.

These progressive features of Article IV, notably the unified court system and merit selection of judges, did not originate with the Alaska constitution. New Jersey pioneered the unified court system in its 1947 constitution, and Missouri initiated the merit selection of judges in its 1946 constitution. Yet Alaska's judiciary article is notable because it incorporated so many of the innovations hailed by constitutional reformers of the day. Many states have embraced these judiciary reforms in the years since Alaska's constitution was written.

Article IV has been amended five times but only for fine-tuning. The basic features of the article have proven workable and remain unaltered. Today, Alaska's judiciary system is recognized nationally as one of the best in the United States.

Section 1. Judicial Power and Jurisdiction

> **The judicial power of the State is vested in a supreme court, a superior court and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.**

This vesting provision also creates the basic structure of that system. It consists of the superior court, which is a trial court, and the supreme court, which hears appeals from the trial court. Importantly, this section also specifies that Alaska's court system is to be unified. Thus, any courts the legislature may create must be administered by the supreme court as part of a centralized state judicial system.

This section also authorizes the legislature to create additional courts. The legislature created the district court, which is another trial court that relieves the superior court of hearing lesser criminal and civil matters. It also created the court of appeals for criminal cases, an intermediate appellate court that helps reduce the number of criminal appeals reaching the supreme court. Alaska's constitution tasks the legislature with prescribing the jurisdiction of the various courts, which is common, except perhaps in the clarity of its directive.

Judicial districts are commonly established in constitutions, but the delegates preferred to leave this matter to the legislature so districts could be modified with changing administrative needs of the judicial system. During territorial days, the federal courts were organized in four judicial districts—District One, southeast Alaska; District Two, northwest Alaska; District Three, southcentral Alaska; and District Four, interior Alaska. The legislature has maintained these four districts for the organization of the state judicial system (AS 22.10.010).

The Alaska Supreme Court has declared that this section confers upon it certain inherent rule-making authority distinct from the rule-making authority granted in Section 15. It has said, for example, that it has exclusive power to regulate the practice of law in the state, and statutes dealing with this subject are an unconstitutional invasion of the judicial branch of government (see *Citizens Coalition for Tort Reform v. McAlpine*, 810 P.2d 162 (1991)).

Section 2. Supreme Court

> **(a) The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.**
>
> **(b) The chief justice shall be selected from among the justices of the supreme court by a majority vote of the justices. His term of office as chief justice is three years. A justice may serve more than one term as chief justice but he may not serve consecutive terms in that office**

Paragraph (a) of this section creates the "court of last resort" in the state judicial system. It sets the number of supreme court justices at three, subject to increase by the legislature. This proviso (modeled on a similar proviso in Puerto Rico's constitution) was included to prevent the legislature from "packing" the supreme court with new justices as a means of changing a prevailing interpretation of the law. At the request of the court, the legislature expanded the number of justices to five in 1967 (16 other state supreme courts have five justices, two have seven justices, and six have nine justices).

Paragraph (b) was added by amendment in 1970. Notice that paragraph (a) is silent on how the chief justice is to be selected. Prior to the 1970 amendment, the governor designated the chief justice. The change followed a bitter conflict during the late 1960s between the court and the state bar association over the chief justice's exercise of his administrative prerogatives. The amendment was designed to prevent the accumulation of excessive power by one justice and to make the chief justice accountable to the other members of the court.

This section is, comparatively speaking, simple and concise. Absent are a number of provisions found in other constitutions pertaining to the supreme court, such as authorization to render advisory opinions at the request of the governor or legislature; a requirement for a supermajority vote to declare a legislative act unconstitutional; formal authorization to exercise the power of judicial review (i.e., to scrutinize the constitutionality of acts of the other branches of government); permission for "divisions" of the court (panels of fewer justices than the full bench) to hear and render decisions on cases; assignment of original jurisdiction to the court in certain cases (legislative redistricting cases, for example); or a requirement for broad geographical representation on the court.

Section 3. Superior Court

> **The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.**

The superior court is the trial court with original jurisdiction over all civil and criminal matters. To facilitate the work of the court, particularly in small communities without a superior court judge, the legislature immediately after statehood established a set of lower trial courts called district magistrate courts. Deputy magistrates were authorized to assist district magistrates by serving primarily in outlying areas. In 1966, the magistrate courts became the district courts of the present day, and deputy district magistrates became today's magistrates. (The history of the district court and the role of magistrates are discussed in *Buckalew v. Holloway,* 604 P.2d 240 (1979)). Thus, there are now two trial courts, the superior court and the district court.

The superior court deals with serious criminal offenses (felonies) and civil cases involving claims for recovery of money or damages more than $100,000. It hears appeals from the district court and final administrative actions, and handles family and juvenile matters including probate, child-in-need-of-aid, and guardianships of minors and vulnerable adults. The district court hears minor criminal cases (misdemeanors), violations of municipal ordinances, domestic violence protective orders, and civil cases involving sums less than $100,000. Magistrates are appointed by and serve at the pleasure of the presiding superior court judge in each district. They assist primarily, but not exclusively, in outlying areas with routine district court matters such as issuing marriage licenses, summons, and search and arrest warrants; setting bail; and solemnizing marriages.

All judges and magistrates are assigned to one of the four judicial districts. One superior court judge in each district is designated presiding judge to coordinate administrative matters. In 2024, Alaska had 45 superior court judges, 20 district court judges, and 70 magistrates.

Section 4. Qualifications of Justices and Judges

> **Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.**

In addition to meeting these minimum qualifications, supreme court justices and superior court judges must have been residents of the state for five years immediately preceding their appointment and engaged in the active practice of law for eight and five years respectively (AS 22.05.070 and AS 22.10.090). Court of appeals and district court judges must meet the same minimum qualifications and must have been in the active practice of law for eight and three years, respectively (AS 22.07.040 and AS 22.15.160(a)). Magistrates, however, do not have to be licensed lawyers, and they need only be residents of the state for six months prior to being appointed (AS 22.15.160(b)).

Section 5. Nomination and Appointment

> **The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.**

A variety of methods are used to select judges in the states, and different methods may be used to select judges of the different courts within the same state. Some judges are elected by the voters on either a partisan or nonpartisan basis; others are appointed, either by the legislature, the judiciary or, more commonly, the governor. The trend is toward appointment as a method of selection, coupled with the use of an impartial body to screen applicants based on their qualifications; Alaska was one of the first states to adopt this merit selection method of appointment. The Alaska Judicial Council evaluates candidates for judgeships and submits several nominees to the governor who makes the final appointment. In other states, the legislature may confirm the governor's appointments. In Connecticut, the Judicial Selection Commission recommends qualified individuals, then the governor refers a nominee from the list to the legislature for confirmation after a public hearing. In California, appellate court judges are appointed by the governor and confirmed by the Commission on Judicial Appointments.

When a judicial vacancy occurs, the Alaska Judicial Council receives applications from those interested in filling the position. It then evaluates the candidates based on information derived from a poll of the bar association, letters of reference, background investigations, public hearings, and interviews. The council must forward at least two names to the governor; frequently it sends more than two and, on one occasion, it sent nine names to the governor for a single vacancy.

The legislature has provided for judgeships in the two statutory courts (the district court and court of appeals) to be filled by this method too, although the constitution does not require it (AS 22.07.070 and AS 22.15.170). The legislature has also directed the Judicial Council to evaluate candidates for the public defender (AS 18.85.050); the council does not, however, evaluate candidates for district attorney or the public advocate. Composition of the Judicial Council is specified in Section 8 of this article, and other duties are assigned to it in Section 9.

Section 6. Approval or Rejection

> **Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.**

The merit selection method of filling judgeships is usually coupled with the retention election procedure outlined here. Under this procedure, voters may remove a judge they believe is unfit for office, but, because the judge's name appears on the ballot only at certain intervals, it reduces the possibility of voters sweeping away a judge on a sudden whim or impulse, and it gives a new judge time to establish a record which can be fairly evaluated. Thus, the retention election is designed to balance the need for judicial independence with the need for public accountability.

Only a few judges have failed to be retained, and the vote in favor of retention is usually over 60 percent. However, the form of retention elections tends to encourage a yes vote: there is no opposing candidate; the judge is nonpartisan; and he or she has the advantage of being an incumbent.

Recognizing that the public may have difficulty assessing a judge's performance, and mindful of the vulnerability of judges to last-minute smear campaigns, the legislature in 1975 directed the Judicial Council to evaluate judges standing for retention election and publish the results prior to the election. Judges have been retained by voters despite being deemed unqualified by the Judicial Council. Campaigns have occurred against the retention of judges who were deemed qualified by the council. One such campaign succeeded in 2018, when a superior court judge was rejected by voters despite a favorable review by the council. This was the result of public reaction to a plea agreement he accepted shortly before the election that was widely regarded as too lenient. A supreme court judge was rejected by the voters in 1964. The process used by the council to evaluate judges is described in the commentary on Section 9.

By statute, court of appeals and district court judges are also evaluated by the Judicial Council prior to their retention election (AS 22.07.060, AS 22.15.195). Only supreme court justices and judges of

the court of appeals stand for retention on a statewide basis. Superior and district court judges appear on ballots in the judicial district they serve.

The date of a judge's "appointment" is the day the governor makes the appointment rather than the day the judge is installed in office (*State, Division of Elections v. Johnstone*, 669 P.2d 537 (1983)). The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected.

Section 7. Vacancy

> **The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.**

This section is intended to give a judge leaving office sufficient time to wind up judicial business in an orderly manner and to minimize transition time by allowing the process for appointing a successor to commence in advance of the vacancy.

Section 8. Judicial Council

> **The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex-officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.**

More than thirty states use some form of judicial nominating commission. Alaska is among several that have adopted the original Missouri plan of three members selected by the state bar association, three public members appointed by the governor, with the supreme court justice serving as a voting ex-officio member. There is, however, wide variation today in the commissions used among the states. Some commissions are created in the constitution, some by statute, and some by executive

order. Some have authority for all state courts, as in Alaska, while others have responsibility for only specific courts, and others for only filling interim vacancies on the bench. Most require the appointing authority (typically the governor) to appoint judges from a list of commission nominees, but in some cases the commission nominees are only non-binding recommendations for appointment.

Composition of these state commissions also varies widely. A seven-member body, like Alaska's Judicial Council, is common, but some have as many as 16 members. Virtually all require some members to be lawyers. In Alaska, attorney members are appointed by the state bar association, as is the case in many other states. In some cases, the state bar association nominates attorney members who are then appointed by the governor. The balance between mandated attorneys and public members is in favor of attorneys in some states (including Alaska, where the chief justice may vote only when there is a tie), but public members outnumber attorneys in others. (The privileged role of the Alaska Bar Association in selecting members of the council, and therefore members of the judiciary, was challenged unsuccessfully in 2009 in federal court as a violation of the federal constitution.) Some state commissions require political party balance or mandate some type of geographical balance, while Alaska's constitution only requires, vaguely, that "appointments be made with due consideration to area representation and without regard to political affiliation." Public member appointees to the council in Alaska must be confirmed by the legislature, but attorney members do not. Several states require legislative confirmation of both attorney and lay members.

The prohibition against "dual office holding" is to avoid conflicts of interest on the part of members (see the commentary under Article II, Section 5).

Section 9. Additional Duties

> **The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.**

The primary constitutional duty of the judicial council is to screen applicants for supreme court and superior court vacancies and nominate qualified candidates for appointment by the governor (Section 5). This section gives it the additional duty of studying the judicial system and recommending improvements. Thus, for example, the Judicial Council has studied such matters as plea-bargaining, bail, sentencing, and use of the grand jury. These studies and recommendations are described in the biennial reports to the legislature and supreme court required by this section.

In addition, this section authorizes the legislature to assign other tasks to the Judicial Council. The legislature has charged the council with the task of screening applicants for vacancies in the district court and court of appeals, as well as applicants for Public Defender. The main duty assigned to the

council by the legislature, however, is that of publicly evaluating the performance of judges prior to their retention elections. (Section 6)

To evaluate the fitness of judges for retention, the council surveys attorneys, police officers, probation officers, jurors, social workers, and court employees; it studies decisions of the judge and pertinent court records; and it solicits citizens' opinions through public hearings and other means. The council must publicize the results of its evaluations at least 60 days before the retention election. It does so by publishing them in newspapers around the state and in the official election pamphlet distributed to voters by the division of elections.

At the request of the supreme court, the Judicial Council also evaluates the performance of *pro tempore* judges (retired judges working under special assignments from the supreme court).

Section 10. Commission on Judicial Conduct

> **The Commission on Judicial Conduct shall consist of nine members, as follows: three persons who are justices or judges of state courts, elected by the justices and judges of state courts; three members who have practiced law in this state for ten years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of the members of the legislature in joint session; and three persons who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. In addition to being subject to impeachment under Section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law.**

The purpose of this section is to provide an alternative to impeachment for removing a judge from the bench. Impeachment is a cumbersome process; furthermore, it is available only in the case of proven "malfeasance or misfeasance." It has taken two amendments to this section, however, to develop a satisfactory mechanism for removing or disciplining a judge.

Initially, this section set out a procedure for removing a judge for incapacity, but not for misconduct. According to the original procedure, the Judicial Council would first certify to the governor that a supreme court justice was incapacitated, whereupon the governor would appoint a three-member board to review the matter and recommend whether the governor should remove the justice. Regarding judges of other courts, the council could recommend early retirement to the supreme court,

which was authorized to force a judge into retirement. This provision was similar to one in the 1950 Hawaii constitution.

In 1962, the Judicial Council used the original procedure to remove a judge. It became apparent, however, that the issues of judicial ethics and propriety were a greater threat to the integrity and public esteem of the judiciary than the infrequent problem of a mentally or physically impaired judge who refused to resign. Thus, the council recommended that the legislature establish a separate commission with broad authority to investigate allegations of judicial misconduct, as well as incapacity, and to recommend disciplinary action. Council members had studied the California Commission on Judicial Performance as a model for such a body. The council's recommendation led to a constitutional amendment in 1968 creating a nine-member commission on judicial qualifications.

In 1982, a second amendment changed the name of the body to the Commission on Judicial Conduct to lessen public confusion about the respective roles of this commission and the Judicial Council. It also modified the composition of the body by reducing the number of judges from five to three and increasing the number of lawyers and public members from two to three.

The Alaska Commission on Judicial Conduct may investigate charges of disability as well as charges of unethical or improper behavior (such as showing bias or personal favoritism from the bench); it may not evaluate the quality or correctness of judicial decisions, or the general skill and competence of judges. The commission's authority is limited to making recommendations to the supreme court, which independently decides if suspension, censure or removal from office is appropriate (see *In re Robson,* 500 P.2d 657 (1972)). Statutory provisions giving the commission authority to reprimand a judge were declared unconstitutional (*In re Inquiry Concerning a Judge,* 762 P.2d 1292 (1988)).

As is the case with other boards overseeing professional licensing and standards, relatively few complaints filed with the commission eventually result in a public recommendation for disciplinary action.

Section 11. Retirement

> **Justices and judges shall be retired at the age of seventy except as provided in this article. The basis and amount of retirement pay shall be prescribed by law. Retired judges shall render no further service on the bench except for special assignments as provided by court rule.**

Unlike federal judges who are appointed for life (and who do not face periodic retention elections), Alaska judges must retire at age 70, a requirement common among states. It is considered necessary to prevent the possibility of a person of failing powers remaining on the bench, and it creates the opportunity for the infusion of new talent in the judiciary. On the other hand, it deprives the state of

the services of experienced judges who remain intellectually vigorous after their seventieth birthday. After debating the matter, the framers of Alaska's constitution adopted mandatory retirement but left the door open for the supreme court to call on retired judges for ad hoc assignments (so-called *pro tempore* service).

Section 12. Impeachment

> **Impeachment of any justice or judge for malfeasance or misfeasance in the performance of his official duties shall be according to procedure prescribed for civil officers.**

Most constitutions provide for the removal of justices and judges by impeachment. However, it is a cumbersome and archaic procedure that is seldom used. It has not yet been used in Alaska. Therefore, alternative procedures for removal of judges for incapacity or misconduct, such as those found in Section 10, are common and becoming more so. Judges are not subject to recall in Alaska (Article XI, Section 8). Alaska's impeachment procedure is described in Article II, Section 20.

Section 13. Compensation

> **Justices, judges, and members of the judicial council and the Commission on Judicial Qualifications shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State.**

The first sentence in this section was amended in 1968 by adding the words "and the Commission on Judicial Qualifications." The amendment in 1982 that changed the name of the Commission on Judicial Qualifications to the Commission on Judicial Conduct inadvertently omitted express mention of this section, therefore the old name still appears here. Members of the Judicial Council and the Commission on Judicial Conduct are not paid for their service on these bodies. Rather, they receive travel expenses and an allowance for living expenses while attending meetings, similar to other members of state boards and commissions. The prohibition in the second sentence of this section against reducing the salaries of judges in office is a means of safeguarding the independence of the judiciary. This is identical to protection for the governor and lieutenant governor in Article III, Section 15, which helps protect the integrity of the three branches of government.

Section 14. Restrictions

> **Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions. Any supreme court justice or superior court judge filing for another elective public office forfeits his judicial position.**

This prohibition on dual office holding serves the same purposes as similar prohibitions that apply to legislators and the governor: it prevents conflicts of interest, concentrations of power and violations of the separation of powers (see Article II, Section 5). The additional prohibition here against holding office in a political party reinforces the nonpartisan character of the judiciary. There are no exceptions to this section and, it thus required the resignation of a state judge from his position as a regent of the University of Alaska (1976 Informal Opinion Attorney General, December 27).

Section 15. Rule-making Power

> **The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.**

By granting the supreme court authority to make administrative and procedural rules, this section promotes the unity and operational efficiency of the entire court system. At the time of Alaska's constitutional convention, the American Bar Association strongly recommended a provision of this kind; and vesting the supreme court with the power to issue rules for all state courts continues to be urged as a desirable constitutional reform in states with court systems that aren't unified and lack cohesion.

While other state constitutions also grant rule-making power to the supreme court, this provision is noteworthy because it allows the legislature to *amend* the rules governing practice and procedure by a two-thirds vote of each house. Florida has a similar provision, but there the legislature may only *repeal* a court rule by a two-thirds vote of each house. This provision is one of the important "checks and balances" of our governmental system, in this case a legislative check on the judicial branch. The legislature cannot adopt court rules on its own initiative, but only change rules made by the court (the substance of this distinction might be difficult to find in practical circumstances, however). The court has said that adopting a law containing a provision that inadvertently changes a court rule is not a proper exercise of the authority granted to the legislature in this section *(Leege v. Martin,* 379 P.2d 447 (1963)).

With the aim of discouraging public interest lawsuits against the state, the legislature in 2003 adopted a law that exposed public interest litigants to an assessment of the defendant's legal costs in cases when the defendant prevailed in court. This law affected the "public interest exception" to a rule of civil procedure that allows partial costs to be awarded to the prevailing party. Litigation ensued, in which a Native village, several environmental organizations, and some labor unions argued that the legislature did not adopt the measure by a two-thirds majority vote, and it was therefore invalid because the constitution requires a supermajority vote to change court rules. Reversing a lower court decision, the Alaska Supreme Court said that the measure changed a matter of substantive law, not procedure, and the legislature needed only a majority vote to do so (*State v. Native Village of Nunapitchuk*, 156 P.3d 389 (2007)).

While this section says that court rules governing practice and procedure in both civil and criminal cases may be amended by the legislature by two-thirds vote, there are some basic rules governing the internal working of the courts that are an exercise of the inherent powers of the judicial system as a separate branch of government, and, therefore, presumably not subject to review by the legislature. The court has said that Section 1 of this article confers some exclusive rule-making authority (see, for example, *Application of Park*, 484 P.2d 690 (1971); and *Citizens Coalition for Tort Reform v. McAlpine*, 810 P.2d 162 (1991)).

Section 16. Court Administration

> **The chief justice of the supreme court shall be the administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service. The chief justice shall, with the approval of the supreme court, appoint an administrative director to serve at the pleasure of the supreme court and to supervise the administrative operations of the judicial system.**

The first sentence of this section further unifies the court system by centralizing its administration in the chief justice of the supreme court. It follows the recommendation of the *Model State Constitution.* The second sentence allows the chief justice to address backlogs, equalize workloads and otherwise expedite the operation of the court system by temporarily assigning judges from one court to another and from one location to another.

Originally, the court administrator was hired with the approval of the entire court but served at the pleasure of the chief justice. A 1970 amendment made the administrator responsible to the entire court, which was intended to dilute the power of the chief justice. Like the amendment of Section 2, it was an outgrowth of conflicts over the exercise of power by the first chief justice under the original constitutional provisions.

ARTICLE V

SUFFRAGE AND ELECTIONS

Article V deals with voting, voting rights, and elections. The most important functions of this article establish the qualifications for voting, guarantee the right to vote, including by absentee ballot, for all who meet those qualifications, and safeguard the sanctity of elections and secrecy of ballots.

Both state and federal elections are largely governed by state law. The U.S. Constitution does not directly address the matter of qualifications for voting or the conduct of state elections. Nonetheless, amendments to the U.S. Constitution and federal voting rights legislation have established strict guidelines for the states to follow in these matters.

The first section of this article, establishing qualifications to vote in Alaska, has been amended four times. These amendments have expanded access to voting by authorizing the legislature to relax residency requirements for voters in presidential elections, lowering the voting age from 19 to 18, eliminating the literacy test and reducing the durational residency requirements from one year to 30 days. Throughout the late 20th Century, a national trend toward such changes sought to remove impediments to voting in order to reverse the steady decline in turnout and to enfranchise members of minority groups who have been systematically excluded from voting. However, more recently, lawmakers in several states have implemented policies that disproportionately impact ethnic minorities and those with relatively low incomes, thereby threatening to reduce voter turnout among those groups of citizens.

Suffrage articles are typically brief, and Alaska's is shorter and less complicated than most. The delegates tasked the legislature with fashioning a detailed election code. General provisions for the conduct of elections are found in Title 15 of the Alaska Statutes; additional provisions regarding municipal elections are found in Title 29.

Section 1. Qualified Voters

> **Every citizen of the United States who is at least eighteen years of age, who meets registration residency requirements which may be prescribed by law, and who is qualified to vote under this article, may vote in any state or local election. A voter shall have been, immediately preceding the election, a thirty day resident of the election district in which he seeks to vote, except that for**

> **purposes of voting for President and Vice President of the United States other residency requirements may be prescribed by law. Additional voting qualifications may be prescribed by law for bond issue elections of political subdivisions.**

As it originally appeared in the constitution, Section 1 read:

> Every citizen of the United States who is at least nineteen years of age, who meets registration requirements which may be prescribed by law, and who is qualified to vote under this article, may vote in any state or local election. He shall have been, immediately preceding the election, for one year a resident of Alaska and for thirty days a resident of the election district in which he seeks to vote. He shall be able to read or speak the English language as prescribed by law, unless prevented by physical disability. Additional voting qualifications may be prescribed by law for bond issue elections of political subdivisions.

Residency Requirements

This section was first amended in 1966, when the clause "except that for purposes of voting for President and Vice President of the United States other residency requirements may be prescribed by law" was added. This change was made to allow the legislature to relax the residency requirement for voting for U.S. president and vice-president. By the mid-1960s, about 19 states had taken steps to make it easier for recent residents to vote in presidential elections. In 1960, the National Conference of Commissioners on Uniform State Laws recommended the "Uniform Act for Voting by New Residents." Alaska's constitution required an amendment to conform to these trends. Ratification occurred in the 1966 primary election, and the legislature eliminated residency requirements for voting in presidential elections the following year. Congressional amendments to the U.S. Voting Rights Act have since eliminated all residency requirements for presidential elections.

The fourth amendment to this section, ratified in 1972, changed the durational residency requirement as a qualification for voting from one year to 30 days. This change was necessary to align Alaska's constitution with the U.S. Supreme Court decision in *Dunn v. Blumstein* (405 U.S. 330 (1972)) which overturned Tennessee's one-year residency requirement and questioned the validity of a residency requirement in excess of 30 days.

Voting Age

The two suffrage issues which generated controversy at the constitutional convention are now moot: the minimum voting age and literacy requirements. The original committee proposal set the minimum voting age at 20 years but was lowered to 19 in floor session; the standard elsewhere in the United

States was 21. Notably, Alaskans have long been partial to a voting age lower than 21 years; in 1945 the territorial legislature extended the vote to 18-year-olds, with the provision that Congress formally concur (ch. 1, SLA 1945), but Congress never considered the matter.

In 1970, the voting age was lowered to 18 by amendment, reflecting a growing preference across the United States because 18-year-olds had been drafted for duty in the Vietnam War. Congress also lowered the minimum voting age to 18 with amendments to the U.S. Voting Rights Act that year, but the U.S. Supreme Court said the measure could not apply to state elections. Congress responded with the Twenty-sixth Amendment, which was ratified in 1971, extending the vote to 18-year-olds in all jurisdictions. Thus, Alaska's amendment preceded congressional action by only a short time.

Literacy Requirement

Delegates opted for the requirement to "read or speak" English as a prerequisite to voting, rejecting the more restrictive proposals to require voters to "read" and "read and write" English. At the time, approximately 17 states had "read and write" literacy requirements.

A third amendment to Section 1, ratified in 1970, eliminated the requirement. This change, too, was precipitated by federal election law. The U.S. Voting Rights Act (VRA) of 1965 curtailed the use of literacy tests, and later banned them entirely, in the United States.

Despite these constitutional changes, Alaska has been required to follow several sections of the VRA since 1975 when it was amended to include language minority provisions. Specifically, between 1975 and 2013, Alaska was subject to Section 5 of the VRA, requiring it to submit any proposed changes in election law to the Department of Justice for "preclearance." This provision became inoperable nationwide in 2013 after a U.S. Supreme Court decision invalidated the formula used to determine whether a jurisdiction was required to obtain preclearance.

Additionally, several Alaska census areas are subject to Section 203 of the VRA, which requires the provision of minority language assistance. In 2013, several individual voters and village councils sued the state in federal court over the provision of language assistance under Section 203. In a 2015 stipulated settlement, the state agreed to establish a comprehensive language assistance program including bilingual voting materials, translation panels, outreach workers, and training for poll workers. The terms of the settlement have been extended twice and remain in effect until December 2026 (*Toyukak v. Dahlstrom*, 3:13-cv-00137-SLG (2023)).

Votes on General Obligation Bonds

The last sentence in this section is not enforceable, even though it has not been removed by formal amendment. Historically, municipalities in Alaska limited voting rights on local general obligation bond issues to property owners because the bonds are repaid by assessments on property. However,

the U.S. Supreme Court struck such restrictions down nationwide in 1970 *(City of Phoenix v. Kolodziejski,* 26 L. Ed. 2d 523 (1970)).

Section 2. Disqualifications

> **No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored. No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed.**

Historically, convicted felons and the mentally incompetent were denied the vote in virtually all states, sometimes indefinitely. The reason for doing so is a presumption that these people are unfit to vote. However, numerous states have, in recent years, established legal pathways by which felons may restore voting rights upon completion of incarceration or parole.

Crimes involving moral turpitude are defined in law (AS 15.80.010(10)) and include virtually all felony crimes. The right of a convicted felon to register to vote is restored at the time the person is unconditionally discharged (AS 15.05.030; see *Singleton v. State*, 921 P.2d 636 (Alaska Ct. App. (1996)).

Section 3. Methods of Voting; Election Contests

> **Methods of voting, including absentee voting, shall be prescribed by law. Secrecy of voting shall be preserved. The procedure for determining election contests, with right of appeal to the courts, shall be prescribed by law.**

Three important guarantees are expressed here: absentee voting; voting by secret ballot; and judicial review in contested elections. Absentee voting allows qualified voters to cast a ballot despite a temporary absence from their voting precinct on election day or a physical disability which prevents them from going to the polls. By statute, an absentee ballot may be cast by a qualified voter for any reason (AS 15.20.010). At the time of the convention, constitutional guarantees of this kind were commonplace among states, several of which had been amended in the aftermath of World War II to ensure servicemen could vote in their home state.

Elections are the foundation of representative democracy, and all state constitutions contain some provision to guarantee their integrity. Alaska's constitution is one of the few that refers to "secrecy" of voting. Others specify that elections shall be "open," "free," or "by ballot." Many constitutions give symbolic recognition to the fundamental importance of voting by placing the suffrage and elections article second in the document, behind only the declaration of rights.

Less common in other state constitutions are provisions allowing courts to resolve election contests, including challenges to the outcome of an election on the grounds of irregular election procedures, failure of the winner to meet the legal qualifications for candidacy, or corrupt practices sufficient to change the results of the election. The delegates modeled this provision on language in the Hawaii Constitution ("contested elections shall be determined by a court of law of competent jurisdiction in such manner as shall be provided by law"). The third sentence of this section directs the legislature to establish a court procedure to review the legality of an election result (codified at AS 15.20.540 – 15.20.560). Also, the legislature has provided a procedure whereby the results of recounts may be appealed to the court (AS 15.20.510; see *Cissna v. Stout,* 931 P.2d 363 (1996)). Alaska's supreme court has consistently emphasized the necessity of determining the intent of the voter in cases involving questioned ballots (see *Miller v. Treadwell,* 245 P.3d (2010)).

Section 4. Voting Precincts; Registration

> **The legislature may provide a system of permanent registration of voters, and may establish voting precincts within election districts.**

Registration of voters prior to an election is now used by almost all states to safeguard the integrity of elections. After statehood, Alaska voters merely gave their name, residence, and mailing address to the election judge at their polling place and verbally affirmed their eligibility to vote before casting a ballot. In 1968, the legislature passed a voter registration law allowing but not requiring registration in advance of an election (ch. 211, SLA 1968). The measure prohibited charging registration fees and allowed individuals to appeal a denial of registration to superior court. A group of citizens filed a referendum petition to reject the law, but it failed to secure enough votes at the 1970 primary election. Referendums are addressed in Article XI.

Delegates at the constitutional convention wrestled with the matter of voter registration, thinking it unnecessary in the small towns and villages across Alaska. A committee proposal would have required registration in all cities with over 2,500 residents and left the matter up to the legislature in other areas. However, the delegates ultimately left it up to the legislature to decide.

Section 5. General Elections

> **General elections shall be held on the second Tuesday in October of every even-numbered year, but the month and day may be changed by law.**

In 1945, the territorial legislature, with congressional approval, established the date of general elections as the second Tuesday in October. However, longstanding federal law called for presidential and congressional elections on "the Tuesday next after the first Monday in November," and that date

became the national standard for state general elections. The convention delegates rejected an amendment to adopt the more common date, but the first state legislature swiftly exercised its prerogative by adopting the standard date by statute due to the expense and complication of holding a general election for state offices in October and another for federal offices a month later (AS 15.15.020).

ARTICLE VI

LEGISLATIVE APPORTIONMENT

Legislative apportionment refers to the distribution of legislative seats among election districts. Most of the original language of this article was changed or repealed by a 1998 amendment, after U.S. Supreme Court rulings rendered it unenforceable. The amendment created an appointed, public, five-member board responsible for redrawing legislative election districts every ten years.

This article uses the term redistricting interchangeably with reapportionment, although the former more precisely refers to the redrawing of district boundaries in accordance with population changes, whereas the latter is the reallocation of the number of seats among those districts.

Until the mid-1960s, many state senates were apportioned based on geographical area. For example, each county might have one senator, regardless of its population. Today, all state legislative chambers are apportioned based on population. All senators in a legislature represent approximately the same number of people, and all house members also represent an equal number of people; however, because there are more house members, they represent fewer constituents than do senators. This has not always been the case.

When Congress created the Alaska Territorial Legislature in 1912, it provided each of the four large judicial districts two senators and four representatives. The judicial districts were not equally populated at the time and became even more disparate as the territory's population increased and gravitated toward a few larger towns. As a result, residents of the less populous districts had far more representation in the legislature than did residents from more urban districts. In 1942, Congress responded by reapportioning the house, making the number of seats for each of Alaska's four judicial districts proportional to its population. The apportionment of the senate was not changed, but the number of senators was increased from 8 to 16, and representatives from 16 to 24. These changes took effect in 1944.

A consequence of allocating legislative seats to only four districts was that legislators tended to be elected from the largest town in each district. The planners of the constitutional convention recognized this problem. To ensure broader representation at the convention, they included 15 single-member districts in the convention apportionment plan, along with seven delegates elected at-large from the entire territory, and 33 delegates elected from the four judicial districts, for a total of 55.

The delegates abandoned the four large judicial districts in favor of house election districts in the constitution. Initially, house members were to be elected from 24 districts, 17 of which were single-member and seven were multi-member. These districts would be modified as necessary after each decennial census to maintain approximate equality of population. For the senate, the delegates settled on an apportionment scheme based on geography and population. Each of the four judicial districts would have two senators, plus additional senators based on the relative population of the district. Therefore, apportionment of the Alaska senate resulted in comparatively more representation for less populated areas of the state. This situation was typical of state senates throughout the country, but it was not to last.

In a series of historic reapportionment cases in the early 1960s, the U.S. Supreme Court established the apportionment rule of "one person, one vote," based on the equal protection clause of the federal constitution (*Baker v. Carr,* 369 U.S. 267 (1962), and *Reynolds v. Sims,* 377 U.S 567 (1964)). According to this rule, seats in both houses of bicameral state legislatures must be exclusively apportioned based on population, and the seats in each chamber must represent roughly the same number of people. The court's rulings forbade the pervasive over-representation of rural districts resulting from area-based apportionment of state senates and the failure of lower houses to periodically adopt new redistricting plans.

These decisions effectively nullified much of the original contents of this article. Under the existing apportionment of the senate, 31 percent of voters resided in districts which could elect a majority of the senate, and it was clearly unconstitutional under the "one person, one vote" standard. In 1964, Governor William Egan reapportioned the senate using mechanisms originally intended only for the house of representatives, which were subsequently upheld by the Alaska Supreme Court in *Wade v. Nolan,* 414 P.2d 689 (1966).

Originally, the governor was responsible for redistricting after each decennial U.S. census. Nationwide, reapportionment is traditionally a legislative function, but convention delegates were mindful of the reluctance of legislatures to reapportion themselves in a fair and timely manner, and that many had not been reapportioned for decades. Therefore, they created an automatic reapportionment process within the executive branch and modeled the process on the Hawaii constitution.

Redistricting plans proclaimed by the governor following the 1970, 1980 and 1990 censuses were challenged by partisan opponents, and aspects of all three were found to be unconstitutional by the Alaska Supreme Court. A summary of the post-1970 redistricting litigation is found in *Egan v. Hammond*, 502 P.2d 856 (1972), and *Groh v. Egan*, 526 P.2d 863 (1974). Post-1980 redistricting litigation is summarized in *Carpenter v. Hammond*, 667 P.2d 1204 (1983), and *Kenai Peninsula Borough v. State,* 743 P.2d 1352 (1987). Post-1990 redistricting litigation is summarized in *Hickel v. Southeast Conference,* 846 P.2d 38 (1992).

In 1998, the legislature proposed, and voters narrowly ratified, an amendment that fundamentally changed the redistricting process by transferring authority from the governor to an appointed, five-member public board. The board is required to produce a draft redistricting plan (or plans) within 30 days of receiving block-level data from the U.S. Census Bureau, and a final plan within 90 days. Final plans may be challenged, and the courts must handle such litigation on an expedited basis.

Transferring redistricting duties to a board has not made the process less contentious, nor has it reduced litigation. For various reasons, the board's plans have sparked lawsuits following each decennial census in 2000, 2010, and 2020. (For examples, see *In re 2001 Redistricting Cases,* 47 P.3d 1089 (2002)); *In re 2011 Redistricting Cases*, 274 P.3d 466 (2012); and *In re 2021 Redistricting Cases*, 528 P.3d 40 (2023).

While redistricting is usually by the legislature, several states delegate the task of redistricting to a board or commission. Some states have "backup" commissions in case the legislature fails to produce a legal plan, and others use commissions that are advisory to the legislature. (See Article III, Section 6(b) of the Connecticut constitution and Article III, Section 28 of the Texas constitution for examples).

Section 1. House Districts

> **Members of the house of representatives shall be elected by the qualified voters of the respective election districts. The boundaries of the house district shall be set under this article following the official reporting of each decennial census of the United States.**

Representatives are elected by the voters only of his or her district. Qualifications for representatives are specified in Article II, and for voters in Article V. House district boundaries must be redrawn every ten years after each federal census in order to keep them roughly equal in population.

Section 2. Senate Districts

> **Members of the senate shall be elected by the qualified voters of the respective senate districts. The boundaries of the senate districts shall be set under this article following the official reporting of each decennial census of the United States.**

Senators are also elected only by voters of their district, and senate districts must also be redrawn every ten years.

Section 3. Reapportionment of House and Senate

> **The Redistricting Board shall reapportion the house of representatives and senate immediately following the official reporting of each decennial census of the United States. Reapportionment shall be based upon the population within each house and senate district as reported by the official decennial census of the United States.**

This section assigns authority for redistricting to a board. Federal law generally prohibits states from using any population data other than that published by the U.S. Census Bureau. Prior to 1990, Alaska adjusted the federal census figure by removing the estimated number of non-resident military personnel in the state. The original constitutional provisions specified that redistricting was to be based on the "civilian" population. In 1999, however, the legislature prohibited the redistricting board from adjusting census data for the purpose of "excluding or discriminating among persons counted based on race, religion, color, national origin, sex, age, occupation, *military or civilian status*, or length of residency" (AS 15.10.200(b); emphasis added).

The U.S. Census Bureau usually releases two census numbers: the results of the actual enumeration (which is the number Congress uses to reapportion), and a statistically adjusted number that attempts to correct for the inevitable over-count and under-count in the field enumeration. The different numbers have partisan implications, so the question in the states of which to use is politically contentious. Alaska is among the majority of states that uses the results of the actual enumeration.

Section 4. Method of Redistricting

> **The Redistricting Board shall establish forty house districts, with each house district to elect one member of the house of representatives. The board shall establish twenty senate districts, each composed of two house districts, with each senate district to elect one senator.**

This section mandates single-member districts. Prior to 1992, multi-member districts were common in Alaska. House districts are the building blocks for senate districts, which are formed by combining two house districts.

Section 5. Combining Districts (Repealed)

Section 6. District Boundaries

> **The Redistricting Board shall establish the size and area of house districts, subject to the limitations of this article. Each house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty. Each senate district shall be composed as near as practicable of two contiguous house districts. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.**

In this section, "contiguous" means all areas of a house district must be reachable without crossing the district boundary, although the Alaska Supreme Court has recognized that, because of geographical features such as archipelagos, "a contiguous district may contain some amount of open sea." "Compact" districts should approximate circles rather than long, sinuous shapes; and the preference for socio-economic integration recognizes the value of a district population that interacts both socially and commercially.

These requirements are typical in state constitutions and are intended to reduce the opportunity for redistricting authorities to "gerrymander"—that is, to draw district lines strictly for partisan advantage. While the contiguity standard is absolute, compactness and socio-economic integration are subjective matters of degree, especially in Alaska, and it is ultimately up to the courts to decide whether those standards have been met.

Specifically, Alaska courts review redistricting plans as if they were a regulation "adopted under a delegation of authority from the legislature to an administrative agency" to ensure that authority is not exceeded, and that the regulation is "reasonable and not arbitrary" (*In re 2001 Redistricting Cases*, 44 P.3d 141 (2002)). Redistricting is a complex task and must conform with requirements set by this section, the U.S. Constitution, and the federal Voting Rights Act. The Alaska Supreme Court, in *Hickel v. Southeast Conference*, 846 P.2d 38 (1992), provided that the requirements of this section receive priority in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.

How close must districts be to the ideal population of one-fortieth of the state's total population? While the U.S. Supreme Court has held that deviations from the ideal population of plus or minus five percent, for an overall deviation of ten percent in a statewide plan, are acceptable without

justification, the Alaska Supreme Court has enunciated a stricter standard. Reviewing the board's final plan in 2002, it ordered the board to further reduce deviations in Anchorage, although all were within the federal guideline of plus or minus five percent, stating that "newly available technological advances will often make it practicable to achieve deviations substantially below the ten percent federal threshold, particularly in urban areas" (*In re 2001 Redistricting Cases*, 44 P.3d 141 (2002)).

Section 7. Modification of Senate Districts (Repealed)

Section 8. Redistricting Board

(a) There shall be a redistricting board. It shall consist of five members, all of whom shall be residents of the state for at least one year and none of whom may be public employees or officials at the time of or during the tenure of appointment. Appointments shall be made without regard to political affiliation. Board members shall be compensated.

(b) Members of the Redistricting Board shall be appointed in the year in which an official decennial census of the United States is taken and by September 1 of that year. The governor shall appoint two members of the board. The presiding officer of the senate, the presiding officer of the house of representatives, and the chief justice of the supreme court shall each appoint one member of the board. The appointments to the board shall be made in the order listed in this sub-section. At least one board member shall be a resident of each judicial district that existed on January 1, 1999. Board members serve until a final plan for redistricting and proclamation of redistricting has been adopted and all challenges to it brought under Section 11 of this article have been resolved after final remand or affirmation.

(c) A person who was a member of the Redistricting Board at any time during the process leading to final adoption of a redistricting plan under Section 10 of this article may not be a candidate for the legislature in the general election following the adoption of the final redistricting plan.

The sentence "appointments are to be made without regard to political affiliation" suggests the board is intended to be non-partisan. However, redistricting is highly partisan because the political parties have a large stake in the outcome. The number of board members (five) and the method of appointment are not likely to produce a non-partisan body or a balanced bi-partisan body. If one legislative chamber is the same party as the governor, for example, that party will likely have three members on the board.

Compensation of board members is not set in statute. The board terminates when all litigation concerning the plan is finished. Subsection (c) prevents a recurrence of a situation following the 1990 redistricting cycle in which the chairman of the governor's advisory board ran successfully in a newly created house district that had no incumbent.

Section 9. Board Actions

> **The board shall elect one of its members chairman and may employ temporary assistants. Concurrence of three members of the Redistricting Board is required for actions of the Board, but a lesser number may conduct hearings. The board shall employ or contract for services of independent legal counsel.**

This section authorizes the board to hire staff and requires it to hire legal counsel. To avoid partisan influence, the drafters of this section did not want the board to rely on the attorney general for legal advice.

Section 10. Redistricting Plan and Proclamation

> **(a) Within thirty days after the official reporting of the decennial census of the United States or thirty days after being duly appointed, whichever occurs last, the board shall adopt one or more proposed redistricting plans. The board shall hold public hearings on the proposed plan, or, if no single proposed plan is agreed on, on all plans proposed by the board. No later than ninety days after the board has been appointed and the official reporting of the decennial census of the United States, the board shall adopt a final redistricting plan and issue a proclamation of redistricting. The final plan shall set out boundaries of house and senate districts and shall be effective for the election of members of the legislature until after the official reporting of the next decennial census of the United States.**
>
> **(b) Adoption of a final redistricting plan shall require the affirmative votes of three members of the Redistricting Board.**

The redistricting board must adopt at least one draft plan 30 days after it receives block-level census data, which must be released within a year following the census under federal law but is typically available in late summer. Then the board has an additional 60 days to hold hearings (the number and location are not specified) and adopt a final plan.

This compressed 90-day schedule is supposed to ensure that a board-created, court-approved plan is in place in time for the June 1 filing deadline for the first legislative elections that follow the decennial census. However, litigation has frequently resulted in court-imposed interim plans. For the elections in 1972 and 1992, the superior court imposed interim redistricting plans of its own creation because the governor's plans were still being adjudicated. Following the 2020 census, the redistricting plan was reviewed twice by the Alaska Supreme Court, which ultimately affirmed the lower court's imposition of an interim plan in 2022 so that elections could be held on time. The board later ratified the court's interim plan on May 15, 2023, nearly two years after the release of census data and well after the 2022 general election.

Section 11. Enforcement

> **Any qualified voter may apply to the superior court to compel the Redistricting Board, by mandamus or otherwise, to perform its duties under this article or to correct any error in redistricting. Application to compel the board to perform must be filed not later than thirty days following the expiration of the ninety-day period specified in this article. Application to compel correction of any error in redistricting must be filed within thirty days following the adoption of the final redistricting plan and proclamation by the board. Original jurisdiction in these matters is vested in the superior court. On appeal from the superior court, the cause shall be reviewed by the supreme court on the law and the facts. Notwithstanding Section 15 of Article IV, all dispositions by the superior court and the supreme court under this section shall be expedited and shall have priority over all other matters pending before the respective court. Upon a final judicial decision that a plan is invalid, the matter shall be returned to the board for correction and development of a new plan. If that new plan is declared invalid, the matter may be referred again to the board.**

In addition to allowing any qualified voter to sue to compel the board to do its work or to challenge the final plan adopted by the board, the courts have held that municipal governments may also bring suit.

That plaintiffs are given a short filing deadline, and the courts required to hear these challenges on an expedited basis reinforce the intention to produce a valid redistricting plan for the first legislative election two years after the year of the census. If the supreme court invalidates part of the board's plan, it "shall" remand the plan to the board for further work. But if the supreme court finds fault with the plan a second or subsequent time, it "may" remand the plan to the board. The alternatives to another remand, although unspecified here, most prominently include the court imposing its own plan.

ARTICLE VII

HEALTH, EDUCATION AND WELFARE

This article is the shortest in the constitution and, at the time it was written, the least controversial. It directs the legislature to establish a unified school system open to all children of the state; enshrines the University of Alaska; and affirms the power of the legislature to provide for public health and welfare.

Few other constitutions contain a similar article. Most devote an article just to education. Providing for the public health, safety, and welfare is the essence of the state's police powers, which are an inherent attribute of sovereignty. If reference is made to these matters in a state constitution, it is usually enumerating the powers of the legislature.

Section 1. Public Education

> **The legislature shall by general law establish and maintain a system of public schools 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 educational institution.**

Virtually all state constitutions require the legislature to provide free public education, although the precise wording varies by state. Constitutions have long prohibited public money from being used to support religious or sectarian schools. In Alaska, the Territorial Organic Act of 1912 stated: "Nor shall any public money be appropriated by the Territory or any municipal corporation therein for the support or benefit of any sectarian, denominational, or private school, or any school not under the exclusive control of the government."

While this section establishes state responsibility for education, it is silent on how schools are to be organized and operated. Constitutional convention deliberations and Article X make clear that local school districts control these matters under the fiscal supervision of a city or borough.

By adopting this section, the people of Alaska affirmed the goal of having a single, statewide school system. At the time of statehood, however, a dual system of public education existed. Municipal and territorial schools served urban areas, and federal Bureau of Indian Affairs (BIA) schools served the

Native population in rural communities. Although the territorial legislature sought to unify this dual system, a lack of funding and racial bias slowed progress. Three decades later, thanks largely to revenue from North Slope oil fields, the legislature established the state-operated school system within the unorganized borough to replace BIA schools with state-run boarding schools. Municipalities and boroughs continued to operate school districts within their boundaries. Supplanting BIA schools with state-funded and operated schools did not result in uniformity of educational quality or opportunity for all students, however.

Representatives of rural schools repeatedly sued the state to bring their schools closer to parity with urban schools. The first of several notable cases was the Molly Hootch case filed in 1972 on behalf of a group of Alaska Native schoolchildren to compel the state to build and operate secondary schools in villages (*Hootch v. Alaska State-Operated School System,* 536 P.2d 793 (1975)). Lawyers for these students argued that a school system which forced certain children to leave family and home for boarding schools in a distant, strange, and frequently hostile environment was not truly "open to all children of the state" as contemplated by this section. The suit also claimed that the lack of local secondary schools in villages amounted to racial discrimination and denial of equal protection under Article I of the Alaska Constitution and the Fourteenth Amendment of the U.S. Constitution. After lengthy litigation through which the Alaska Supreme Court rejected the claims based on this section, but never fully adjudicated the other claims, an out-of-court settlement obligated the state to build and operate primary and secondary schools in many rural villages. The settlement (consent decree) is discussed in *Tobeluk v. Lind,* 589 P.2d 873 (1979).

Another suit on behalf of rural schools alleged that the state's different methods of capital funding for urban and rural schools was discriminatory. School districts within a city or borough with a sufficient property tax base can, at their discretion, sell bonds for school construction and, under a state reimbursement program, recapture a percentage of their bond debt payments from the state. School districts located within the unorganized borough, which are predominantly rural, cannot participate in this school debt reimbursement program because they lack taxing authority. They must instead fund school facilities with direct appropriations from the legislature. In 1997, a coalition of parents, rural school districts, and an advocacy group sued the state on the grounds that this method of financing schools was arbitrary and unfair, and resulted in many substandard rural school facilities. They alleged violations of this section, the equal protection clause of Article I, Section 1, and the federal civil rights law. A superior court agreed with the plaintiffs that the history and practice of capital funding for schools fell short of the state's constitutional obligations *(Kasayulie v. State,* Case No. 3AN-97-3782CI). After a decade of delay caused by a secondary issue, the state settled the case by agreeing to fund several specific rural school projects and adopt a more equitable method for funding schools.

Like the *Kasayulie* plaintiffs, the Matanuska-Susitna Borough sued the state over the method of school funding but on the basis that it had to pay part of the cost of a new school under the state's

debt reimbursement program, whereas districts within the unorganized borough paid nothing for their schools (after the state agreed to a settlement based on allegations of discrimination in the Molly Hootch case). They said that this amounted to a violation of the equal protection clause of the state constitution. The Alaska Supreme Court disagreed *(Matanuska-Susitna Borough v. State,* 931 P.2d 391 (1997)).

In 2004, another suit alleging state neglect of rural schools was brought on behalf of several rural districts where students were performing poorly academically. The plaintiffs argued the failure of the state to intervene effectively to improve these underperforming schools amounted to an abrogation of its constitutional duty under this section. A superior court agreed, and in 2012 the state settled the case by pledging corrective action (*Moore v. State*, Case No. 3AN-04- 9756CI).

"Direct Benefit" Cases

On several occasions the courts have decided whether state funds are being used in violation of the last sentence of this section, which prohibits the state from spending public money for the "direct benefit" of religious and other private schools. Indeed, a dispute over this issue was an early constitutional question to come before the new state supreme court. It involved the provision of free public transportation for pupils attending private schools, authorized by a territorial law adopted in 1955. On the basis of this section, the court in 1961 declared the practice unconstitutional *(Matthews v. Quinton,* 362 P.2d 932 (1961)).

The *Quinton* decision notwithstanding, the legislature later adopted AS 14.09.020, which reimbursed school districts for providing free public transportation to private school students who lived along routes generally served by the public-school transportation system. In 1993, the Department of Education cut off state funds for this service on the grounds that it was unconstitutional under the *Quinton* decision. Parents of students in the Fairbanks area sued, and the superior court upheld AS 14.09.020 stating that, under the legal analysis in *Sheldon Jackson College* (see next paragraph), pupil transportation constituted "indirect aid" to nonpublic schools and therefore did not violate the direct-benefit provision of this section (*Ten Eyck v. State*, Case No. 4FA-93-02135CI (1993)).

Another case involved a state grant program that gave residents attending private colleges in Alaska the difference between the tuition charged at their college and that charged by the state university. Opponents of the program claimed that it benefited the private schools directly, although technically the grant was made to the student. While the case was pending, the legislature placed a constitutional amendment on the general election ballot in 1976 that would have expressly permitted the type of tuition grant at issue. The voters rejected the proposal by a large margin and the lawsuit resumed. The Alaska Supreme Court invalidated the program, holding that the grants constituted a "direct benefit" in violation of clause of Section 1 because "the student is merely a conduit for the transmission of state funds to private colleges . . . ." *(Sheldon Jackson College v. State,* 599 P.2d 127 (1979)).

A law enacted in 2014 extended a school allotment program allowing parents of children enrolled in a public correspondence program to receive money directly from school districts that can be used to "purchase nonsectarian services and materials from a public, private, or religious organization" (AS 14.03.310). In 2023, a group of parents challenged the law, and a superior court judge issued summary judgment in their favor, striking down the allotment program as facially unconstitutional, which would prevent correspondence students from using state funds for any purpose.

On appeal, the Alaska Supreme Court reversed, finding that the allotment statute has a "plainly legitimate sweep . . . despite allowing some unconstitutional uses." Further, the court ruled the direct benefit prohibition "does not prohibit all uses of public funds related to education, only direct benefits to private educational institutions. The constitutional convention debates and prior case law show the prohibition was not intended to bar purchasing educational materials from private vendors or allowing welfare benefits for private school students." The case was remanded to superior court to decide whether using the funds to pay for private school tuition was unconstitutional. At this writing, the case is ongoing (*State v. Alexander*, 566 P.3d 268 (2025)).

Section 2. State University

> **The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.**

Section 3. Board of Regents of University

> **The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance with law, formulate policy and appoint the president of the university. He shall be the executive officer of the board.**

These sections create the University of Alaska as a public corporation and establish its management and governance. The Board of Regents appoints the president of the university without the approval of the governor or legislature, unlike appointment of department heads (see Article III, Sections 25 and 26).

These sections confer a measure of autonomy on the university, and the Alaska Supreme Court has acknowledged that the university is "an instrumentality of the sovereign which enjoys in some limited respects a status which is coequal rather than subordinate to that of the executive or the legislative

arms of the government." Nonetheless, it has consistently treated the university as an agency of the state like any other (see *University of Alaska v. National Aircraft Leasing,* 536 P.2d 121 (1975), applying statutes waiving sovereign immunity to the university; *Carter v. Alaska Public Employees Association,* 663 P.2d 916 (1983), applying state public record disclosure laws to the university; and *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162 (2009), holding that proceeds from university lands are state revenues for purposes of Article IX, Section 7.)

Several disputes over the university's autonomy occurred in the late 1970s. The first originated in 1977 when the legislature included it under the state's fiscal procedures and executive budget acts, which apply to other departments and agencies of the executive branch. The university sued the state over this and other measures, alleging they infringed on the regents' constitutional authority to govern. The university eventually withdrew these claims and remains subject to the Executive Budget Act (AS 37.07.120, which explicitly includes the University within the definition of "agency" for purposes of the act). An opinion of the attorney general said: "The University of Alaska is similar in all or most respects to other state executive agencies for purposes of budgeting and accounting; it does not have any peculiar status by virtue of being constitutionally established" (1977 Op. Att'y Gen. No. 9 (Feb. 28)).

The second occurred when the legislature authorized the sale of a parcel of land held in trust for the university, without compensating the university, which argued it held title to the land under Section 2. The Alaska Supreme Court ruled the legislature could dispose of university land without consent of the Board of Regents, but it must compensate the university *(State v. University of Alaska,* 624 P.2d 807 (1981)). In a negotiated settlement regarding other lands sold by the state without compensation, the state agreed to reconstitute a land trust for the university.

Section 4. Public Health

The legislature shall provide for the promotion and protection of public health.

Section 5. Public Welfare

The legislature shall provide for public welfare.

One of the inherent powers of a state legislature is to provide for public health and welfare, but the use of mandatory language ("shall") in Sections 4 and 5 removes discretion in the matter. These sections are included as a statement of responsibility to act on behalf of public health and welfare. Delegate Rolland Armstrong said that these sections express "a philosophy we need within the constitution."

The draft text of both sections was taken from the Hawaii Constitution. Section 4 was not changed during floor debate. However, the draft language of Section 5 was shortened significantly. As proposed, it read: “The state may provide for public welfare for persons unable to maintain a standard of living compatible with health and human dignity.” This referred to welfare in the sense of public assistance to the indigent. Fearing that a narrow use of the term “welfare” might inhibit the legislature from implementing the section more expansively, the delegates adopted the present version.

ARTICLE VIII

NATURAL RESOURCES

At the time of the constitutional convention, Alaska had a modest economic base. Mining and fishing were mainstays, but neither was robust. Proponents of statehood believed the future of the state of Alaska depended upon the successful development of its natural resources. Statehood bills pending in Congress indicated that the new state government would acquire an enormous amount of land from federal holdings and would assume responsibility for managing all fish and wildlife. Alaska's delegate to Congress, Bob Bartlett, devoted his keynote speech at the constitutional convention to the role of resource development in Alaska's future and to the ease with which the benefits of this development could be lost by careless management, saying:

> …fifty years from now, the people of Alaska may very well judge the product of this Convention not by the decisions taken upon issues like local government, apportionment, and the structure and powers of the three branches of government, but rather by the decision taken upon the vital issue of resources policy.

Delegate Bartlett and others urged constitutional defenses against freewheeling disposals of public resources and colonial-style exploitation that would contribute nothing to the growth and betterment of Alaska. Such abuses were common in the early history of resource management in the western states, and manifestations were visible in contemporary Alaska under the complacent management of federal bureaus. Thus, the convention delegates sought to preserve the principle that Alaska resources be administered for the long-run benefit of Alaskans, akin to a public trust, and not subverted through the indifference or greed of future generations.

In drafting this article, delegates could not refer to other state constitutions or the *Model State Constitution* for ideas and guidance, as none dealt with natural resource policy as broadly as they thought necessary. At the time, only the Hawaii Constitution addressed natural resource policy in a separate, but brief, article. Other state constitutions, if they contained reference to resources at all, focused on specific matters of local relevance, such as irrigation and water rights in the western states, tidelands in Washington, and reforestation in Oregon. These state constitutions were, for the most part, written before modern principles of conservation and resource policy were articulated—sustained yield and multiple use, for example. Thus, this article was a product of the 1956 convention, and it remains unique among the states despite constitutional amendments and revisions of natural resource and environmental issues in other states.

Article VIII clearly establishes that the natural resources of Alaska should be developed. Indeed, to the convention delegates, the very success of statehood depended on it. But, while this article creates a strong presumption in favor of resource development, it spurns that which is wasteful, biologically exhaustive, rooted in special privilege, or contrary to collective rights and the larger public interest. With certain exceptions, this article allows the government to sell, lease or give away public land and resources but only in accordance with constitutional and statutory guidelines, and in full public view.

Delegates debated at some length the organization of the executive agency to be charged with managing natural resources. While there was vocal public support for a commission of fish and game, the delegates granted the legislature discretion about when or if a board should head a principal department (see discussion in Article III, Section 25).

Natural resources loom large in the lives of so many Alaskans, as both sources of subsistence or livelihood, and of cherished recreation. Yet, the language of this article is general and often obscure. It is, therefore, not surprising that controversies over resource management have been among the most bitter in Alaska's history and that courts must frequently decide the meaning of constitutional language in these disputes. A major challenge of the resource agencies has been to manage in the interest of conservation and to satisfy the needs of various user groups without creating special privileges and exclusive rights, which the constitution prohibits. The courts have determined, for example, when management schemes reasonably limit access and allocate among user groups, and when they cross a constitutional threshold and violate guarantees of equal and open access to the public.

Section 1. Statement of Policy

> **It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.**

This is an emphatic statement that the policy of the state is to encourage the development of its land and resources but in a manner that recognizes the collective interests of the people as the owners of these lands and resources. The meaning of the phrase "consistent with the public interest" is found elsewhere in this article. For example, it means that the principles of conservation must govern resource management (Sections 2 and 4); that everyone should be treated equally by management rules, particularly rules adopted in the interests of conservation that limit the access of some groups to certain resources (Sections 3, 15, 16, and 17); and that the public must be notified of all disposals of public land and resources, which may occur only according to the terms of general laws (Sections 8, 9, and 10).

The delegates wanted the state's resources developed, not plundered. At the time of the convention, a current of opinion in Alaska was that corporate developments such as the Kennecott copper mine made insufficient lasting social and economic contributions to the territory, and that absentee owners of fish traps had unfair, exclusive rights of access to Alaska's salmon and were depleting the resource in their single-minded quest for profits.

Section 2. General Authority

> **The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.**

This section grants broad legislative authority to implement the policy enunciated in Section 1. The original resource article of the Hawaii constitution, written in 1950, began with a similar provision: "The legislature shall promote the conservation, development and utilization of agricultural resources, and fish, mineral, forest, water, land, game and other natural resources" (Article X, Section 1).

In addition to utilization and development, conservation appears as an objective of resource management. The delegates understood the term in its traditional sense of "wise use." The Alaska Supreme Court has said: "The terms 'conserving' and 'developing' both embody concepts of utilization of resources. 'Conserving' implies controlled utilization of a resource to prevent its exploitation, destruction or neglect. 'Developing' connotes management of a resource to make it available for use" *(Kenai Peninsula Fisherman's Co-op Association v. State,* 628 P.2d 897 (1981)).

Section 3. Common Use

> **Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.**

This section codifies the common law doctrine that natural resources must be managed as a public trust for the benefit of the people rather than for the benefit of government, corporations, or specific individuals. Sections 15 and 17 reinforce the public trust doctrine of natural resource management and, together with this section, prohibit the state from granting special privileges or monopolies to any person or group to the wild fish, game, waters, or lands of Alaska.

Sections 3, 15, and 17 are known as the "equal access clauses." The Alaska Supreme Court has said "although the ramifications of these clauses are varied, they share at least one meaning: exclusive or special privileges to take fish and wildlife are prohibited" (*McDowell v. State*, 785 P.2d 1 (1989)). Allegations that a state action violates this section typically allege a violation of the other two as well.

Tension exists between these clauses, and other provisions of this article requiring adherence to principles of conservation (Sections 2 and 4), and those that allow "preferences among beneficial uses" (Section 4). Regulating the harvest of fish, game, and other resources in the interest of conservation involves limiting access in some manner, such as bag limits and closed seasons. Delineating legitimate regulatory measures from unconstitutional denial of access as guaranteed by Sections 3, 15, and 17 is often before the courts.

The Alaska Supreme Court has upheld traditional regulatory tools of fish and game management such as registration requirements and limitations on the means and methods of taking, including: designation of "superexclusive" fishing districts in which people who register to fish are barred from other districts *(State v. Herbert,* 803 P.2d 863 (1990)); designation of urban areas as "nonsubsistence areas" in which no priority may be given to subsistence hunting (*State v. Kenaitze Indian Tribe*, 894 P.2d 632 (1995)); regulations banning certain equipment in the taking of fish and game, such as a ban on spotter airplanes in the Bristol Bay salmon fishery (*Alaska Fish Spotters Assn v. State*, 838 P.2d 798 (1992)); and another on airplanes and airboats as a means of access to certain areas for hunting (*Interior Alaska Airboat Association v. State*, 18 P.3d 686 (2001)).

The courts have also upheld regulations delineating resources among user groups, such as an allocation of salmon among commercial and recreational fishermen *(Kenai Peninsula Fisherman's Co-op Association v. State,* 628 P.2d 897 (1981)); and a fixed quota of king salmon to commercial trollers challenged by sport fishers who claimed the it amounted to a special privilege and limited the ability of the public to fish for king salmon *(Tongass Sport Fishing Assn v. State*, 866 P.2d 1314 (1987)).

To be constitutionally sound, resource laws and regulations must have adequate justification; a reasonable basis for distinctions they make among various users; put everyone on an equal footing within a group of users; and may not prevent anyone from belonging to a particular user group. A regulation may make access to a resource more convenient for some people and less so for others, but convenience of access is not protected by the constitution.

However, a law or regulation in the name of conservation may treat groups unfairly or convey a special privilege in violation of the common use and anti-monopolistic safeguards of Sections 3, 15, and 17. One such law was a subsistence measure adopted by the legislature in 1986 that made access to subsistence uses of fish and game dependent upon place of residency. Under the law, people who lived in areas determined to be urban were denied access to subsistence activities, and those who lived in areas determined to be rural were permitted access. Following years of litigation, the Alaska Supreme Court reached a decision with far-reaching political and practical impacts, ruling that the state could legally allocate subsistence resources among different groups if necessary to protect the resource, but it could not use place of residency as criterion for making that allocation (*McDowell v. State*, 785 P.2d 1 (1989)).

This decision placed the state's position on subsistence resource allocation at odds with the federal Alaska National Interest Lands Conservation Act of 1980 (ANILCA). While a full review of the importance of ANILCA is outside the scope of this publication, it was an extraordinarily complex and impactful piece of legislation that sought to address land claims unresolved by the Alaska Native Claims Settlement Act of 1971; placed 104 million acres of land into various conservation designations (national parks, refuges, monuments, etc.); and otherwise protected lands with significant value for wilderness, recreation, scientific, scenic, historic, and subsistence purposes.

The ruling in *McDowell*, with its prohibition on the use of place of residency criterion for resource allocation, violated Title VIII of ANILCA. Prominent among the relevant provisions of that title, is its definition of "subsistence uses," in part, as "customary and traditional uses by rural Alaska residents of wild renewable resources," (Section 803) and requirement that "subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes" (Section 804).

Consequently, the federal government determined that state management of fish and game on federal land failed to conform to ANILCA. What followed was a panicked political effort among the Alaska legislature, governor, resource managers, Alaska Native entities, and outdoorsmen, who either supported or opposed the looming imposition of federal management of subsistence activities on federal lands in Alaska. Despite several special sessions, numerous bills, and the consideration of amendments to the Alaska Constitution seeking to maintain state management, federal agencies assumed full management responsibility of these areas in 1999.

Another regulatory scheme found to violate the equal access clauses authorized exclusive areas for big-game guides, in which only a permit holder could guide hunters. Permits were not available for competitive bidding, and were assigned based on past use, occupancy, and investment by guides. Further, the permits were of unlimited duration, required no lease or rental payment to the state, and holders were allowed to sell the permit as if it were private property. The court said that although there was nothing unconstitutional about leases and exclusive concessions on state lands, this system for allocating hunting areas among competing guides was unconstitutional because it resembled "the types of royal grants the common use clause expressly intended to prevent. Leases and concession contracts do not share these characteristics" (*Owsichek v. State*, 763 P.2d 488 (1988)).

As a result of the *Owsichek* decision, the attorney general advised the commissioner of the Department of Natural Resources that a proposal to limit the number of commercial fishing guides on the Kenai River by using permitting criteria similar to those used for exclusive hunting areas likely violated the common use and equal access clauses of the constitution (1991 Inf. Op. Att'y Gen. (September 27; 993-90-0049 and 993-91-0105)).

Although permits issued under the state's limited entry fisheries program share several of the characteristics the court found objectionable in *Owsichek*, that program is specifically authorized by Section 15.

Section 4. Sustained Yield

> **Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.**

This section bolsters the commitment to conservation found in Section 2. The principle of sustained yield management is a basic tenet of conservation: the annual harvest of a biological resource should not exceed the annual regeneration of that resource. Maximum sustained yield is the largest harvest that can be maintained annually. State law defines "sustained yield" as "the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the state land consistent with multiple use" (AS 38.04.910). At the time of the constitutional convention, stocks of Alaska's salmon had been decimated by neglect of the sustained yield maxim. The qualifying phrase "subject to preferences among beneficial uses" signals recognition by the delegates that not all the demands on resources can be satisfied, and that prudent resource management based on modern conservation principles requires prioritizing competing uses.

In a challenge to the state's predator control program, which sought to reduce the number of wolves and bears in certain areas so more moose and caribou would be available to hunters, the Alaska Supreme Court determined the sustained yield management requirement applied to all animals, and that the phrase "subject to preferences among beneficial uses" allowed the Board of Game to give priority to prey over predators *(West v. State, Board of Game,* 248 P.3d 689 (2010)). In this case, the court ruled plaintiffs failed to show that the Department of Fish and Game had ignored considerations of sustained yield.

In 2012, the Department of Fish and Game implemented emergency closure measures restricting fishing for king salmon on the Kuskokwim River due to low numbers. Such measures are permitted under state laws and regulations adopted in accordance with the "sustained yield principle" of this section. Thirteen Yup'ik subsistence fishermen, cited for violating the emergency closure, moved to dismiss the charge, claiming their fishing for king salmon was a religious activity protected by the free exercise clause of Article 1, Section 4. The district court denied the motion. All defendants were convicted and appealed to the Alaska Court of Appeals, which upheld their convictions (*Phillip v. State*, 347 P.3d 128 (Alas. App. 2015)).

In a previous case, *Frank v. State*, 604 P.2d 1068 (1979), the court devised a two-part test to determine whether an individual is entitled to religious exemption from a state law. In that case a single moose had been taken for an Athabascan funeral potlach. The court found that, although the state has a compelling interest in managing moose populations, it did not prove its interest would suffer from the discrete, occasional taking of a moose for potlatch. By contrast, in *Phillip*, the court recognized the cultural importance of harvesting king salmon to the Yup'ik people but, in ruling for

the state, found that its interest in managing king salmon stocks would suffer under plaintiffs' claims to and "unfettered right to subsistence fishing" on religious grounds.

Among the cases brought under this section is one that challenged the sustainability of petroleum resource developments, given its impact on the environment. Plaintiffs were a group of Alaskan minors who, through their parents, sued the state claiming its resource development policies violated their rights under this and other sections of Article VIII because those policies exacerbate human-caused climate change, causing them direct harms in the present, which would worsen in the future. Although the Alaska Supreme Court acknowledged they raised "compelling concerns" it nonetheless affirmed the lower court's dismissal of the case. Specifically, the court had established in prior cases that its role in cases brought under this article is limited to ensuring state agencies have taken a "hard look at the salient problems and genuinely engage in reasoned decision making." Further, the court stated, it is the job of the legislature, rather than the judiciary, to determine procedures for developing resources sustainably for the "maximum benefit of Alaskan people" (*Sagoonick v. State*, 503 P.3d 777 (2022)).

Section 5. Facilities and Improvements

> **The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.**

This section is, strictly speaking, unnecessary because the legislature possesses the inherent power to provide for all facilities, improvements, and services it deems necessary to promote a public purpose. Its presence in the constitution is hortatory—that is, it *exhorts* the legislature to do these things to further the constitutional mandate to use and develop the state's resources. Commentary on this section submitted by the drafting committee at the convention noted that it was "not intended as an authorization for the state's entering business in competition with private industry."

Section 6. State Public Domain

> **Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain.**

The public domain is government-owned land that has not been set aside for special use and remains open for private settlement and development in accordance with public land laws. Thus, all state

lands, including tidelands and submerged land beneath navigable rivers and inland bays, are in the public domain except for parcels explicitly withdrawn for a specific governmental purpose. The second sentence of this section is a general authorization for the legislature to select land in accordance with the Statehood Act (it was evident at the time that Congress would make a large grant of federal land to the new state) and to provide for the administration of state lands. It is technically unnecessary, as managing state lands is an inherent power of all state legislatures.

Section 7. Special Purpose Sites

> **The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.**

This language, like that of Sections 5 and 6, is unnecessary. However, it makes clear that special-purpose withdrawals are constitutional even though development objectives are stressed in other sections.

Pursuant to state law, land may be classified as forest and wildlife reserves, state parks (to protect areas with special recreational, scenic, cultural, historical, wilderness, and similar values), state trails, and wild and scenic rivers (AS 38.04.070). However, these classifications may not impair public access for traditional recreational use unless they are less than 640 acres or approved by the legislature (AS 38.04.200).

Section 8. Leases

> **The legislature may provide for the leasing of, and the issuance of permits for exploration of, any part of the public domain or interest therein, subject to reasonable concurrent uses. Leases and permits shall provide, among other conditions, for payment by the party at fault for damage or injury arising from noncompliance with terms governing concurrent use, and for forfeiture in the event of breach of conditions.**

This and the following section deal with public access to resources on state lands. This section authorizes the legislature to lease the public domain and issue permits for mineral exploration on it. Commentary on this section prepared by the drafting committee said:

> 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.

The legislature has exercised this authority in the Alaska Land Act (AS 38.05). Articles 6 (AS 38.05.131-134) and 7 (AS 38.05.135-184) govern exploration and leasing of petroleum and mining lands, respectively.

Section 9. Sales and Grants

> **Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.**

The Alaska Land Act implements this section by providing for the sale of land by auction, lottery, and other methods (AS 38.05).

In addition to leasing, the legislature may sell or give away (by means of a grant) state-owned resources. "Interests therein" refers to specific, limited uses of the land, such as agriculture, which may be sold without transferring full title. The second sentence anticipated Congress would prohibit the new state from conveying mineral interests in its land and, in fact, Section 6(i) of the Alaska Statehood Act does exactly that. The background of this provision is discussed at length in *State v. Lewis,* 559 P.2d 630 (1977); see also Section 11, and Article XII, Section 13.

A condition of sale or grant of the surface use of state land is that the state retains ownership of the subsurface mineral resources and may provide third party access to these resources. In the case *Hayes v. A.J. Associates* (960 P.2d 556 (1998)), the court ruled that commercial developers who had purchased land from the state had to accommodate staked mining claims on their land. Third-party mining claim access may not unduly impair the owner's right to use the land or to control trespass by others, and the owner may be compensated for damages caused by those seeking to exercise right of access. Further, pursuant to AS 38.05.130, the right of access is available only after the third-party holder of the mining claim obtains the landowner's consent or by posting a surety bond. The *Hayes* ruling remanded to the trial court the issue of determining an appropriate amount and means to indemnify the owner's interests.

This little-known reservation of mineral rights to the state, and the right of anyone to stake mining claims in pursuit of minerals, received widespread public attention in 2003 when homeowners in the Matanuska-Susitna Valley discovered the state had issued coal bed methane gas exploration leases on private, residential lots that had once been state land.

Section 10. Public Notice

> **No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.**

This section requires the state to follow fixed legal procedures that protect the public's interest when disposing of state lands and resources as authorized by Sections 8 and 9. One requirement is a formal announcement that the state intends to sell, lease, or grant a specific parcel before the transaction occurs. This requirement protects against fraud and administrative wrongdoing, and concessions, sales, and leases that confer special privileges in violation of Sections 3, 15, and 17. The Alaska Supreme Court underscored the significance of this provision in *Alyeska Ski Corporation v. Holdsworth,* 426 P.2d 1006 (1967), in which an unsuccessful bidder for a state lease complained of procedural irregularities in the award of the bid. The Department of Natural Resources rejected the complaint and asserted that the commissioner's decision in the matter was final, not subject to judicial review. The court held otherwise, compelled by the "unequivocal constitutional mandate requiring that all leases of state lands are to be entered into in accordance with safeguards imposed by law." Even though there were no express provision allowing for an appeal to the courts, the constitution "reflects the framers' recognition of the importance of our land resources and of the concomitant necessity for observance of legal safeguards in the disposal or leasing of state lands."

In 1976, dissatisfied with certain sales of state royalty oil that had been negotiated by the executive branch, the legislature placed an amendment on the ballot that would have authorized legislative veto of all disposals of state-owned natural resources. Voters rejected it.

In a dispute over a contract issued by the Alaska Railroad Corporation to remove gravel from the corporation's land, the Alaska Supreme Court held that the public notice requirement of this section was not satisfied by the contracted company merely applying for a conditional use permit from local government (*Laverty v. Alaska R.R.Corp.,*13 P.3d 725 (2000)).

The Alaska Department of Natural Resources routinely issues temporary land use permits for numerous types of exploration activities on state mining claims. These permits are regarded as temporary and revocable, but when their cumulative impacts are substantial and long lasting, they amount to a "disposal" of state resources warranting the various safeguards of Article VIII, including the requirement for public notice in this section. The Alaska Supreme Court affirmed this

interpretation in sustaining a challenge to the state's permitting of the large Pebble Mine exploration project in the headwaters of Bristol Bay *(Nunamta Aulukestai v. State, Dept. of Natural Resources*, 351 P.3d 1041 (2015)).

Section 11. Mineral Rights

> **Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents, or royalties, or upon other requirements as may be prescribed by law. Surface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.**

This and the following section describe how citizens can acquire the right to explore for and produce minerals on state-owned land. These methods distinguish between locatable and leasable minerals as established in federal land law. Locatable minerals are gold, silver, lead, and other metallic minerals; the main leasable minerals are coal and petroleum products, most notably oil and natural gas.

Locatable minerals on federal land are managed under the U.S. Mining Law of 1872. According to this law, a person can prospect freely on the public domain, and, upon discovering a mineral deposit, file a claim for the right to produce and sell the mineral; and may patent a legitimate claim to acquire from the government full ownership (fee title) of the land and the minerals it contains. The alternative to locating mineral claims on public land is leasing the land and sharing with the government the income from the sale of minerals produced (i.e., paying royalties).

Mining interests in the territory wanted to keep the location system for metallic minerals on state lands that would be acquired from the federal government at statehood. However, Congress was mindful of the importance of resource revenue to the new state and troubled by the "giveaway" of public resources inherent in a location system. Indeed, statehood bills under consideration by Congress called for the leasing of minerals in all lands transferred to the state. A draft resources article prepared by the Public Administration Service, a group serving as technical consultants to the convention, proposed the delegates adopt a leasing system for metallic minerals. However, the

delegates made clear in this section their preference for the location system, including the right to patent a claim. Thus, the next-to-last sentence allows a mining claim to be patented "…if authorized by the State and not prohibited by Congress."

Congress, in Section 6(i) of the Statehood Act, prohibited the state from parting with the title to its minerals, as follows:

> The grants of mineral lands to the State of Alaska…are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented…. Mineral deposits in such lands shall be subject to lease by the State as the legislature may direct….

The state government subsequently adopted a mining law that was nominally a leasing system but had the main attributes of the traditional location system in which claims could not be patented but were otherwise similar to those filed under federal law. This system was challenged by a coalition of environmental, Alaska Native, and fishing groups on grounds it was not a true leasing system as contemplated in Section 6(i) because it required no rent or royalty payments (*Trustees for Alaska v. State,* 736 P.2d 324 (1987)). The Alaska Supreme Court upheld the challenge, and the U.S. Supreme Court declined to hear the state's appeal. Shortly thereafter, the legislature adopted a new metallic mining law incorporating rental fees and royalties (AS 38.05.212).

Section 12. Mineral Leases and Permits

> **The legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals as may be prescribed by law. Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas, subject to reasonable concurrent exploration as to different classes of minerals, may be authorized by law. Like leases and permits giving the exclusive right of prospecting by geophysical, geochemical, and similar methods for all minerals may also be authorized by law.**

Similar to the federal Mineral Leasing Act of 1920, the rights to explore for and extract oil and gas and other nonmetallic minerals are leased by the state according to its terms and conditions. Thus, for example, an oil company may not freely drill for oil on public land as a miner might prospect for gold; it must first obtain from the state a lease to a specific tract, which is normally issued at a competitive auction. The state usually specifies that bids above minimum required lease payments be in the form of a cash payment but may specify the bid terms be royalty payments or share of net profits.

This section is implemented by AS 38.05.135-180. Petroleum revenue from competitive oil and gas lease bonus bids, royalties, and taxes were the financial lifeblood of the state of Alaska for decades. However, in recent years, new production has failed to replace declines from the once massive oil fields on the North Slope. As a result, total receipts from petroleum sources decreased from a high of around 90% of total state revenues in fiscal year 2013 to under 40% in recent years. The largest single source of state revenue is now earnings from the Alaska Permanent Fund (see Article IX, Section 15).

Section 13. Water Rights

> **All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.**

This section continues the traditional right in the western United States to use water on a "first-come-first-served" basis, which differs from an early method of acquiring water rights used historically on the East Coast known as the "riparian method" that allocates water rights to owners of the stream bank. In Alaska and the other western states, water rights are traditionally acquired by actual use of the water. Under this constitutional provision a prior user of water has preference to it, but these rights may be withdrawn or limited to reallocate water use to a higher public priority (a hydroelectric development might displace placer mines, for example). Statutes and regulations relating to water use are found at AS 46.15 and 11 AAC 93.010 -.970.

The "reservation of fish and wildlife" clause in the last sentence means those who appropriate water do not acquire a property right to the fish or wildlife that use the water.

Section 14. Access to Navigable Waters

> **Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.**

This section adopts the public trust doctrine regarding navigable rivers and other public waterways, granting citizens the right to travel on and otherwise use these bodies of water. The government may not deny this use except by a general law that protects a public interest. For example, a state law may keep people away from a lake that supplies drinking water or impair navigation on a river by building

a dam; but it may not protect the interests of a private fishing lodge by blocking public access to a stream. When the state sells or leases public land next to a navigable waterway or other public body of water, it must reserve a public access easement (AS 38.05.127; see also *CWC Fisheries, Incorporated v. Bunker,* 755 P.2d 1115 (1988), in which the court said that a sale of tidelands contained an implicit public access easement, by virtue of the public trust doctrine, even though such an easement was not mentioned in the patent). This section does not, however, authorize trespass across private land to reach a navigable body of water.

Section 15. No Exclusive Right of Fishery

> **No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.**

This is one of three "equal access" clauses of Article VIII; it applies specifically to fishing. It works with Sections 3 and 17 to guarantee no one has monopolistic access to any of Alaska's natural resources (see discussion under Section 1). The second sentence was added by amendment in 1972 to authorize an exception to the prohibition in the first sentence so that the state could institute a limited entry program for distressed fisheries.

The prohibition in the first sentence derives from a federal law governing Alaska's fisheries during the territorial period. Section 1 of the White Act prohibited the U.S. secretary of commerce from granting an "exclusive or several right of fishery" or denying to any citizen "the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted."

The exception in the second sentence was the result of efforts to revitalize the depressed salmon fisheries in the mid-1960s. Restricting the number of boats in various state-managed fisheries had primarily economic objectives but also served long-term management and conservation goals. The legislature passed a limited entry law in 1968 (ch. 186, SLA 1968), but a lower federal court found the law unconstitutional. The U.S. Supreme Court vacated that decision in *Reetz v. Bozanich*, 90 S. Ct. 788 (1970), but the issue was later litigated in state superior court, which found the law violated Article VII, Sections 3 and 15, and Article I, Section 1.

Recognizing that a limited entry system would require constitutional authorization, the legislature placed an amendment before the voters, who ratified it in 1972. Soon thereafter, the legislature adopted a limited entry law, administered by the Commercial Fisheries Entry Commission (AS

16.43). The law was upheld by the Alaska Supreme Court *(State v. Ostrosky,* 667 P.2d 1184 (1983)), and an initiative to repeal the law was rejected by a wide margin in 1976.

In 2005, the Board of Fisheries implemented regulatory changes reducing the number of salmon that could be taken in certain Cook Inlet fisheries. Impacted fishermen sued the state over the decline in market value of their limited entry permits. The Alaska Supreme Court ruled these permits did not amount to private property that would require compensation as a government "taking." To hold otherwise would effectively give permit holders an exclusive right to fish in violation of sections 3 and 15 of this article *(Vanek v. State, Board of Fisheries*, 193 P.3d, 283 (2008)).

Another dispute over the meaning of this section centered on whether allowing a tideland lease for the purpose of set net fishing created an exclusive right of fishery. Attorney general opinions have said no: "While Section 15 of Article VIII prohibits the state from granting exclusive fishing rights through legislation or regulation, it does not preclude the state from granting property interests which, by their nature, lead to exclusivity of use for fishing. The fact that the motivating force behind the creation of the property interest is a desire to promote fishing is of no consequence" (1963 Op. Att'y Gen. No. 3 (Mar. 13); *see also* 1983 Op. Att'y Gen. No. 3 (Apr. 21)).

Section 16. Protection of Rights

> **No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.**

This section further reinforces the right of public access to state-owned resources by defining the conditions under which it may be infringed or revoked. Only a superior public purpose established in law may intervene, and a fair payment must be made if a specific existing right is extinguished.

The drafters intended to assure those who had built improvements on pilings over the tidelands could acquire property rights. At the time, many docks, homes, and other buildings in coastal communities of Alaska were placed over tidelands owned by the federal government, which considered them in trespass. In *State, Dept. of Natural Resources v. Alaska Riverways, Inc.,* 232 P3.d 1203 (2010), the Alaska Supreme Court rejected a claim that this section gave a riverbank property owner the right to build a dock over a state-owned riverbed without first obtaining a lease, stating "Properly understood, section 16 establishes that substantial improvements on tidelands that existed at the time of statehood would give rise to protected property rights while tidelands that were unimproved at the time of statehood would be state property that could be disposed of only in accordance with other provisions of Article VIII.*"*

In 1973, the Alaska Supreme Court ruled that a person whose property access was impaired by construction of a state road was entitled to just compensation under this section. In that case, the Minnesota Bypass built across Chester Creek in Anchorage obstructed the flow of high water up the creek, which had been used by the plaintiff for many years as access from his property to Cook Inlet for commercial fishing, and made access to his driveway difficult *(Wernberg v. State,* 516 P.2d 1191 (1973)).

In contrast, the court denied another claim under this section because the state's construction of a bridge downstream from the residence of the claimant did not keep him from using the river as a base for his floatplane, it merely made the use less convenient *(Classen v. State,* 621 P.2d 15 (1980)).

Section 17. Uniform Application

> **Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.**

This section is an "equal protection" provision, like that of Article I, Section 1, that pertains specifically to natural resource management. It is one of three "equal access" clauses of Article VIII (see discussion of Section 3). Resource laws and regulations must apply equally to all people who are "similarly situated."

Claims of unequal treatment by fishermen over a regulation that granted a smaller allocation of fish to their district than to others were rejected by the court because the districts were not "similarly situated" with respect to fish spawning patterns, historical catch levels, and fishery participation *(Gilbert v. Department of Fish and Game,* 803 P.2d 391 (1991)).

Section 18. Private Ways of Necessity

> **Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources. Just compensation shall be made for property taken or for resultant damages to other property rights.**

The state may use its power to take private property for the benefit of a public purpose, even if the project is privately owned, like an oil pipeline or a road to a significant mining development, provided that the owner is fairly compensated (See also Article I, Section 18.).

The commentary that accompanied the draft of this section explained the intent of the constitutional convention's resources committee:

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 a general provision for the use of eminent domain proceedings to provide essential access for extraction and utilization of natural resources.

ARTICLE IX

FINANCE AND TAXATION

In drafting this article, the committee on finance and taxation generally heeded the advice of experts and consultants who urged the legislature be given broad discretion in managing the state's fiscal affairs. Historically, state constitutions were restrictive regarding public finance, which tended to result in evasive budgetary measures that complicated and distorted state financial management. Alaska's constitution contains conventional safeguards to protect the public treasury – for example, appropriations must be for a public purpose; expenditures must be authorized by an appropriation; general obligation debt requires voter approval and may only be incurred for capital projects – but it omits constraints and restrictions that bedeviled many older documents. After the state's purse swelled with oil revenues, amendments to limit appropriations and mandate savings curtailed legislative discretion in fiscal matters.

The delegates forbade the practice, common among other states, of "earmarking" revenues (Section 7). This prohibition sought to enhance the fiscal prerogatives of the legislature, not hobble them. When specific revenues are dedicated to specific purposes (gasoline taxes to highway construction, and lottery income to education, for example) the legislature loses its ability to match expenditures with changing public needs from year to year. Convention delegates believed that all public goods and services should openly compete for funding on a regular basis.

Because of the prohibition against dedicated funds in Section 7, a constitutional amendment was required to create the Alaska Permanent Fund. In 1976, voters ratified an amendment to authorize this popular and unique state fund, into which certain petroleum revenues must be deposited (Section 15).

State budgets soared after the Trans-Alaska Pipeline began operation in 1977. There was widespread concern, however, that volatile oil revenue could not sustain this higher state spending. In the summer of 1981, Governor Hammond called a special session of the legislature to consider a constitutional amendment limiting annual appropriations. This proposal was ratified at the 1982 general election as Section 16 of this article. The measure called for voters to reconsider the section five years later, in 1986, and it was upheld by a large margin. However, Section 16 has never effectively limited appropriations because the fiscal base was set comparatively high, there are significant exceptions to the limit, and revenues available for appropriation have fallen short of projections.

Nonetheless, interest continued in establishing a mandatory device to curtail spending and reserve money for the uncertainties of the future. In 1986, the legislature created in statute a budget reserve fund consisting of any legislative appropriations and revenue that exceeds the appropriation limit (AS 37.05.540). In 1990, voters approved the constitutional budget reserve fund, ratified as Section 17, which requires all income derived from the termination, by settlement or litigation, of disputes with oil companies over back taxes and royalties be deposited to the fund.

Convention delegates did not consider spending limits in the winter of 1956 given the dim fiscal prospects for the new state, their determination to draft a concise constitution, and their confidence in a fairly apportioned citizen legislature.

Section 1. Taxing Power

> **The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article.**

Legislatures frequently grant tax exemptions and other tax-related inducements to corporations to locate within the state or engage in certain business activities. Courts have found that in some circumstances this special tax treatment amounts to a contractual relationship that future legislatures may not abrogate. Consequently, the constitutions of many states provide that "the power to tax shall not be surrendered, suspended, or contracted away," to clarify that tax exemptions granted by the legislature do not create contractual obligations. The *Model State Constitution* recommended such a provision that was dropped in later editions. Presumably, the delegates adopted this prohibition to emphasize that the state could legally grant tax exemptions in law for public purposes, such as inducement for industrial development (see Section 4). The constitutional committee commentary in the draft of this section said the following: "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."

Under Article X**,** Section 2, the state can delegate its power to tax only to local government.

Section 2. Nondiscrimination

> **The lands and other property belonging to citizens of the United States residing without the State shall never be taxed at a higher rate than the lands and other property belonging to the residents of the State.**

The "equal protection" clauses of the Alaska (Article I, Section 1) and U.S. Constitutions (Fourteenth Amendment) prevent state or a local government taxing property at different rates on the basis of where the owner lives, thus rendering this section unnecessary. Symbolically, however, its inclusion

was important to reassure nonresident commercial interests, which tended to oppose statehood, that their property would not be singled out for tax purposes.

A similar provision was included for the same reason in the Territorial Organic Act of 1912: ". . . nor shall the lands or other property of nonresidents be taxed higher than the lands or other property of residents." Provisions of this kind are found in constitutions of certain western states (see, Article XXII of the South Dakota Constitution).

Section 3. Assessment Standards

> **Standards for appraisal of all property assessed by the State or its political subdivisions shall be prescribed by law.**

Many state constitutions require taxes to be "uniform and equal." Section 9 of the Territorial Organic Act of 1912 contained a uniformity clause: ". . . all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the actual value thereof." However, these provisions have complicated states' fiscal matters when courts interpreted them to prohibit graduated income taxes, tax exemptions, and other differences in the treatment of various tax sources. Because of the potential for these problems, Alaska's constitutional delegates decided against such a clause. However, they included this language for a measure of statewide uniformity in local property taxation by requiring the legislature to establish standards for appraising property.

The legislature has not written appraisal standards into law. In anticipation of doing so, and otherwise implementing this section, the legislature adopted House Concurrent Resolution 14 in 1962, which called for the Local Affairs Agency—a predecessor of the Department of Commerce, Community, and Economic Development (DCCED)—to study assessment problems and procedures in Alaska, prepare a manual for assessors and recommend legislation "necessary to establish uniform, equalized and realistic assessment throughout Alaska." A manual was prepared but was not widely adopted and has not been kept current.

In 2024, the legislature directed the DCCED to adopt standards for determining "full and true value" that are "not inconsistent" with those of the International Association of Assessing Officers. Prior to that, the law required only that the assessment of property by the state and local governments be done on the basis of "full and true value," which is defined in law as "the estimated price that the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels" (AS 29.45.110). Under that standard, the Alaska Supreme Court has historically given local governments leeway in their choice of appraisal methodologies to determine fair market value (see *North Star Borough Assessor's Office v. Golden Heart Utilities, Inc.,* 13 P.3d 263 (2000)).

In 1985, the Kenai Peninsula Borough Assembly established a levy of 1.75 mills on each dollar of assessed value for real property and a rate of 2.5 mills for personal property. Personal property was defined to include certain oil and gas transportation property. The state objected to the differential tax rate, arguing that the statutory requirement that property be assessed at its full and true value meant that real and personal property had to be assessed at the same rate, otherwise the lower rate for real property was the equivalent to assessing it at less than full market value. The matter went before the Alaska Supreme Court, which agreed with the state that both types of property had to be taxed at the same rate *(Kenai Peninsula Borough v. Department of Community and Regional Affairs,* 751 P.2d 14 (1988)).

In 2014, the Alaska Supreme Court held that assessments of "full and true value" does not necessarily require a "fair market" analysis, demonstrating the flexibility of acceptable appraisal methods under this section. In that case, BP Pipelines Alaska, several other companies that own the Trans-Alaska Pipeline (TAPS), and municipalities whose property the pipeline traverses disputed the Department of Revenue's assessment of TAPS value at $3.6 billion using a "use value" analysis, or replacement costs plus depreciation. Following an administrative appeal, the state's Assessment Review Board set TAPS value at $4.3 billion. The superior court, on appeal, increased that amount to roughly $9.8 billion for the 2006 tax year. The Alaska Supreme Court affirmed, rejecting plaintiffs' argument that state law (AS 43.56.060) required a "fair market assessment," finding "use value" to be a legitimate means of assessment, given that "there was no market from which to find fair market value, as [TAPS] was a limited-market and special-purpose property" (*BP Pipelines (Alaska) Inc. v. State*, 325 P.3d 478 (2014)).

Section 4. Exemptions

> **The real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of, property used exclusively for nonprofit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained until otherwise provided by law.**

It is typical in the U.S. that, if used for governmental purposes, property of state and local governments is immune from taxation. The first sentence of this section allows the legislature to provide for the taxation of state or municipal property in appropriate circumstances, such as when the property is used for commercial purposes (see Section 5). In the absence of such legislation, however, a tax-exempt government agency retains its exemption even if engaged in money-making activity. In a case involving a hotel-restaurant-bar business obtained through foreclosure and operated for a year by a tax-exempt state development corporation, the Alaska Supreme Court ruled the corporation

would have been liable for property taxes under the first sentence of this section if not for AS 44.59.300, which specifically exempted that entity in its public purpose of as a development agency *(City of Nome v. Block No. H, Lots 5, 6, & 7,* 502 P.2d 124 (1972)). In 1991, the statute was amended to specify that property acquired through foreclosure by a state entity as an investment is taxable.

The second sentence of this section grants an exemption to "property used exclusively for nonprofit religious, charitable, cemetery or education purposes, as defined by law." Most state constitutions exempt religious, charitable, and educational property from taxation, or require the legislature to do so by law. Cemetery property is often provided automatic exemption, as are other types of property, such as hospitals and property of horticultural and agricultural societies.

Property of an exempt organization utilized for commercial purposes is not tax-exempt, even if the profits are used for a benevolent or charitable purpose *(Evangelical Covenant Church of America v. City of Nome,* 394 P.2d 882 (1964)). Generally, only that portion of property owned by an exempt organization used exclusively for the purposes of the organization qualifies for exemption. However, the court has recognized two exceptions to the "exclusive use" requirement for minor (de minimis) activities and those "incidental to and vitally necessary" to the primary purposes of the exempted property (*Nome v. Catholic Bishop*, 707 P. 2d 870 (1985)). Thus, offices rented to private physicians in a tax-exempt hospital do not benefit from tax-exempt status *(Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence,* 553 P.2d 467 (1976)).

However, the mere fact that property belonging to a charitable organization generates income does not disqualify it from the exemption, if the income is reasonably necessary for the operation and maintenance of the property and does not represent a form of profit *(Matanuska-Susitna Borough v. King's Lake Camp,* 439 P.2d 441 (1968)). In the absence of legislation defining educational purposes, the court found a vocational training facility operated by a union qualified for the exemption despite the challenger's assertion that the program benefitted the electrical industry and the union, rather than the public *(McKee v. Evans,* 490 P.2d 1226 (1971)). The court ruled that buildings owned by the Tanana Chiefs Conference, a non-profit social service regional consortium comprised of the tribal governments of 42 Alaska Native villages, qualified for a municipal property tax exemption because the organization was pursuing charitable purposes even though its services were fully remunerated by the federal government. However, those portions of the buildings used for fundraising, lobbying, political activities, and economic development programs were not exempt *(Fairbanks North Star Borough v. Dena Nena Henash*, 88 P.3d 124 (2004)).

The exemption for charitable, religious, educational, and cemetery property extends only to general taxes, not to special assessments such as those levied under a local improvement district for water and sewer installation, road paving and similar purposes (1966 Op. Att'y Gen. No. 10 (July 28)).

The third sentence authorizes optional exemptions by the legislature. Some state constitutions prohibit statutory exemptions. The legislature has exercised its authority by extending tax-exempt status to

hospitals and to a portion of the value of residential property owned by the elderly and certain military veterans. In 2006, it exempted the residences of teachers at private religious and parochial schools (AS 29.45.030(b)(1)). The legislature also authorized municipal governments the option to grant various tax exemptions for personal property, business inventories, property of nonprofit organizations, historical sites, conservation easements, and other property types (AS 29.45.050).

Section 5. Interests in Government Property

> **Private leaseholds, contracts, or interests in land or property owned or held by the United States, the State, or its political subdivisions, shall be taxable to the extent of the interests.**

Under general principles of tax law, private interests in publicly owned property are taxable. Thus, if a person or entity leases government property, the value of the lease and any improvements are taxable even though the land is not because it remains in government ownership (see *North Star Borough Assessor's Office v. Golden Heart Utilities, Inc*., 13 P.3d 263 (2000)).

Section 6. Public Purpose

> **No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose.**

James Wickersham included a prohibition against using public money "for any but a public purpose" in a draft of Alaska's Territorial Organic Act. At a hearing on the measure, Wickersham was asked what the words meant. He replied: "Some legislatures and city councils have big Fourth of July celebrations out of public funds. It is to prevent spending money for matters of that kind." A senator observed: "A celebration of the Fourth of July might be regarded as a public matter."

The contemporary notion of public purpose in Alaska—which encompasses subsidized loans for students, private businesses, and purchasers of residential property; subsidies for personal utility bills; and permanent fund dividend payments to all residents—is an expansive one. The Alaska Supreme Court has deferred to legislative judgment about the bounds of public purpose, stating:

> …the phrase "public purpose" represents a concept which is not capable of precise definition. We believe that it would be a disservice to future generations for this court to attempt to define it. It is a concept which will change as changing conditions create changing public needs…. Where the legislature has found that a public purpose will be served by the expenditure or transfer of public funds or the use of public credit, the court will not set aside the finding of the legislature unless it clearly appears that

> such finding is arbitrary and without any reasonable basis in fact *(DeArmond v. Alaska State Development Corporation,* 376 P.2d 717 (1962)).

The court has upheld the use of revenue bonds by a public corporation and general obligation bonds of a municipality for industrial development purposes *(DeArmond;* and *Wright v. City of Palmer,* 468 P.2d 326 (1970)); the use of revenue bonds by a public corporation to purchase home mortgages *(Walker v. Alaska State Mortgage Association,* 416 P.2d 245 (1966)); and state grants to homeowners to pay off the mortgages of property lost in the 1964 earthquake *(Suber v. Alaska State Bond Committee,* 414 P.2d 546 (1966)). In *Suber* the court said: "It is not essential that the entire community or any particular number of persons should benefit from remedial legislation in order that a public purpose be served. The purpose of the program is no less public because its benefits may be limited by circumstances to a comparatively small part of the public."

Section 7. Dedicated Funds

> **The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.**

This section prohibits the dedication, or "earmarking," of funds for specific purposes so that the legislature would not tie its own hands in providing for the public needs of the day. The commentary on this section by its drafting committee included this observation:

> 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.

The phrase "as provided in Section 15 of this article" in the second sentence was added by an amendment in 1976 to allow creation of the Alaska Permanent Fund under that section. Two exceptions to the prohibition against earmarking were allowed by the convention delegates. One is a dedicated fund that was already in existence, such as the school fund of AS 43.50.140, which receives proceeds from the tobacco tax for use of school repair and construction. The other allows new earmarking when required by federal law to participate in a federal program. This is the case with the Fish and Game Fund (AS 16.05.100), to which sport hunting and fishing license fees are dedicated.

A statutory dedication of revenue may not seem too serious because it doesn't bind future legislatures, but it is likely to be self-perpetuating or a governor's veto might block a future legislature's effort at repeal. The flow of money into and out of the fund may be "off-budget" and shielded from annual review by the finance committees and the public, and those that benefit from the dedication resist changes to it.

It is unclear how comprehensive the convention delegates intended to be with this prohibition against dedicated funds with the phrase "proceeds of any state tax or license" in the first sentence. Did they mean all state revenue, or only that derived from a tax or license? The question became important when Alaska began to receive substantial income from oil lease bonuses and royalties, which are not a tax or license. An early attorney general's opinion said that oil lease royalty income was outside the prohibition against earmarking. A later opinion reversed this interpretation and held that the historical record of the convention made clear the delegates intended to bar the dedication of *all* state revenues (1975 Op. Att'y Gen. No. 9 (May 2)). Consequently, a constitutional amendment was required to create the Alaska Permanent Fund (Section 15 of this article).

The Alaska Supreme Court interpreted the phrase "proceeds of any state tax or license" to mean all sources of state revenue (*State v. Alex,* 646 P.2d 203 (1982)) and held that a statute granting state land to the University of Alaska and requiring proceeds from that land be placed in a university trust fund was an unconstitutional dedication of funds *(Southeast Alaska Conservation Council v. State*, 202 P.3d 1162 (2009)).

In 1998, Alaska participated in a settlement of tobacco-related claims which provided annual payments to the state of millions of dollars for 40 years. The legislature sold this stream of future revenue for a lump-sum, which it then appropriated mainly for rural school construction. This unusual transaction was challenged as an unlawful dedication of funds, but the court ruled that it was not *(Myers v. Alaska Housing Finance Corporation,* 68 P.3d 386 (2003)).

It is generally understood that the authors of the constitution intended certain exceptions to the prohibition against dedicated revenues, such as pension contributions, proceeds from bond issues, and certain fund receipts (1982 Op. Att'y Gen. No. 13 (Nov. 30)). Indeed, beyond these practical exceptions, some dedications have a legitimate role in state financial management, despite the public policy behind this section's prohibition. Dedication allows the benefits of a public program to be directly linked to those who pay for them. Some revenues are dedicated today in a manner deemed constitutionally acceptable; namely, the pertinent statutes say the legislature "may" appropriate certain money for a specific purpose but is not legally obligated to do so. One example among several of this in statute is the fisheries enhancement tax levied on salmon fishermen under AS 43.76.010 to support hatcheries. The tax receipts are deposited to the general fund, and "the legislature may make appropriations to the Department of Community and Economic Development for the purpose of providing financing to qualified [regional aquaculture] associations" (AS 43.76.025(c)).

Enterprise funds are also examples of de facto dedication of revenues, such as the Marine Highway System Fund, which directs receipts from the sale of ferry tickets to support that system. The constitutionality of this fund was upheld because the language of its authorizing statutes is permissive and does not restrict the authority of the legislature to appropriate from the fund; however, a provision of the act restricting the authority of the executive branch to request appropriations from the fund was found to violate this section (*Sonneman v. Hickel*, 836 P.2d 936 (1992)).

In 2014, the Ketchikan Gateway Borough challenged Alaska's statutory school funding formula that requires boroughs to contribute financial support of local schools. The borough argued local tax revenue used to support schools was a dedication of state revenues prohibited by this section. The Alaska Supreme Court rejected the borough's claim, saying it was evident from discussions at the constitutional convention and from the history of local support for community schools prior to statehood that the delegates did not intend to encompass local support for schools within the term "state tax or license" used in this section. (*State v. Ketchikan Gateway Borough*, 366 P.3d 86 (2016)).

Voters are prohibited from using the initiative to dedicate revenue. Interpreting this prohibition, the courts have expanded the concept of revenue to include non-monetary assets of the state, such as land and fish. See the discussion under Article XI, Section 7.

Section 8. State Debt

> **No state debt shall be contracted unless authorized by law for capital improvements or unless authorized by law for housing loans for veterans, and ratified by a majority of the qualified voters of the State who vote on the question. The State may, as provided by law and without ratification, contract debt for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting natural disasters, or redeeming indebtedness outstanding at the time this constitution becomes effective.**

This section permits the state to borrow money for capital improvements and veterans' housing loans. It prohibits the state from borrowing money to pay for operating expenses of government, except as provided in the last sentence and Section 10, which collectively constitute a "balanced budget" mandate found in all state constitutions. Only rarely have states issued long-term general obligation bonds to pay for annual operations, unlike the federal government which does so routinely.

Borrowing for capital improvements by selling "general obligation" bonds, which are backed by the full taxing power of the state, must be approved by voters. This restriction on the legislature is intended to protect the fiscal integrity of the treasury, and is common among the states, although a few constitutions allow the legislature to issue debt by a supermajority vote. It is the result of defaults by states on bonds issued for overly ambitious public works projects and scandals arising from

bribery and corrupt financing schemes. The Territorial Organic Act of 1912 originally prohibited the territory and its municipalities from acquiring any kind of debt without congressional approval, but this restriction was removed in 1935.

In 1982, a constitutional amendment inserted the words "or unless authorized by law for housing loans for veterans," allowing the state to sell tax-exempt general obligation bonds for that purpose. The amendment was a response to a 1980 federal law preventing states or public entities such as the Alaska Housing Finance Corporation from selling housing bonds in the tax-exempt market but allowed an exception for bonds to finance veterans' housing. Tax-exempt bonds can be sold with lower rates of interest by providing tax savings for investors. A proposal in 2016 to amend this section to additionally authorize state debt for postsecondary education loans was defeated by the voters.

The Alaska Supreme Court has construed the term "capital improvements" used here and in Section 9 to mean assets in the form of real or personal property with a permanent character, such as streets, sewers, schools, and public buildings. Thus, the municipality of Juneau could not borrow money through the sale of general obligation bonds to acquire land to later convey to the state for the expansion of state government offices, as land is not a public works or capital improvement within the traditional meaning of these terms (*City of Juneau v. Hixson,* 373 P.2d 743 (1962); see also AS 37.07.120(4)).

Revenue bonds issued by an instrumentality of the state are explicitly exempt from the requirement for voter approval of this section (see Section 11). Repayment of this type of debt is made using revenue generated by the project the bonds financed. The bonds are backed by the full financial resources of the public entity that sold them.

Occasionally the state uses lease-purchase agreements to acquire buildings for public purposes. This involves selling bond-like "certificates of participation," which explicitly make lease payments by the state subject to annual appropriation by the legislature. In 1995, the Alaska Supreme Court upheld a lease-purchase agreement because the legislature was not legally bound to appropriate lease payments each year, and therefore this form of borrowing did not constitute debt in the context of Section 8 (*Carr-Gottstein Properties v. State*, 899 P.2d 136 (1995)).

In 2018, the legislature created a state corporation within the Department of Revenue authorized to sell up to $1 billion in bonds to repurchase outstanding oil production tax credits issued to oil companies over previous years (ch. 33, SLA 2018). The payments to bondholders by the state were subject to annual legislative appropriation. A citizen sued, claiming that the law violated this and other sections of Article IX. The state used the *Carr-Gottstein* precedent as its defense, and a superior court upheld the measure. The Alaska Supreme Court unanimously reversed the lower court, declaring that Section 8 was clearly intended to be a bulwark against this sort of massive state borrowing (*Forrer v. State,* 471 P.3d 569 (2020)).

The large majority of general obligation bond propositions have been approved by voters.

Section 9. Local Debts

> **No debt shall be contracted by any political subdivision of the State, unless authorized for capital improvements by its governing body and ratified by a majority vote of those qualified to vote and voting on the question.**

This section limits the general borrowing power of local governments just as Section 8 does for state government: debt secured by the general credit of the government may be acquired only for capital improvements, and only after voter approval. Its purpose is also to safeguard the fiscal integrity of the government. (See Section 8 for the meaning of "debt" and "capital improvements.")

Alaska's constitution does not impose a ceiling on local debt, but many others do so by, for example, restricting local debt to a percentage of total assessed property valuation. The legislature has restricted local property tax rates to three percent, or 30 mills (AS 29.45.090), but it has not restricted mill rates for revenue used to repay bonded debt.

Section 10. Interim Borrowing

> **The State and its political subdivisions may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year, but all debt so contracted shall be paid before the end of the next fiscal year.**

This section provides a limited exception to the restrictions in Sections 8 and 9 against borrowing for non-capital expenses. It authorizes the state and local governments to acquire short-term debt to deal with a revenue shortfall within the yearly operational budget cycle by issuing revenue anticipation notes. While debt incurred should not be greater than an amount that can be repaid from revenues raised in one fiscal year, this provision recognizes that, as a practical matter, it may be necessary to delay full repayment into the next fiscal year.

Section 11. Exceptions

> **The restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public corporation of the State or a political subdivision, when the only security is the revenues of the enterprise or corporation. The restrictions do not apply to indebtedness to be**

> **paid from special assessments on the benefited property, nor do they apply to refunding indebtedness of the State or its political subdivisions.**

This section makes clear that the limitations on the issuance of debt in Sections 8 and 9 apply only to general obligation bonds, which are backed by the full taxing power, or "full faith and credit," of the issuing government.

The state has frequently incurred debt through the sale of revenue bonds, which are backed by the money generated by the project they finance and do not require voter approval. For example, the state sold revenue bonds for construction and expansion of the Anchorage and Fairbanks airports. Also, quasi-independent public corporations, such as the Alaska Housing Finance Corporation and the Alaska Industrial Development and Export Authority, have issued a substantial number of revenue bonds. The state has also financed public buildings with revenue bonds sold by the former Alaska State Housing Authority, secured by long-term lease agreements with the state and entered long-term lease-purchase agreements to obtain public office space from private developers.

Because revenue bonds and lease-purchase agreements do not require voter approval, they are simpler options for acquiring public facilities. Financial obligations incurred by public corporations are not a legal liability of the state; however, the state has an interest in being the payor of last resort for revenue bonds, or certificates of participation used to finance lease-purchase agreements, to prevent default and protect its own general credit rating. In 1994, the legislature adopted restrictions on the use of lease-purchase agreements, including a requirement that those for the purchase or improvement of real property be approved by law (AS 36.30.085(e)).

Section 12. Budget

> **The governor shall submit to the legislature, at a time fixed by law, a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments, offices, and agencies of the State. The governor, at the same time, shall submit a general appropriation bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenues.**

Virtually all state constitutions direct the governor to submit a proposed budget to the legislature, although most do so in the executive branch article. Traditionally, governors' budgets were adopted with little or no change, particularly for operating programs. This is less common today as state legislatures, including Alaska, have independent fiscal staff and finance committees produce their own budgets.

The Executive Budget Act (AS 37.07) further describes the governor's budget preparation responsibilities, including a comprehensive, ten-year fiscal plan and a six-year capital improvement program for the state. The governor must submit a budget to the legislature on December 15 each year, approximately one month before the legislature convenes (AS 37.07.020).

In 2018, the legislature approved an appropriations bill that included funding for public schools in the coming fiscal year, and the following two fiscal years, which was not typical practice. Governor Dunleavy objected to "forward funding" provisions. The legislature and an education advocacy group sued the governor, arguing that nothing in this article imposes temporal (time-based) limits on its power of appropriation. In ruling for the governor, the Alaska Supreme Court acknowledged "none of the Constitution's budgetary clauses expressly prohibit forward funding." However, the court found a requirement for appropriations to be made annually implicit in the prohibition on dedicated funds in Section 7, and in the respective budget and appropriations requirements of Sections 12 and 13 (*State v. Alaska Legis. Council & Coal. for Educ. Equity*, 515 P.3d 117 (2022)).

Section 13. Expenditures

> **No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.**

The government may not spend money that has not been appropriated, that is, authorized, for the purpose of the expenditure. This is a customary safeguard against fraud and fiscal mismanagement that appears in most constitutions. Alaska's version was taken from the *Model State Constitution.*

The full amount of an appropriation does not have to be spent if the purpose of the appropriation is accomplished with a lesser amount; rather, appropriations set a limit for each specified purpose. This does not mean, however, the executive branch has unlimited authority to restrict expenditures. If a law requires the executive branch to carry out a specific task (make grants to communities, for example) and money is appropriated for it, the executive branch is obligated to spend as directed.

The last sentence of this section permits the legislature to direct when the unspent portion of an appropriation lapses back to the fund from which it was appropriated. Typically, appropriations for operating programs lapse at the end of each fiscal year, but capital appropriations generally lapse when the project is completed or at a date set by the legislature.

Section 14. Legislative Post-Audit

> **The legislature shall appoint an auditor to serve at its pleasure. He shall be a certified public accountant. The auditor shall conduct post-audits as prescribed by law and shall report to the legislature and to the governor.**

A legislative post-audit is a review of the expenditure of public funds by all government agencies to ensure the agencies spent the money in compliance with applicable laws and regulations. A post-audit contrasts with the pre-audit used in some states where expenditures are reviewed before payment is made. This section makes the auditor responsible to the legislature to avoid a potential conflict of interest if the post-auditor was appointed by and responsible to the governor, as is the case in some states.

State statutes implementing this section require the legislative auditor to undertake "performance" audits, which evaluate a program's effectiveness, financial audits, and "sunset" audits of boards and commissions whose existence has an expiration date in statute (AS 24.20.271). Any legislator may request a special audit of any state agency to "determine the propriety of any expenditure of state funds" (AS 24.20.281).

Section 15. Alaska Permanent Fund

> **At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.**

This section, added by constitutional amendment in 1976, created the Alaska Permanent Fund. An amendment was required because Section 7 prohibits the dedication of revenue. Although the permanent fund dedicates non-tax petroleum royalties and lease-related revenue, the phrase "tax or license" in Section 7 has been interpreted by the courts to encompass all forms of public revenue.

A dedicated fund normally specifies the source of the revenue and the purpose for which it is to be expended (such as, motor fuel taxes dedicated to highway construction). This section identifies the revenue stream but does not specify how the fund's income is to be used. Investments eligible for the permanent fund's assets were detailed in statute until 2005, when the legislature provided the Permanent Fund Corporation's board of trustees authority to adopt regulations making investment determinations (AS 37.13.120; 15 AAC 137).

Income generated by these investments is deposited in the general fund "unless otherwise provided by law." The legislature created the permanent fund earnings reserve account, which receives only permanent fund earnings, is managed by the Permanent Fund Corporation, and available for annual appropriation by the legislature. One such appropriation is to pay for permanent fund dividends (AS 37.13.145).

In 2016, Governor Bill Walker vetoed half of the appropriation made by the legislature from the earnings reserve account for dividends and related expenses. A sitting senator and two former senators sued to overturn the veto, arguing the phrase "unless otherwise provided by law" conferred upon the legislature authority to dedicate earnings of the permanent fund, which the legislature did when it created the dividend program. The supreme court rejected this argument, saying this section did not authorize dedicated spending of the fund's income and that appropriations from the earning reserve account are subject to regular budgetary processes, including the governor's power to veto and reduce appropriations (*Wielechowski v. State*, 403 P.3d 1141 (2017)).

Prior to the 2016 appropriation, using the earnings reserve to pay for general government operations had long been viewed as an action sure to end one's political career. However, in 2018, facing steep declines in petroleum revenues, the legislature passed a bill enabling a "percentage of market value" POMV approach, in which five percent of the permanent fund's average market value for the first five of the previous six years is made available for appropriation (AS 37.13.140). The POMV has since become the largest single funding source for the state's budget.

Section 16. Appropriation Limit

> **Except for appropriations for Alaska permanent fund dividends, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issues revenue bonds, appropriations from the treasury made for a fiscal year shall not exceed $2,500,000,000 by more than the cumulative change, derived from federal indices as prescribed by law, in population and inflation since July 1, 1981. Within this limit, at least one-third shall be reserved for capital projects and loan appropriations. The legislature may exceed this limit in bills for appropriations to the Alaska permanent fund and in bills for appropriations for capital projects, whether of bond proceeds or otherwise, if each bill is approved by the governor, or passed by affirmative vote of three-fourths of the membership of the legislature over a veto or item veto, or becomes law without signature, and is also approved by the voters as prescribed by law. Each bill for appropriations for capital projects in excess of the limit shall be confined to**

capital projects of the same type, and the voters shall, as provided by law, be informed of the cost of operations and maintenance of the capital projects. No other appropriation in excess of this limit may be made except to meet a state of disaster declared by the governor as prescribed by law. The governor shall cause any unexpended and unappropriated balance to be invested so as to yield competitive market rates to the treasury.

This section was added by amendment in 1982. At the time, efforts to slow the growth of government by restraining spending were popular nationally, and limits on revenues or appropriations are now found in many state constitutions. Annual increases may be limited based on a range of factors including annual growth of personal income, wages and salaries, or population and inflation, or to a ratio of revenue or spending to personal income that existed in a base year.

This section of Alaska's constitution limits incremental growth of state appropriations to $2.5 billion, adjusted for changes in population and inflation from July 1, 1981 (see also Article XV, Section 28). The adjustments for population growth and inflation were intended to allow spending to remain steady on a real per capita basis. It is popularly referred to as the state's "spending limit," although it is technically an appropriation limit. (The distinction between expenditures and appropriations is discussed in Section 13.) The fondness for capital spending on the part of legislators and their constituents is revealed in the provision that a third of the amount appropriated when the limit comes into play must be for capital projects, and in the mechanism for exceeding the limit for capital appropriations.

The appropriation limit in this section has never operated as intended, largely because the base of $2.5 billion was high, from a historical perspective in Alaska, and because revenues available for appropriation did not continue to increase as dramatically as foreseen at the time. Meanwhile, inflation and population growth continued apace. As adopted in 1982, this amendment had an "escape clause" that called for a referendum in 1986 on its repeal (see Article XV, Section 27). Despite its ineffectiveness, voters retained the measure with strong support.

Section 17. Budget Reserve Fund

(a) There is established as a separate fund in the State treasury the budget reserve fund. Except for money deposited into the permanent fund under Section 15 of this article, all money received by the State after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a State or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in

the budget reserve fund. Money in the budget reserve fund shall be invested so as to yield competitive market rates to the fund. Income of the fund shall be retained in the fund. Section 7 of this article does not apply to deposits made to the fund under this subsection. Money may be appropriated from the fund only as authorized under (b) or (c) of this section.

(b) If the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year, an appropriation may be made from the budget reserve fund. However, the amount appropriated from the fund under this subsection may not exceed the amount necessary, when added to other funds available for appropriation, to provide for total appropriations equal to the amount of appropriations made in the previous calendar year for the previous fiscal year.

(c) An appropriation from the budget reserve fund may be made for any public purpose upon affirmative vote of three-fourths of the members of each house of the legislature.

(d) If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law.

This section was added by amendment in 1990. It represents another attempt to constrain state government spending, one which would have been unnecessary if the robust fiscal conditions of the early 1980s had continued and the appropriation limit in Section 16 had worked as envisioned. Here, the focus is on potential revenue from one-time payments resulting from the resolution—either negotiated or adjudicated—of disputes with oil companies over back royalty and tax payments. In several lawsuits and administrative proceedings, the state claimed that oil companies underpaid royalties and taxes from the production of North Slope oil fields. By the end of the 1980s, several billion dollars were at stake. Even if the state prevailed in only a portion of these disputes, it stood to receive a lot of money. Many people preferred to see this "windfall" placed in a budget stabilization fund rather than contribute to what they considered unsustainable annual budgets.

Central to the budget stabilization concept is that money may be appropriated from the reserve fund when revenues are below that of the previous fiscal year, but this money must be repaid to the fund when revenues rebound.

Litigation was necessary to interpret two key phrases in this section; namely the phrase "administrative proceeding" in subsection (a), and the phrase "amount available for appropriation" used in subsection (b). The questions were not academic.

In *Hickel v. Halford*, 872 P.2d 171 (1994), the court heard a dispute over whether an informal conference was an "administrative proceeding." Upon receipt of a tax assessment, the taxpayer could appeal by requesting either an informal conference or a formal appeal. The Department of Revenue asserted that only settlements stemming from a formal appeal needed to be deposited into the constitutional budget reserve. A group of legislators sued, arguing that the term "administrative proceeding" should include informal conferences. The Alaska Supreme Court agreed and ordered the Department of Revenue to transfer approximately $1 billion into the budget reserve from the general fund.

In *Hickel v. Cowper*, 874 P.2d 922 (1994), the court upheld a broad interpretation of "amount available for appropriation," making it more difficult to access the fund without resorting to subsection (c), which requires a three-fourths majority vote in each house. In the face of declining revenues, this method was successful in maintaining state spending levels, but because the legislature did not appropriate money to replace withdrawals, it resulted in the balance of the budget reserve falling from around $10 billion in 2015 to under $1 billion in 2022.

There is also a statutory budget reserve fund which has been used by the legislature as a temporary savings account (AS 37.05.540). It is funded by direct appropriations, requires only a simple majority vote to access, and contains no repayment provisions. While this statute remains on the books, the budget reserve's funds were liquidated in 2015 and deposited within the general fund.

ARTICLE X

LOCAL GOVERNMENT

Like Article VIII on natural resources, Article X on local government reflects considerable constitutional innovation. In its drafting, the delegates sought a middle course between too little and too much detail about local government structure. Existing constitutional provisions varied between New Jersey's silence on the subject and New York's expansive local government article.

Looking at municipal government in the United States, members of the drafting committee saw a hodgepodge of counties and cities crisscrossed with single-purpose, special service districts, all pursuing their duties narrowly without regard for economies that could be realized from consolidation and cooperation. County and city governments tended to lack centralized control over their various jurisdictions, which lacked budgetary and operational integration, resulting in what one consultant to the committee called "a jungle of local governments."

Courts tended to construe powers of local governments very narrowly as, unlike state governments with inherent power, local governments derive their authority solely from state constitutions and statutory grants of power. Thus, municipal governments were often barred from dealing with pressing problems because they were unauthorized to act in the area.

At the time of the convention, local government institutions were mostly undeveloped in Alaska. Scattered around the territory were small cities and a few independent school and public utility districts. Congress had prohibited the creation of counties in the Territorial Act of 1912, making it likely that most Alaskans would live in or near cities. Unincorporated areas on the periphery of cities, such as Spenard and Fairview near Anchorage, were growing rapidly and some residents resisted efforts to annex them. Conflicts between special purpose districts and cities were already occurring. The delegates wanted to prevent problems by limiting the number of permissible local government units while providing flexibility.

There was overall agreement on the long-term need for a unit of general-purpose government between the state and the city; something that did not exist in Alaska at the time. The delegates feared that in the absence of this intermediate level of areawide government, fiscally autonomous service districts would proliferate, resulting in the jurisdictional chaos that made local government so inefficient and reform so difficult elsewhere. Some delegates even wanted to do away with cities altogether and provide for a single areawide unit of local government. This idea had appeal in concept, but as a practical matter it was considered unrealistic, as cities were already well established.

Therefore, the convention authorized two units of local government in the constitution: the city and the borough.

Boroughs exist elsewhere, but they are most often political subdivisions of a large city. In Alaska, boroughs encompass cities. It was intended as a flexible variation of the traditional county. Delegates emphasized the legal and political distinctness of this new super-county form of government, including using the term "borough" instead of county, but were reluctant to specify for it anything more than the broadest constitutional framework. They realized the vast differences across Alaska—in population distribution, concentration of taxable wealth, tradition, and experience with self-government—required local variations of borough government.

Article X speaks of two types of boroughs, organized and unorganized. The sparsely populated rural areas would receive local government services provided by the legislature through unorganized boroughs (Section 6). It is not clear how many unorganized boroughs were contemplated by the convention delegates, but the intention was that several would be created, as candidates for full borough status in the future, and eventually the state would be covered by a seamless network of large, regional boroughs, with a powerful local boundary commission arranging the pieces to suit statewide and local criteria. In 1961, however, the legislature simply designated the entire area outside organized boroughs as *the* unorganized borough.

The first borough created—the tiny Bristol Bay Borough in 1962—was at odds with the constitutional vision of boroughs as expansive regional units destined to merge with comparable, contiguous regional boroughs. Like several others subsequently created through local initiative, the borough was designed to exploit a local tax on fisheries to provide a narrow range of services to a small community of people. Voluntary incorporation is often a defense against a neighboring jurisdiction annexing the local tax resource and exploiting it for a broader community.

In struggling to implement the borough concept, the legislature faced general reluctance to take on a new and unknown form of government and to shoulder new taxes to pay for services that were being provided by the state or a local service area. The legislature had to force the formation of boroughs in the most populated parts of the state. As events unfolded in some areas, it became evident that local government could be provided most efficiently with only one unit. As a result, Anchorage, Haines, Juneau, Sitka, Skagway, Wrangell, and Yakutat are unified, city-borough governments. Elsewhere, city and borough governments have generally accommodated each other, and relationships among boroughs, cities, and school districts have stabilized. Large areas of the state do not have an organized borough government today because they do not have a tax base to support it, or because it serves no useful purpose.

The contemporary system of local government in Alaska emerging from this article is something different from and perhaps less grand than that foreseen by its authors. It was a slow and difficult

process, but over time, the legislature and the local boundary commission have crafted a workable system of local government from the minimal guidelines offered in the 15 short sections of Article X.

Section 1. Purpose and Construction

> **The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.**

This section favors local governance in Alaska with "a minimum of local government units," namely cities and boroughs, as provided in subsequent sections. When oil companies sued on numerous grounds to block formation of the North Slope Borough, the Alaska Supreme Court upheld its formation, and that of others, as long as requirements for incorporation have been minimally met *(Mobil Oil Corporation v. Local Boundary Commission,* 518 P.2d 92 (1974)). In that decision, the court said: "Aside from the standards for incorporation [in statute], there are no limitations in Alaska law on the organization of borough governments. Our constitution encourages their creation."

Under the judicial doctrine known as Dillon's Rule, courts generally hold that local governments are powerless to act in the absence of express delegated authority. The second sentence of this section is intended to prevent courts from interpreting this article narrowly.

Here, the convention delegates provided local governments the upper hand in disputes over their power to act. In fact, the Alaska Supreme Court has referred to this section in several decisions favoring municipalities in disputes over their taxing powers. For example, *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (1978) upheld the power of the borough to levy a sales tax on fish against a challenge that it constituted an unauthorized tax.

Section 2. Local Government Powers

> **All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.**

By authorizing only two units of local government, the city and borough, this section implements the objective in Section 1 of maximizing local self-government "with a minimum of local governmental units." By delegating taxing power to only cities and boroughs, this section prevents the "duplication of tax-levying jurisdictions" of Section 1. Commentary on these provisions by the drafting committee notes that they are designed to prevent "numerous types of local units which can become not only complicated but unworkable," and "overlapping taxing authorities" that "often do not realize needs

other than their own." Thus, for example, school districts in Alaska do not have independent taxing power, which some states allow.

The Alaska Supreme Court declared unconstitutional a state law that authorized private aquaculture associations to collect mandatory assessments on the sale of salmon by commercial fishermen, saying the scheme amounted to a delegation of taxing powers to an entity other than a city or borough *(State v. Alex,* 646 P.2d 203 (1982)). In response, the legislature established a voluntary "salmon enhancement" tax paid by salmon permit holders into the general fund (AS 43.76.010; see commentary on Article IX, Section 7). The *Alex* decision also resulted in the termination of the Commercial Fisheries Entry Commission (CFEC) buy-back program, which sought to purchase limited entry permits when the number of permits exceeded the optimum number in a fishery. The program was to be funded by CFEC assessments on permit holders. Based on advice from the attorney general's office that this would likely be an unconstitutional delegation of taxing authority, and would be deemed an unconstitutional dedicated fund, the buy-back program ceased (1985 Op. Att'y Gen. No. 2 (May 23)).

Section 3. Boroughs

> **The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.**

This section mandates the creation of boroughs, which the delegates conceived as areawide units of government geographically larger than a city, comparable to the traditional county, but arguably simpler given the limitation of taxing authority in Section 2 to only boroughs and cities. Many other states provide such authority to smaller and more numerous political subdivisions, such as school districts and special purpose districts. In short, Alaska's borough model limits the layers of government and taxation common in the county model.

Adoption of the term "borough" was debated at length by the delegates. It was selected to emphasize the unique aspects of this governmental jurisdiction, and to avoid legal and political connotations of the traditional county. Alaska's boroughs were intended to be more versatile than counties.

The legislature is given wide latitude to define and shape this system. The constitution provides only that standards for creating boroughs must include population, geography, economy, and

transportation, with the area and population of boroughs sharing common interests. The delegates avoided more specific guidelines because they recognized that the borough concept would have to adapt to a wide variety of local circumstances.

Also, the expectation was that areas with insufficient population, economic activity, and other prerequisites for local self-government would nonetheless be designated as boroughs but remain "unorganized," until conditions warranted incorporation, with the legislature acting as their assembly.

Citizens may voluntarily petition to create boroughs. Statutory standards for borough incorporation are similar to, and slightly more specific than, the constitutional standards set out here (AS 29.05.031). This flexibility has allowed boroughs to vary widely in size and population. Local petitions to create a borough are made to the local boundary commission created in Section 12, but the commission may not create boroughs on its own initiative. Initially, the legislature provided for three classes of boroughs, but now only first-class and second-class boroughs are authorized.

The legislature has also adopted procedures for boroughs to be merged, consolidated, reclassified, and dissolved (AS 29.05 and 29.06).

Section 4. Assembly

> **The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter.**

Originally, this section required that cities within a borough have formal representation on the borough assembly, which was intended to promote cooperation between cities and boroughs and the integration of their activities. But because of competition and conflict between cities and boroughs for territory and functions, it often resulted in stalemate. Further, it violated principles of legislative apportionment enunciated in a series of federal reapportionment cases of the early 1960s (see commentary under Article VI), which required local government legislative bodies to be apportioned based on population. In 1972 an amendment deleted that requirement.

Section 5. Service Areas

> **Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.**

This provision authorizes service areas within boroughs but seeks to keep their number to a minimum. Service areas are typically geographic zones outside the existing geographic boundary for core municipal services. Service areas may only be created within a borough if the services in question cannot be provided by an existing service area or city. Property receiving such services as road improvement, water supply, and fire protection from a special district may be taxed differentially to pay for them. Sections 2 and 15 prevent the existence of autonomous service areas.

The local government committee saw a special need for service areas in sparsely settled areas. Committee commentary said:

> 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 assumptions of administrative or advisory responsibility, the citizens of small communities or rural areas will be preparing themselves for full self-government.

Although authorizing the creation of service areas, this section, read together with Section 1, favors the formation of cities over service areas. In *Keane v. Local Boundary Commission,* 893 P.2d 1239 (1995), opponents of incorporation of Pilot Point, a second class city, unsuccessfully argued that the services to be provided by the new city could be better provided by a service area created by the Lake and Peninsula Borough in which the city was located.

Section 6. Unorganized Boroughs

> **The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.**

This section further underscores the drafters' intention that the entire state would be divided into boroughs, some of which would be organized and some of which would remain unincorporated until ready for self-government. In providing for "maximum local participation and responsibility," the delegates had in mind local committees to advise the legislature and perhaps assume administrative responsibilities.

Instead of multiple boroughs, however, the legislature established one unorganized borough that consists of all areas outside of organized boroughs (AS 29.03.010). To provide local services in the

unorganized borough and meet the goal of local participation and responsibility, the legislature has used special service areas as authorized by Section 5 (AS 29.03.020). Service areas in the unorganized borough include numerous school districts (called regional education attendance areas) and salmon enhancement districts. These entities have their own governing board.

Section 7. Cities

> **Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.**

This section authorizes the legislature to build a statutory framework for the creation and operation of cities, the second of the two local government units authorized in Section 2. It requires that cities be part of a surrounding borough, if one exists, but they retain their independence from borough government regarding their internal affairs. The constitution suggests by reference to "classification" of cities and boroughs in this and other sections that flexibility should be provided by authorizing cities with different sets of duties and responsibilities. Two classes of cities are recognized by statute—first class and second class cities (AS 29.04.030 and AS 29.35.250-350)—in addition to home rule cities (see Section 9 and AS 29.04.010).

It also gives the legislature broad power to specify how the separate existence of cities may be terminated through merger, consolidation, unification, or dissolution. In *City of Douglas v. City of Juneau,* 484 P.2d 1040 (1971), the Alaska Supreme Court rejected the plaintiff's argument that Section 9 prohibits dissolution of a first class, home rule city, without consent of its resident voters. The court found the "distinction between dissolution of cities and adoption, amendment, or repeal of home rule charters [to be] of controlling significance." Specifically, it cited this article in finding "the legislature is authorized to decide the broader and quite different question of whether a home rule city should be dissolved, as well as the method or manner of dissolution" in conformance with the broad purpose of Article X to "provide for maximum local self-government with a minimum of local government units." Therefore, that a majority of voters in Douglas opposed the city being subsumed had no effect, as the majority of *borough* voters approved its consolidation with Juneau (see also Section 9).

Section 8. Council

> **The governing body of a city shall be the council.**

This section provides that the governing body of a city be referred to as the "council," whereas Section 4 provides that the governing body of a borough be referred to as the "assembly."

Section 9. Charters

> **The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.**

This section furthers the constitutional objective expressed in Section 1 of providing maximum local self-government by providing a mechanism for first class cities and boroughs to acquire home rule status. A charter is a locally drafted "organic law" for a home rule community; it delineates the powers, duties, and structure of local government and provides the largest measure of local control allowable under the constitution. Cities and boroughs that have not acquired home rule powers by adopting a charter must operate within the limits of the powers delegated to them by the state (AS Title 29). These are known as general law municipalities. Home rule municipalities, in contrast, may exercise all legislative powers not prohibited by state law or by their own charter (see Section 11). The major municipal governments in the state today are home rule municipalities.

The second sentence of this section is a self-executing provision that allows first class cities and boroughs to adopt home rule charters if the legislature fails to implement the section. The constitution does not define classes of municipalities; it presumes that the legislature will adopt a classification scheme that involves at least first and second class categories (AS 29.04).

Section 10. Extended Home Rule

> **The legislature may extend home rule to other boroughs and cities.**

Cities and boroughs other than those of the first class may adopt home rule charters only under procedures specified by the legislature. They may not take advantage of the self-executing provision in Section 9. Statutes provide that a borough or first class city may adopt a home rule charter (AS 29.10.010).

Section 11. Home Rule Powers

> **A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.**

This broad grant of home rule legislative power is unusual among state constitutions, bolstering the policy of "maximum local self-government" set out in Section 1. Typically, state constitutions enumerate the powers that may be exercised by home rule municipalities, and courts have tended to interpret these enumerated powers narrowly.

Home rule municipalities may not exercise legislative powers explicitly denied to them (AS 29.10.200). For example, they may not alter the qualifications in state law for municipal voters (AS 29.26.020), prohibit a woman breastfeeding a child in public (AS 29.25.080), or decline to operate a public school district (29.35.160). Further, they may not exercise legislative powers that are implicitly denied in cases where a state law preempts local action. The courts have been called on repeatedly to determine whether municipal ordinances are valid in the face of seemingly contrary state law. The role of courts has therefore been to ascertain whether state laws were meant to further a specific statewide policy and have uniform statewide application. If so, then the municipal law must yield. For example, the City of Anchorage could not impede an electric utility from extending power lines to certain portions of the service area awarded to it by the Alaska Public Utilities Commission (now the Regulatory Commission of Alaska). The court said that the authority of the commission derived from state law prevails over an ordinance of a home rule municipality *(Chugach Electric Association v. City of Anchorage,* 476 P.2d 115 (1970)). However, conflict or inconsistency of an ordinance with a state law is not necessarily fatal, provided the ordinance deals with a matter of purely local concern. Thus, for example, the court upheld the leasing ordinance of a home rule city against its alleged inconsistency with state law (*Lien v. City of Ketchikan,* 383 P.2d 721 (1963)). In the *Lien* case, the courts stated plainly "where a home rule city is concerned the charter, and not a legislative act, is looked to in order to determine whether a particular power has been conferred upon the city."

Additionally, Article II, Section 19, which prohibits "local and special legislation," protects home rule and other municipalities from selective intervention in their affairs by the legislature and serves the constitutional objective of providing "maximum self-government."

Section 12. Boundaries

> **A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or**

> **at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.**

In the delegates' view, a major failing of municipal government in the older states was the rigidity of boundaries: city, county, and other jurisdictional lines could not, as a practical matter, be modified to respond to changing needs and opportunities. They wanted a mechanism for decisions on boundary changes to be made "at a level where areawide or statewide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively."

The Local Boundary Commission, is one of five constitutionally created boards and commissions. It is a five-member body appointed by the governor; one member must be appointed from each judicial district in the state and the fifth member is appointed at large and serves as the commission chair. It operates within the Department of Commerce, Community and Economic Development, Division of Community and Regional Affairs, which serves as staff to the commission. Recommendations by the commission on boundary changes under this section are subject to a legislative veto (AS 44.33.810.828).

The term "boundary change" used in this section refers to altering established boundaries such as through annexation and detachment, not to the creation of new cities and boroughs through incorporation. Although the Local Boundary Commission plays a key role in incorporations and unifications, it does so through authority conferred by the legislature under Sections 3 and 7, which say that cities and boroughs may be incorporated, merged, consolidated, classified, or dissolved in the manner provided by law (AS 29.05.06).

Boundary changes that result from annexation may involve dissolution of an existing unit of government. In such cases, approval of the annexation by the Local Boundary Commission that survives legislative scrutiny is decisive, even if statutory procedures regarding dissolution required ratification by the voters of the dissolved governmental unit (See *Fairview Public Utility District No. 1 v. City of Anchorage,* 368 P.2d 540 (1962), which involved the dissolution through annexation of a public utility district without ratification, and *Oesau v. City of Dillingham,* 439 P.2d 180 (1968), which involved the dissolution through annexation of a city without ratification by voters of the city).

Although this section says the local boundary commission may consider any proposed boundary change, the legislature has stipulated it may consider only proposals from the legislature, the commissioner of the Department of Commerce, Community and Economic Development, or a political subdivision of the state (AS 44.33.812(a)(3)). Under this authority, the Local Boundary Commission in 1985 considered and approved a request by the commissioner of the department for detachment of 3,298 square miles of land from the North Slope Borough, including the mineralized

zone around the Red Dog mining property. This detachment was critical to the success of the proposed Northwest Arctic Borough, the 1986 incorporation of which the commission also approved. Absent the detachment, the new borough was deemed unlikely to succeed, as it would have held little in terms of economic development potential and, therefore, no viable tax base. By contrast, the North Slope Borough already enjoyed the highest per capita tax revenues of any Alaska municipality stemming from oil production. The Local Boundary Commission viewed the detachment as an issue of equitable access to revenues from public lands.

The ability of the legislature to veto proposals of the Local Boundary Commission made under this section is one of two explicit authorizations of that power in the Alaska Constitution. (see Article III, Section 23 and Article IV, Section 15.) To reject a proposal under this section, a majority vote is required in both houses. Decisions by the commission have occasionally been rejected by the legislature; in 1989, it rejected the proposed annexation by the Fairbanks North Star Borough of Pump Station 7 on the trans-Alaska pipeline (Legislative Resolve No. 6). Decisions of the commission made under statutory authority not derived from this section, however, are not subject to the legislative veto. For example, the Alaska Supreme Court ruled the commission's approval of the North Slope Borough's incorporation petition under statutes implementing Section 3 was not subject to legislative veto under this section *(Mobil Oil Corporation v. Local Boundary Commission,* 518 P.2d 92 (1974)).

Section 13. Agreements; Transfer of Powers

> **Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.**

Members of the local government committee saw intergovernmental conflict and jurisdictional rivalry as an underlying cause of municipal government inefficiency in many parts of the country. Because of those conflicts, services were needlessly duplicated and efforts to solve problems that cut across governmental lines of authority, such as pollution abatement, river basin management, and regional economic development, were hindered. By this and the original language in Section 4 (since removed by amendment), which gave cities representation on borough assemblies, the constitution seeks intergovernmental cooperation and the fullest reasonable integration of activities between cities and boroughs.

Ironically, in some areas, the creation of boroughs around established cities led to duplication of local government structures that delegates strived to avoid in crafting this article. The solution has not been

cooperative agreements between the city and borough, as contemplated here, but unification into city-borough governments.

Section 14. Local Government Agency

> **An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law.**

Currently, the agency established by this section is the Division of Community and Regional Affairs within the Department of Commerce, Community, and Economic Development. It is the only executive agency mandated by the constitution and signifies the importance the drafters placed on local government matters.

Section 15. Special Service Districts

> **Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.**

At the time of the convention, school districts were the primary special service districts in existence. In keeping with the general constitutional objectives of minimizing local jurisdictions and favoring general purpose over special purpose government, the delegates required boroughs to assume responsibility for schools upon incorporation. Under this scheme, the borough levies taxes to support education and approves the budget of the school district, which otherwise continues under the management of a local school board and separate school administration. Within budget restraints, borough school districts have substantial autonomy. The requirement here that school districts be merged with borough governments was a major complicating factor in the implementation of the new borough concept. The constitution does not specify a timetable for the creation of boroughs, and in the meantime existing cities, school districts and public utility districts continued to operate (Article XV, Section 3).

ARTICLE XI

THE INITIATIVE, REFERENDUM, AND RECALL

The initiative and referendum are "direct democracy" devices that permit the electorate to participate first-hand in the law-making process. Through the initiative voters may enact legislation, and through the referendum they may veto laws passed by a recent legislature. They first appeared in this country during the populist reform movement of the early twentieth century and are found in one form or another in about half of state constitutions. The recall allows voters to remove an elected official from office.

This article specifies basic procedures for using the initiative and referendum to ensure these avenues of popular access to the legislative process are not dependent upon or constrained by measures adopted by the legislature. The procedures and grounds for recalling elected officials, however, are left entirely to the legislature.

Alaska's convention delegates were largely ambivalent about direct democracy, authorizing it on the one hand but circumscribing its use on the other. For example, certain subjects are off-limits (Section 7); the legislature can head off an initiative proposal by passing a substantially similar law on its own (Section 4); and may amend an initiated law (Section 6). These constitutional hedges on the initiative and referendum reflect an underlying faith in the efficacy of legislative deliberation, and fear on the part of some delegates that narrow special interests would exploit them.

A variation of the initiative not foreseen in the language of Article XI was an "advisory" vote regarding a constitutional amendment to create a single house, or "unicameral," legislature. Because Article XIII, Section 1 precludes use of the initiative to amend the constitution, and because the legislature refused to place a unicameral amendment before the voters, backers of a unicameral legislature brought pressure on the legislature by initiating an advisory ballot proposition. Although technically an initiative, this measure was loosely referred to as a "referendum" on the question of unicameralism. While the advisory vote narrowly passed in 1976, it failed to secure the necessary legislative support to move the matter forward.

The legislature used an advisory ballot in 1978 to seek guidance on the constitutional question of limiting the length of legislative sessions (passed). In 1986, it sought the opinion of voters on the issue of adopting an annuity plan for the elderly in place of the longevity bonus (passed); in 1999, on the question of whether a portion of permanent fund investment earnings should be used to help balance the state budget (failed); and in 2007, on the issue of adopting a constitutional amendment

prohibiting state and local governments from providing employment benefits to same-sex couples (passed). These measures are not referendums as described in Article XI.

On other occasions the legislature has asked voters to pass judgment on adopted laws. A 1968 act providing for pre-registration of voters and a 1980 act creating the Alaska Statehood Commission both contained requirements that the electorate give its approval before the laws became effective. Each of these successful ballot propositions were called a "referendum," although neither was a citizens' referendum under Article XI. In 1982, the legislature sought voter approval for the expenditure of money to relocate the state capital from Juneau to Willow (failed). It is arguable whether delegation of the inherent legislative function of law-making and appropriating money that occurred in these cases was constitutional, but they were not challenged.

The initiative and referendum, subject to the limitations of Section 7, have been extended to the residents of municipalities (AS 29.26.100).

Initiatives are often contentious, and disputes are common over wording used by the lieutenant governor on the petition and ballot, certification or rejection of an application, and decisions regarding the similarity of an alternative measure adopted by the legislature.

Section 1. Initiative and Referendum

> **The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum.**

Voters may bypass the legislature and enact a law by means of the initiative subject to the explicit limitations in Section 7 of this article. Thus, enactments by initiative are similar to enactments by the legislature, and rules that bind the legislature apply. For example, initiatives must conform to the single-subject rule in Article II, Section 13. (See *Yute Air Alaska, Incorporated v. McAlpine,* 698 P.2d 1173 (1985)). Further, initiated laws must be constitutional. The lieutenant governor has rejected initiative applications on the grounds that their subject matter was clearly unconstitutional (see Section 2), and the attorney general has advised the executive branch to ignore an adopted initiative on constitutional grounds (see "Tundra Rebellion" commentary under Article XII, Section 12).

The initiative may not be used to amend the constitution. Thus, various efforts to adopt term limits by the initiative came to nothing because they sought to change the qualifications for office set in the constitution (Article II, Section 2; see also *Alaskans for Legislative Reform v. State*, 887 P.2d 960 (1994)). Voters adopted initiatives in 1994, 1996, and 1998 pertaining to legislative and congressional offices. The 1994 initiative would have banned ballot listing for U.S. senators who had served 12 of the last 18 years and representatives who had served six of the last 12 years and was scheduled to take

effect when 24 other states adopted similar legislation. A U.S. Supreme Court decision nullified state efforts to impose term limits on congressional office (*United States Term Limits v. Thornton*, 514 U.S. 779 (1995)). The 1996 and 1998 initiated laws sought to place information on the ballot indicating whether a candidate supported term limits. These initiatives were not implemented on the advice of the attorney general and were repealed by the legislature in 2001 in the wake of another U.S. Supreme Court case invalidating a similar law enacted by voters in Missouri (ch. 34, SLA 2001; *Cook v. Gralike*, 531 U.S. 570 (2001)).

Initiated laws may not exceed the general powers of a legislative body. In *Municipality of Anchorage v. Frohne*, 568 P.2d 3 (1977) regarding use of the initiative at the municipal level, the Alaska Supreme Court said: "The Borough Assembly…had no power, through a prior legislative act, to bind a municipal government not yet in existence. Similarly, the people through the initiative process cannot accomplish that result." (See also *Griswold v. City of Homer*, 186 P.3d 558 (2008), holding that the initiative could not be used to amend the city zoning code because that was not a power possessed by the city council.) Nor may a municipality adopt an ordinance on a subject that is preempted by state law (see the discussion under Article X, Section 11). Thus, an initiative adopted by the voters of the Lake and Peninsula Borough that granted local authority to prohibit certain types of large-scale mining within the borough was declared unconstitutional because it interfered with the exclusive powers of the Alaska Department of Natural Resources to regulate exploration and mining on state land (*Jacko v. State, Pebble Ltd. Partnership*, 353 P.3d 337 (2015)).

The referendum gives voters a veto power similar to that of the governor to reject a measure recently passed by the legislature and signed into law. Like the governor's veto power, the referendum applies to entire bills, not portions of them. However, it may not be used to repeal appropriations or other certain types of legislation (see Section 7).

The initiative is used frequently, and the referendum rarely. The latter was used in the primary election of 1976 to repeal a law raising the salaries of judges, legislators, and department heads; and in the 2000 general election to reject a law that authorized "land and shoot" methods of taking wolves. A referendum in 2014 to repeal a change to oil severance tax failed at the polls.

Under Section 5, referendum petitions must be filed within 90 days after adjournment of the legislature that passed the bill that is the subject of the petition. The initiative enables voters to repeal a law after the 90-day deadline, or one enacted through an earlier initiative. (1975 Inf. Op. Att'y Gen, April 14). For example, an initiative on the 1976 general election ballot sought to repeal the state's limited entry law enacted several years earlier and one to repeal the state's subsistence law appeared on the 1982 general election ballot, but both were defeated. A 1998 initiative successfully repealed a road sign law adopted by the legislature in 1997.

Section 2. Application

> **An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred qualified voters as sponsors, and shall be filed with the lieutenant governor. If he finds it in proper form, he shall so certify. Denial of certification shall be subject to judicial review.**

This is the first of a two-step process for placing an initiative or referendum on the ballot. It requires an application signed by 100 qualified voters prior to circulating a petition to acquire the signatures required in Section 3. The first step assures that the measure has some popular support before the state incurs the expense of printing petitions and creates a threshold level of effort to discourage frivolous petitions.

Alaska Statute 15.45.040 defines the proper form of an initiative petition. It must be confined to one subject; the subject must be expressed in the title; the enacting clause shall read "Be it enacted by the People of the State of Alaska;" and the bill may not include subjects prohibited by Section 7 of this article. Alaska Statute 15.45.270 defines the proper form of a referendum application. Like those for an initiative, referendum applications must specify the act being referred and a statement of approval or rejection.

The Alaska Supreme Court has said generally that the constitutionality of an initiative should be adjudicated only after the measure has been adopted by the electorate. However, it recognizes an exception for initiative applications that are clearly unconstitutional or unlawful. Occasionally, on advice of the attorney general, the lieutenant governor has rejected initiative applications as being unconstitutional, resulting in litigation. In *Alaskans for Efficient Government Inc. v. State*, 153 P.3d 296 (2007), the Alaska Supreme Court said that the lieutenant governor properly rejected an initiative to require a supermajority vote in the legislature to pass tax-related bills because Article II, Section 14 requires only a majority vote of the legislature, and an initiative may not be used to amend the constitution. The court also upheld the denial of certification by the lieutenant governor because the initiatives were deemed unconstitutional in *Kohlhaas v. Office of Lt. Governor*, 223 P.3d 105 (2010), and *Lt. Governor of the State of Alaska v. Alaska Fisheries Conservation Alliance, Inc.*, 363 P.3d 105 (2015). However, in *State v. Trust the People,* 113 P.3d 613 (2005), the initiative sponsors successfully challenged the lieutenant governor's determination that their measure to restrict the governor's ability to temporarily appoint a U.S. Senator was unconstitutional (see further discussion under Section 4). Sponsors of an initiative seeking to regulate discharges of toxic chemicals and other mine wastes also prevailed in court against the denial of certification of their measure by the lieutenant governor in *Pebble Ltd. Partnership v. Parnell*, 215 P.3d 1064 (2009).

Section 3. Petition

> **After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by qualified voters who are equal in number to at least ten percent of those who voted in the preceding general election, who are resident in at least three-fourths of the house districts of the State, and who, in each of those house districts, are equal in number to at least seven percent of those who voted in the preceding general election in the house district, it may be filed with the lieutenant governor.**

This is the second and more difficult step in securing a place on the ballot and is intended to assure widespread support for an initiative or referendum before it reaches the ballot.

The current signature requirement, added by amendment in 2004, is more burdensome than the initial language. Originally, those seeking to place a measure on the ballot had only to collect signatures equal to ten percent of voters in the preceding general election residing in at least two-thirds of state house districts. The convention delegates chose the ten percent figure as a compromise between eight percent urged by some and fifteen percent urged by others. Virtually all required signatures could be obtained from a few urban districts.

Section 4. Initiative Election

> **An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.**

The lieutenant governor must write an impartial summary of the proposed initiative for petitions circulated for signatures. The courts often decide if the summary is objective. For example, opponents of an initiative to require a minor seeking an abortion to obtain prior parental notification sued to prevent it from appearing on the ballot alleging the summary on petitions omitted pertinent provisions. The court agreed that it was incomplete but allowed the measure to go forward with a revised ballot summary (*Planned Parenthood of Alaska v. Campbell,* 232 P.3d 725 (2010)).

An initiative may not go before the voters until the legislature has had an opportunity to contemplate its subject matter over a full session and decide whether to adopt a similar law. If it adopts

"substantially the same measure," the initiative is voided. By law, the lieutenant governor, "with a formal concurrence of the attorney general," determines substantial similarity (AS 15.45.210). If the legislature does not act, the initiative appears on the ballot at the first statewide election occurring 120 days after adjournment of the legislative session. Depending on when the legislature adjourned, this could be a primary, general, or special election, the difference of which could be significant as the number and characteristics of voters vary in different types of elections.

These provisions give the legislature considerable power over initiatives, as do the provisions of Section 6, which permit the legislature to amend an initiated law at any time and repeal it after two years. Allowing the legislature time to consider an initiative over the course of a session resembles the "indirect initiative" used in some states whereby voters can introduce bills in the legislature.

Some initiative petitions in Alaska have been halted when the legislature enacted a substitute measure. For example, an act adopted by the legislature in 1974 regulating election campaign financing displaced a proposed initiative (ch. 76, SLA 1974), as did a 1980 act repealing the state's personal income tax (ch. 22, SLA 1980). Not surprisingly, sponsors of superseded initiatives tend to disagree that substitute measures are substantially the same as their own. In *Warren v. Boucher,* 543 P.2d 731 (1975), the court said: "If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists." The court noted that because the legislature possesses broad power to amend an initiative (Section 6), it therefore "has broad power to change an initiative by an enactment covering the same subject as the initiated measure."

In 2004, a group upset by Governor Frank Murkowski's appointment of his daughter to the U.S. Senate seat he vacated, sponsored an initiative to restrict a governor's ability to fill a vacant senate seat by appointment, by requiring an election instead. The lieutenant governor refused to certify the petition, asserting it was unconstitutional. The sponsors successfully sued to have the petition certified for the ballot. Then the lieutenant governor determined that a measure passed by the legislature was substantially the same as the initiative and withdrew it from the ballot. The sponsors again successfully challenged the lieutenant governor's decision. The Alaska Supreme Court held that the enacted legislation preserving the governor's appointment power had the opposite effect of the initiative, and thus was not substantially the same (*State v. Trust the People,* 113 P.3d 613 (2005)). The measure appeared on the ballot and was adopted by voters but not before the sponsors sued again to have the ballot summary rewritten to eliminate bias.

The meaning of "filed" in this section was the subject of litigation over a 1984 initiative to abolish the state transportation commission. Although the initiative petition was filed before the legislative session convened, the lieutenant governor did not begin to verify the signatures until after it began. Those opposed to the measure argued the filing was not valid until after the verification process, in which case the initiative would have to wait until after another legislative session before reaching the ballot, but the supreme court upheld the lieutenant governor's decision to put it on that year's ballot:

"While the court in no way disagrees with the importance of the safeguard afforded by requiring the initiative to lie before a complete session of the legislature, it concludes…that actual filing of a facially valid initiative suffices to invoke that safeguard" *(Yute Air Alaska, Incorporated v. McAlpine,* 698 P.2d 1173 (1985)).

A 1982 initiative sought to repeal the state's subsistence law giving preference to rural residents when fish and game resources were insufficient to meet the demands of all user groups. Opponents alleged the lieutenant governor failed to accurately summarize the initiative on both the petition and ballot by stating its passage would prevent classification of subsistence users based on whether they lived in an urban or rural area. Opponents claimed this was misleading because its passage would not prevent the enforcement of rural-urban classifications contained in federal law. The court ruled the summary accurately described the effect of the initiative on state law and did not have to address the effect of passage on federal law (*Burgess v. Miller,* 654 P.2d 273 (1982)).

In 2002 the sponsors of an initiative to move the site of legislative sessions from Juneau challenged the ballot summary of their measure prepared by the lieutenant governor. The Alaska Supreme Court ordered changes, holding that the summary failed to "adequately describe the actual changes" that the initiative proposed to make and cast it in an "unnecessarily negative light." (*Alaskans for Efficient Government, Inc. v. State,* 52 P.3d 732 (2002)). See Article XIII, Section 1 about biased wording of summaries of proposed constitutional amendments.

In 2020, an initiative sponsor group successfully submitted a petition to the lieutenant governor seeking to change elements of the state's petroleum tax for a defined cohort of oil companies based on levels of production and geographic location. They subsequently complained that elements of the lieutenant governor's petition summary were inaccurate. The superior court ruled that one sentence of the subsequent ballot summary, in which the lieutenant governor "improperly weighed in" on the initiative's interpretation, represented "partisan suasion." The state appealed to the Alaska Supreme Court, which affirmed the lower court ruling but allowed the lieutenant governor to add corrective language to the ballot summary. The initiative sponsors did not object (*Office of Lieutenant Governor, Div. of Elections v. Vote Yes for Alaska's Fair Share*, 478 P.3d 679 (2021)).

Section 5. Referendum Election

> **A referendum petition may be filed only within ninety days after adjournment of the legislative session at which the act was passed. The lieutenant governor shall prepare a ballot title and proposition summarizing the act and shall place them on the ballot for the first statewide election held more than one hundred eighty days after adjournment of that session.**

A qualified voter has 90 days from the end of the session to collect all the signatures necessary to refer a bill to the electorate. Some state constitutions provide for the suspension of the legislative act when a referendum application has been filed against it, pending the outcome of the election. However, the Alaska Supreme Court, in *Walters v. Cease*, 388 P.2d 263 (1994), interpreted the constitution to allow the law to take effect and remain in place until 30 days after certification of a successful referendum election.

After the 90-day deadline has passed, voters may utilize an initiative petition to amend existing law (see commentary on Section 1).

Section 6. Enactment

> **If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification. Additional procedures for the initiative and referendum may be prescribed by law.**

Included in this section are procedural and substantive provisions. Procedurally, it establishes: a majority of votes cast is necessary to adopt an initiative or referendum; the effective date of a successful initiative is 90 days after the lieutenant governor certifies the election; and that an act becomes void 30 days after its rejection at the polls is certified.

Substantively, this section prohibits the legislature from repealing an initiated law for two years but permits amending it at any time. The convention delegates placed a great deal of trust in the deliberative processes of a fairly apportioned and broadly representative legislature and were reluctant to supplant this process entirely with "direct democracy" mechanisms. They prohibited the legislature from making an immediate and outright repeal of an initiated law, for such authority might subvert the initiative process. On the other hand, they allowed the legislature to repeal an initiated law two years after its effective date, given that circumstances giving rise to the law might well have changed, and the effectiveness of the law could be fairly evaluated by then. They allowed the legislature to amend an initiated law at any time, placing such laws under the legislature's purview. An opinion of the attorney general noted: "… mindful of the potential need to protect the State from mistakes, the Convention prohibited repeal but allowed amendment, even though it was also aware that the power to amend was virtually the power to destroy" (1975 Op. Att'y Gen. No. 16 (Aug. 19)).

The rationale for the legislature's power of amendment was stated by the Alaska Supreme Court in *Warren v. Boucher,* 543 P.2d 731 (1975):

> The constitution thus vests broad authority in the legislature to vary the terms of an initiated law, after its adoption, by the process of amendment. This power amounts to a check or balance against the initiative process. No doubt the legislature was given this power to assure that initiatives that were ill-advised, which might seriously cripple or frustrate the sound workings of government, or which might be impracticable, could be altered or corrected rapidly by the legislature. It was obviously intended by the framers that the initiative process should not be permitted to disrupt vital governmental functions or to impose intolerable burdens upon established administrative systems. To this end the legislature was given the ability to substitute its judgment for that of the proponents of the initiative.

The legislature's amendments in 1975 to an initiated conflict-of-interest law were challenged in court on the grounds that they effectively repealed the initiated law. The court disagreed but indicated that amendments to an initiated law that are tantamount of repeal would be unconstitutional *(Warren v. Thomas,* 568 P.2d 400 (1977)).

The legislature may not repeal an initiated law for two years. May it repeal within two years a law that has been determined to be substantially the same as a proposed initiative? This circumstance has not been litigated, but an argument could be made that repeal would violate the intent of this section. In 2003, the legislature amended a law it had adopted the year before as a substitute for a pending initiative that would have increased the state's minimum wage and indexed it to the rate of inflation. The amendment removed the key indexing feature. Although they did not file suit, proponents of the initiative alleged the legislature had cynically adopted the substitute measure only to facilitate crippling it the next year instead of having to wait two years if the initiative had been adopted.

This section does not prevent the legislature from passing again a law rejected by referendum. In 1996, a successful initiative prohibited the public from spotting wolves from aircraft then landing to shoot them. The legislature re-authorized public "same day airborne" hunting methods in 2000 if it was done within an area designated for predator control by the Department of Fish and Game. Supporters of the 1996 initiative mounted a successful referendum overturning the legislature's action in the general election of 2000. In 2003, however, the legislature again authorized private airborne hunting by private persons in predator control areas. In 2008, opponents of private airborne hunting put an initiative on the ballot that would have reinstated prohibitions, including those for hunting grizzly bears, but the measure failed.

Section 7. Restrictions

> **The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety.**

The initiative and referendum may not be used to enact or repeal certain types of legislation, as provided in this section and Article XII, Section 11. Several measures have run afoul of these prohibitions, in litigation over certification for the ballot by the lieutenant governor, or after enactment.

The court has said that in other sections of the constitution, mainly Sections 15 and 16 of Article II, the term appropriation refers strictly to money. In this section, however, it has said that a broader definition is necessary to accomplish the intent of the framers "to prevent popular give-away programs and maintain legislative control over the allocation of state assets" (*Alaska Legislative Council ex rel. State Legislature v. Knowles*, 86 P.3d 891 (2004)).

This expansive definition of "appropriation" has undone several initiatives. The first of these was the Alaska Homestead Act, adopted by voters in 1978, providing for the free transfer of 30 million acres of vacant, state-owned land not otherwise designated for a public purpose to Alaskans. The initiative provided for increasing grants of acreage based on length of residency. The court ruled the term "appropriation" in this section refers to the setting aside of state-owned assets generally rather than to just the cash assets of the state. The Alaska Supreme Court said the act "would substantially deplete the state government of valuable assets just as surely as an initiative allotting to residents of specified years large sums of money. In the same manner, it constitutes an appropriation and hence may not be enacted by initiative" (*Thomas v. Bailey*, 595 P.2d 1 (1979)).

Other initiatives blocked as unconstitutional attempts to appropriate include a municipal proposal to force the sale of the city-owned electric utility (valued at about $35 million) to the regional cooperative utility for one dollar (*Alaska Conservative Political Action Committee v. Municipality of Anchorage*, 745 P.2d 936 (1987)); a proposed transfer of real and personal property from the University of Alaska to a new community college system (*McAlpine v. University of Alaska,* 762 P.2d 81 (1988)); an initiative to reserve five percent of the statewide harvest of salmon for subsistence, personal use, and sport fishing (*Pullen v. Ulmer,* 932 P.2d 54 (1996)); and one seeking to prohibit set-net fishing in urban areas because it allocated salmon, a state asset, among competing users (*Lt. Governor of the State of Alaska v. Alaska Fisheries Conservation Alliance, Inc*., 363 P.3d 105, (2015)). In contrast, the court ruled that an initiative requiring the legislature to approve large-scale

mining on state lands did not amount to an appropriation of state assets, and let it go to the voters (*Hughes v. Treadwell*, 328 P.3d 1037 (2014)).

Both a referendum and an initiative have been challenged as constituting local or special legislation, which is prohibited by Article II, Section 19. In *Walters v. Cease*, 394 P.2d 670 (1964), the Alaska Supreme Court stopped a referendum on the Mandatory Borough Act of 1963, finding the act amounted to special and local legislation that is off limits to the referendum. In *Boucher v. Engstrom*, 528 P.2d 456 (1974), the court upheld a capital move initiative, saying that legislation establishing the location of the state capital was not special and local because the subject was of statewide interest and importance.

The Alaska Supreme Court upheld the refusal of the lieutenant governor to certify a proposed initiative on the grounds that it attempted to prescribe a rule of court in violation of this section. In *Citizens Coalition for Tort Reform v. McAlpine,* 810 P.2d 162 (1991), the lieutenant governor denied certification of an initiative limiting the contingent fees of attorneys, which the court said fell within its rule-making power over the practice of law and the conduct of attorneys, and therefore initiatives on the subject are forbidden by this section.

In 2000, the legislature placed an amendment to this section on the general election ballot seeking to prohibit wildlife management through initiative by inserting the language "permit, regulate, or prohibit the taking or transportation of wildlife, prescribe seasons or methods of taking wildlife." The amendment was sparked by two initiatives that sought to regulate the taking of wolves. The first of these, which was adopted in 1996, restricted airborne "land and shoot" hunting; the second, which failed in 1998, sought to restrict the use of snares (see Article XII, Section 11 for a discussion of the attempt to keep this initiative off the ballot.) The proposed amendment was not ratified.

Use of the initiative to place constitutional amendments before the voters is precluded by Article XIII, which authorizes only two methods to amend the constitution, and by Section 1 of this article limiting the use of the initiative to enacting laws. (See the discussion of term-limit initiatives under Section 1; see also *Starr v. Hagglund,* 374 P.2d 316 (1962)). An initiative may be used, however, to call a constitutional convention (see Article XIII, Section 2).

Section 8. Recall

> **All elected public officials in the State, except judicial officers, are subject to recall by the voters of the State or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by the legislature.**

This section makes the governor, lieutenant governor, and legislators subject to removal from office by a vote of the electorate. Legislators can be recalled only by the voters of the district that elected

them. Procedures for use of the recall are specified in AS 15.45.470- 720. Grounds for recall are "lack of fitness, incompetence, neglect of duties, or corruption." Recall of elected municipal officials is addressed in AS 29.26.240-350. Grounds for recalling municipal officials are "misconduct in office, incompetence, or failure to perform prescribed duties."

The Alaska Division of Elections, or municipal clerk, must certify that a recall petition meets the grounds for recall before signatures may be gathered. Petitions are often denied certification. The Alaska Supreme Court has held, however, that statutory requirements for recall "should be liberally construed so that the people are permitted to vote and express their will on the proposed legislation…technical deficiencies or failure to comply with the exact letter of procedure will be resolved in favor of the accomplishment of that purpose" (see *Meiners v. Bering Strait School District*, 687 P.2d 287 (1984)).

Upon certification, petitioners have 60 days to collect signatures from voters residing in the district of the official equal to at least 25 percent of the number of votes cast for the office subject to recall in the district during the preceding general election.

Several attempts have been made to recall state officials, but none have reached the voters. One legislator resigned prior to a recall vote, and the Division of Elections has rejected recall petitions against three other legislators because the alleged grounds for recall did not meet criteria. In 1993, a recall campaign was mounted against Governor Hickel and Lieutenant Governor Coghill, but it did not reach the ballot. A petition to recall Governor Dunleavy was initially denied by the Division of Elections in 2019 but reinstated by the court (*State of Alaska v. Recall Dunleavy*, 491 P.3d 343 (2021)). In 2021, petitioners abandoned their signature gathering efforts. Efforts seeking recall of a municipal official or local school board member are more common, and some have been successful.

ARTICLE XII

GENERAL PROVISIONS

This article contains a number of constitutional odds and ends that did not fit logically in any other article. During the convention the delegates referred to it as the "miscellaneous article." Several of its provisions were included in anticipation of the requirements Congress would place on Alaska as a condition of admission to the United States. The delegates wanted a document fully acceptable to Congress that would take effect immediately upon the formal declaration of statehood. They consulted other state constitutions and drafts of pending statehood legislation for guidance in drafting these provisions. Sections 1, 4, 5, and 12 are the result of this effort. Section 13 agreed, in advance, to any terms and conditions Congress might impose on the new state of Alaska.

Other provisions of the article define words and phrases used elsewhere in the document, clarify intent, mandate a merit system for state employment, and protect retirement benefits of state workers.

Section 1. State Boundaries

> **The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, included in the Territory of Alaska upon the date of ratification of this constitution by the people of Alaska.**

This section was based on language in pending federal statehood legislation (H.R. 2535). The Public Administration Service, consultants for the convention, discussed the section in its study on natural resources:

> The statehood bills for Alaska and Hawaii in 1954 and 1955 included language designed to apply the Submerged Lands Act of 1953 to those two prospective states. The description of Alaskan boundaries set out in these acts is pertinent to the drafting of a boundary article for the Alaskan Constitution, for the assumption can be made with a fair degree of safety that similar language will be incorporated into any future Congressional Act of admission. The language was rather carefully worked out in 1954 and 1955 in the Committees of the House of Representatives and the Senate and can be considered as settled.

Section 2. Intergovernmental Relations

> **The State and its political subdivisions may cooperate with the United States and its territories, and with other states and their political subdivisions on matters of common interest. The respective legislative bodies may make appropriations for this purpose.**

The *Model State Constitution* recommended this type of provision to foreclose doubts about the authority of the state to participate in interstate compacts and of local governments to enter directly into revenue-sharing agreements with the federal government. The following commentary on this provision was prepared by the committee that drafted it:

> This provision is recommended mainly in order to make it clear that the state can participate in cooperative programs such as the Western Interstate Compact on Higher Education even though such programs may involve the expenditure of public funds outside the state. Some states have had to amend their constitutions in order to participate in such programs.
>
> This provision would also authorize local government units in Alaska to cooperate with Federal agencies on grant-in-aid programs such as housing and airport construction. Local government units could maintain direct relations with Federal agencies, but the Governor would serve as agent for the state in developing the intergovernmental relations of state agencies. In view of the close relationships which Alaska will have with the neighboring Canadian provinces, explicit authority is granted to the state to cooperate with foreign nations to the extent consistent with the laws of the United States.

Section 3. Office of Profit

> **Service in the armed forces of the United States or of the State is not an office or position of profit as the term is used in this constitution.**

Serving in the U.S. military or National Guard does not disqualify a person from becoming a legislator under Article II, Section 5, or governor or lieutenant governor under Article III, Section 6. The meaning of "position of profit" is discussed by the Alaska Supreme Court in *Begich v. Jefferson*, 441 P.2d 27 (1968), which held that a school superintendent employed by the state-operated school system was barred from acting in that position while serving as an elected official.

Article II, Section 5 exempts from the definition of a position of profit for legislators employed by or elected to a constitutional convention.

Section 4. Disqualification for Disloyalty

> **No person who advocates, or who aids or belongs to any party or organization or association which advocates, the overthrow by force or violence of the government of the United States or of the State shall be qualified to hold any public office of trust or profit under this constitution.**

This section is derived from statehood bills pending at the time of the convention. Prior to the 2022 primary election, a constituent filed suit in superior court claiming a state representative was disqualified from holding office under this section and should be removed from the ballot due to membership in an anti-government militia group.

In deciding the case, the court held the disloyalty clause of this section "must be interpreted in harmony with the First Amendment to the United States Constitution," and its guarantees of freedom of speech and association. Although the court found the militia group "advocated concrete, imminent action directed at the violent overthrow of the United States government and engaged in conduct that attempted to bring about that aim," the representative "did not possess a specific intent to further" those actions. In doing so, the court clarified that mere association with an organization that advocates the overthrow of the United States does not meet the disqualification standard under this section (*Kowalke v Eastman, State of Alaska, Division of Elections, and Gail Fenumiai*, AK Superior Ct. 3AN-22-07404CI (2022)).

Section 5. Oath of Office

> **All public officers, before entering upon the duties of their offices shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as . . . to the best of my ability." The legislature may prescribe further oaths or affirmations.**

This, too, is a provision derived from pending statehood legislation. Although authors of the *Model State Constitution* recommended the inclusion of such of a provision, they said it is "more in deference to common usage than because of any deep conviction that the observance of such a formality will, in and of itself, transform the venal or incompetent into devoted public servants."

Alaska Statute 39.05.040 applies the oath requirement of this section to executive officers and board members; AS 39.05.045 does so for other state employees.

Section 6. Merit System

> **The legislature shall establish a system under which the merit principle will govern the employment of persons by the State.**

Here the constitution mandates a state civil service system based on merit. The alternative, Delegate Sundborg pointed out to the constitutional convention, is the "spoils system." A civil service system prevents state jobs from being distributed as political favors, and encourages the development of a competent, permanent work force. "Generally defined, the merit principle requires the recruitment, selection, and advancement of public employees 'under conditions of political neutrality, equal opportunity, and competition on the basis of merit and competence'" (*Alaska Public Employees Assn v. State*, 831 P.2d 1245 (1992)).

The State Personnel Act implements this section (AS 39.25), which includes a detailed definition of the merit principle. Approximately 90 percent of state employees are covered by the provisions of the personnel act. Exempt from its coverage are policy-level positions (mainly commissioners, deputy commissioners, and division directors) in each executive department, employees of the governor's office, the University of Alaska, and the legislature. Alaska Statute 39.25.110 lists all exempt employees; partially exempt employees are defined at AS 39.25.120.

This section does not, however, categorically bar the state from privatizing state jobs. In *Moore v. State*, 875 P.2d 765 (1994), a former state employee sued after being laid off when the state contracted with a private firm to perform the duties of the position. The Alaska Supreme Court stated that "the merit principle, as expressed in article XII, section 6 of the Alaska Constitution, ordinarily allows state agencies broad discretion to eliminate positions and order layoffs for reasons of efficiency and economy, provided that their decisions are not politically motivated." In considering whether to adopt a more restrictive rule when the state couples lay-offs with entering private contracts to provide the same services, the court declined, stating:

> …there appears to be relatively little danger that privatization could successfully be used as a device for subverting the merit principle's primary goal of shielding state workers and jobs from political influence. As we have previously noted, state personnel rules that deal with layoffs offer protection against political influence by ensuring that state workers who are potential targets of layoffs are treated fairly and that the effects of any actual layoff are mitigated. Furthermore, the State Procurement Code establishes extensive control over agency contracting procedures. These measures are calculated to ensure that the State accords fair treatment to persons and businesses seeking to enter state contracts.

The Court did, however, acknowledge that privatization could be used as a "means of circumventing policies relating to qualifications and conditions of employment," as contractors would not be bound

to provide the same level of pay or benefits that state employees are entitled to while providing the same services.

Most collective bargaining agreements contain express provisions dealing with "contracting out." Generally, the state must conduct a feasibility study before securing contracts that would displace union employees and must provide procedural protections to unions allowing them to contest the state's decision and propose alternative plans.

There have been several disputes over state efforts to privatize services. For example, in 2016, the Alaska State Employees Association (ASEA) brought a grievance over Governor Walker's decision to privatize design section positions within the Department of Transportation and Public Facilities. The state also considered privatizing management of the Pioneer Homes in 2016, and the administration of the Alaska Psychiatric Institute in 2019.

Section 7. Retirement System

> **Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.**

According to the drafting committee commentary, this section was intended to "assure state and municipal employees who are now tied into various retirement plans that their benefits under these plans will not be diminished or impaired when the Territory becomes a state." This assurance has proven prescient, as public employees in several states without protections like that of this section have seen accrued benefits reduced through legislation to address retirement systems' unfunded liabilities—that is, future costs exceeding projected assets.

This section further protects state employees from a reduction of retirement benefits in effect when they entered the retirement system. The legislature may change retirement benefits, but the changes will only be prospective. That is, a person is entitled to the benefits of the retirement system which existed at the time the person entered public employment even if retirement benefits are subsequently reduced (see *Hammond v. Hoffbeck,* 627 P.2d 1052 (1981)).

Over the years the legislature has established several "tiers" of retirement benefits. In 1975, a new retirement system, the Elected Public Officers' Retirement System (EPORS), was created by a general legislative pay bill and the governor, lieutenant governor, and all legislators were required to participate. The law creating EPORS was subsequently repealed by referendum. Although the system ceased to exist, those public officials who participated in the system for the few months of its operation were entitled to its schedule of benefits upon their retirement by virtue of this constitutional provision *(State ex rel. Hammond v. Allen,* 625 P.2d 844 (1981)).

In 2021, the Alaska Supreme Court held that a law repealing the statutory right of reinstatement impermissibly diminished accrued retirement benefits (*Metcalfe v. State*, 484 P.3d 93 (2021)). Thus, an employee who had withdrawn his retirement contributions could reenter the system, despite exceeding the statutory time limit to rejoin.

Section 8. Residual Power

> **The enumeration of specified powers in this constitution shall not be construed as limiting the powers of the State.**

This provision extends to the powers of the state the same protection extended to the rights of individuals by Article I, Section 21. It blocks application of the canon of construction of *expressio unius est exclusio alterius* (the mention of one thing implies the exclusion of another). The provision is probably unnecessary, as it is established legal doctrine in the United States that a state may exercise all powers that are not denied it in the U.S. Constitution or its own. Nonetheless, its inclusion reinforces the principle that this constitution is to be construed expansively by the courts.

Section 9. Provisions Self-executing

> **The provisions of this constitution shall be construed to be self-executing whenever possible.**

A "self-executing" provision is one that takes effect without legislative action. By instructing the courts to interpret provisions as self-executing to the greatest reasonable extent, this section reduces the chance that a constitutional provision will be nullified by the legislature's failure to adopt the required ancillary legislation.

Examples of provisions that the convention explicitly made self-executing are found in Article VI, which contains sufficient procedural detail for legislative redistricting to occur without further direction in statute; in Article X, where there is direction for municipalities to achieve home-rule status; in Article XI, providing the steps for initiatives and referendums; and in Article XIII, where all steps necessary for calling a constitutional convention are specified, including the wording of the ballot.

Section 10. Interpretation

> **Titles and subtitles shall not be used in construing this constitution. Personal pronouns used in this constitution shall be construed as including either sex.**

Titles such as "Article XII, General Provisions," and subtitles such as "Section 10 Interpretation" have no legal meaning in the constitution. The second sentence of this provision means that the words *he* and *his* also mean *she* and *her.*

Section 11. Law-Making Power

> **As used in this constitution, the terms "by law" and "by the legislature," or variations of these terms, are used interchangeably when related to law-making powers. Unless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI.**

The aim of this section is to avoid confusion that might be created by different expressions for the concept of law, however it was the subject of at least one suit over what subjects are "clearly inapplicable" to the initiative process.

In a lawsuit seeking to keep an initiative to prohibit the use of snares in trapping wolves off the ballot, the plaintiffs argued that wildlife management was the exclusive domain of the legislature by virtue of it being the trustee of the state's natural resources. Therefore, the regulation of wolf trapping was "clearly inapplicable" to the initiative process. The court rejected this argument, stating: "The convention debates suggest the framers added 'clearly inapplicable' to Article XII so that the initiative would not replace the legislature where the legislature's power serves as a check on other branches of government, such as legislative power to define courts' jurisdiction or override judicial rules." No separation of powers issues are raised by wildlife management, and it is, therefore, a legitimate subject for the initiative (*Brooks v. Wright,* 971 P.2d 1025 (1999)). Voters subsequently rejected the initiative in the general election of 1998.

Section 12. Disclaimer and Agreement

> **The State of Alaska and its people forever disclaim all right and title in or to any property belonging to the United States or subject to its disposition, and not granted or confirmed to the State or its political subdivisions, by or under the act admitting Alaska to the Union. The State and its people further disclaim all right or title in or to any property, including fishing rights, the right or title to which may be held by or for any Indian, Eskimo, or Aleut, or community thereof, as that right or title is defined in the act of admission. The State and its people agree that, unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States. They further agree that no taxes will be imposed upon any such**

property, until otherwise provided by the Congress. This tax exemption shall not apply to property held by individuals in fee without restrictions on alienation.

Except for the second sentence, this provision is the conventional *clause irrevocable* found in virtually all statehood acts since roughly 1850. Its purpose is to avoid land disputes between new states and the federal government. Section 8 of the federal Alaska Statehood Act contains similar language, and these two statements constitute a form of contract between the federal government and the people of the State of Alaska. This section is discussed at length in *Metlakatla Indian Community, Annette Island Reservation v. Egan,* 362 P.2d 901 (1961).

The novel feature of this provision and its counterpart in Section 8 of the statehood act is the reference to Native rights. The purpose of this reference was to leave open the possibility of Alaska Natives receiving compensation from the federal government for their land claims, which came to a head shortly after statehood. As the state began making its land selections under the statehood act, Alaska Natives argued that the selections intruded on tribal land. In 1966, Secretary of the Interior Stewart Udall froze all state land selections until Native claims could be resolved. The discovery of oil on the North Slope several years later added additional pressure to settle the claims so that development could begin. It took an act of Congress, the Alaska Native Claims Settlement Act of 1971, to resolve them.

In 1982, an initiative was approved by the voters that challenged federal ownership of unappropriated federal land in Alaska. This "Tundra Rebellion" initiative was patterned after similar "sagebrush rebellion" campaigns in other western states where federal land holdings tend to be large. It asserted state ownership of all federal land, except specified federal withdrawals, and directed the Alaska Department of Natural Resources to begin to manage the land. The Alaska attorney general advised that this initiative was unconstitutional under the Alaska Constitution because it violates Sections 12 and 13 of Article XII (1983 Op. Att'y Gen. No. 2 (Feb. 18)).

Section 13. Consent to Act of Admission

All provisions of the act admitting Alaska to the Union which reserve rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property, are consented to fully by the State and its people.

By this section the people of Alaska gave advance consent to the terms of the future statehood act, whatever they might be. Advance consent to terms of the statehood act regarding mineral rights is found in Article VIII, Sections 9 and 11. The history and intent of this section are discussed at length in *State v. Lewis*, 559 P.2d 630 (1977).

Ceding consent to a future statehood act was controversial at the constitutional convention, but the delegates knew that Congress would require it, and the likely terms of admission had already become apparent in pending statehood legislation. The delegates hoped this provision would avert a special referendum to ratify the future statehood act. Ultimately, the act did require Alaskans to vote, which occurred on August 26, 1958; 85 percent of the ballots cast were in favor.

Section 14. Approval of Federal Amendment to Statehood Act Affecting an Interest of the State under that Act

> **A federal statute or proposed federal statute that affects an interest of this State under the Act admitting Alaska to the Union is ineffective as against the State interest unless approved by a two-thirds vote of each house of the legislature or approved by the people of the State. The legislature may, by a resolution passed by a majority vote of each house, place the question of approval of the federal statute on the ballot for the next general election unless in the resolution placing the question of approval, the legislature requires the question to be placed before the voters at a special election. The approval of the federal statute by the people of the State is not effective unless the federal statute described in the resolution is ratified by a majority of the qualified voters of the State who vote on the question. Unless a summary of the question is provided in a resolution passed by the legislature, the lieutenant governor shall prepare an impartial summary of the question. The lieutenant governor shall present the question to the voters so that a "yes" vote on the question is a vote to approve the federal statute.**

This section, added by amendment in 1996, makes a political statement that the federal government may not unilaterally change the terms of the Statehood Act compact between the federal government and the state. It is not implicitly incorporated into the state constitution, and therefore no amendment is necessary to ratify changes to the Act. According to this provision, a supermajority of the legislature or a majority of the voters may bind the state to a change in the Act. Without such approval, this provision declares that a change made by Congress is "ineffective."

Behind this amendment is the concern that Congress would authorize oil and gas leasing in the Arctic Wildlife Refuge and share petroleum revenues with the state on less generous terms than are set in the Statehood Act, under which the federal government transfers ninety percent of mineral revenues to Alaska. Draft legislation in Congress would have set Alaska's share at fifty percent.

This wordy amendment is a departure from the succinct style generally favored by the original drafters of the Alaska Constitution.

ARTICLE XIII

AMENDMENT AND REVISION

This article provides for amendment of the constitution. The authors of Alaska's constitution sought to reduce the need for amendments by leaving to the legislature many matters included in the constitutions of other states, such as specifying the powers of local government and organizing the executive branch. They also provided automatic mechanisms to deal with anticipated changes, such as legislative redistricting. Thus, the authors sought a constitution that avoided the frequent tampering that has complicated those of other states.

The convention delegates sought to make amendment procedures difficult enough to prevent rash, cluttering changes but easy enough to allow the constitution to evolve with the needs of a changing society. Because constitutional matters are of fundamental importance, the delegates believed changes should be ratified by voters. Thus, the delegates rejected the committee suggestion allowing the legislature to amend the constitution without a vote of the people; an approach used only in Delaware.

To ensure changes are well-conceived and properly drafted, the constitution requires a two-step process that allows for adequate deliberation, attention to detail, and opportunity for reflection. Proposals for change must emerge from a deliberative body (step one) before they reach the electorate for ratification (step two). The deliberative body may be either the legislature or a constitutional convention convened expressly for the purpose of studying changes in the state's basic law. The delegates did not allow the constitution to be amended by initiative because that process bypasses a deliberative body.

As the governmental body broadly representative of the people, the legislature is the logical and traditional point of origin for proposed amendments. To ensure proposed amendments command substantial support, the constitution requires approval by a two-thirds majority of each house before reaching the ballot. Many states require either a two-thirds or three-fifths majority.

The legislature is not the only source of proposals for change, however, because institutional reform is, at times, difficult to accomplish from within. Furthermore, no single branch of government should control a major overhaul of the constitution. Revision, in contrast to piecemeal amendment, is properly the job of a diverse, well-equipped assembly dedicated specifically to that task. For these reasons, the delegates made explicit provision for constitutional conventions. According to Article XIII, the legislature may convene a convention at any time; and the voters of the state may decide at regular election every ten years whether a convention should be called, or they can call a convention at any time through the initiative process (see the commentary under Section 2).

No mention is made of the governor in this article, which has been taken to mean he has no role in adopting amendments. The legislature proposes amendments in the form of resolutions, which are not subject to the governor's veto. Consequently, the governor is disadvantaged in periodic struggles with the legislature over the respective powers of the two branches of government. For example, proposed constitutional amendments to authorize the legislature to nullify administrative regulations would have resulted in enhanced legislative powers at the expense of executive power (these failed to be ratified).

The constitution was amended 28 times between its ratification in 1956 and the general election of 2024 (see Appendix table "Constitutional Amendments Appearing on the Ballot"). Voters have rejected fourteen proposed amendments. Six times the question "Shall there be a constitutional convention?" has gone before the voters, and each time they have answered no.

Section 1. Amendments

> **Amendments to this constitution may be proposed by a two-thirds vote of each house of the legislature. The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next general election. If a majority of the votes cast on the proposition favor the amendment, it shall be adopted. Unless otherwise provided in the amendment, it becomes effective thirty days after the certification of the election returns by the lieutenant governor.**

This section authorizes the legislature to propose amendments to the electorate by two-thirds majority in each house. It was amended in 1974 by substituting the word "general" for "statewide" in the second sentence. As a result, proposed constitutional amendments do not appear in primary elections, which is the first statewide election after the end of a regular legislative session. There is a substantially higher turnout for general elections than for primary elections. The remaining sections of this article deal with the second method of amendment, the constitutional convention.

Amendment v. Revision

Some state constitutions limit the number of amendments the legislature may submit to the voters at one time, and the frequency with which individual articles may be amended. This section has no such limitations. However, an amendment may not be so sweeping as to constitute a revision of the constitution, and it may not be amended by the initiative (Article XI, Section 1).

The Alaska Supreme Court, in *Bess v. Ulmer*, 985 P.2d 979 (1999), examined three proposed amendments against a challenge that they constituted impermissible revisions. The court defined a

revision as "a change which alters the substance and integrity of our constitution in a manner measured both qualitatively and quantitatively."

The first proposed amendment would have withdrawn from prisoners all rights granted under the Alaska Constitution, leaving only those rights afforded by the U.S. Constitution. The court found the proposal would affect as many as eleven sections, altering the substance and integrity of the constitution and, as such, represented a revision rather than an amendment.

The second and third proposed amendments sought to limit marriage to heterosexual couples and transfer reapportionment to a redistricting board, respectively. The court held neither of these proposals met the qualitative or quantitative tests and, thus, could remain on the ballot. In the court's analysis of the redistricting board amendment, it found that, although the proposal would remove authority from the governor's office (executive branch) to conduct reapportionment, the amendment did not deprive the executive of a "foundational power" and, as such, did not constitute a revision.

In response to *Bess*, the legislature placed an amendment on the 2000 general election ballot that would have added a sentence to this section reading: "An amendment is a change that is limited to one subject and may affect more than one constitutional provision." It would also have added a fifth section prohibiting the courts from altering or changing the language of a proposed amendment or revision to the constitution. The amendment failed to be ratified.

Impartial Summary

In 1976, the legislature and the executive disagreed over the objectivity of the lieutenant governor's ballot summary for a proposed amendment to require legislative approval of sales and leases of state-owned resources by the Department of Natural Resources. The legislature claimed the summary suggested the proposal sought improper objectives, and thereby negatively biased voters. The executive branch opposed this legislative veto power as a violation of the separation of powers doctrine. The ballot summary stated, in part: "The amendment would, with respect to state land disposals, exempt the legislature from the constitutional prohibition against local and special legislation, vest the legislature with the veto power and vest the legislature with the executive power of administration and the judicial power of review." The proposal failed at the polls. To prevent recurrence of biased ballot summaries, the legislature established a mechanism for review of ballot wording, including opportunity for judicial review (AS 15.50.025, AS 15.50.027). (See commentary under Article XIII, Section 4, and Article XI, Section 3 for other disputes about biased wording of ballot measures.)

Section 2. Convention

The legislature may call constitutional conventions at any time.

This and the following section authorize the second method of amending the constitution—by constitutional convention. By implication, the voters as well as the legislature may call a constitutional convention at any time. This is because the voters can do by initiative what the legislature can do, unless they are explicitly barred by the constitution, and calling a convention by initiative is not prohibited in Article XI, Section 7 (Article XII, Section 11 and *Proceedings of the Constitutional Convention,* pp. 3439-3440).

Presumably the call would be by resolution and not subject to the governor's veto.

Section 3. Call by Referendum

If during any ten-year period a constitutional convention has not been held, the lieutenant governor shall place on the ballot for the next general election the question: "Shall there be a Constitutional Convention?" If a majority of the votes cast on the question are in the negative, the question need not be placed on the ballot until the end of the next ten-year period. If a majority of the votes cast on the question are in the affirmative, delegates to the convention shall be chosen at the next regular statewide election, unless the legislature provides for the election of the delegates at a special election. The lieutenant governor shall issue the call for the convention. Unless other provisions have been made by law, the call shall conform as nearly as possible to the act calling the Alaska Constitutional Convention of 1955, including, but not limited to, number of members, districts, election and certification of delegates, and submission and ratification of revisions and ordinances. The appropriation provisions of the call shall be self-executing and shall constitute a first claim on the state treasury.

This provision guarantees voters a chance at least once every decade to call a constitutional convention. Many state constitutions provide for a referendum on a convention every twenty years. Delegates to the convention chose ten years because they believed change would be occurring fast in Alaska. This section specifies the essential procedures for holding a convention and preventing the legislature from thwarting the will of the voters by refusing to issue a call.

The first referendum on a constitutional convention was held in 1970. The ballot read: "As required by the constitution of the State of Alaska, Article XIII, Section 3, shall there be a constitutional convention?" The outcome was a very narrow affirmative vote, 34,911 to 34,472. Opponents of the convention sued, claiming ballot proposition wording was biased in favor of the measure by implying

that the convention, rather than the vote, was required by the constitution. The courts agreed and threw out the election results *(Boucher v. Bomhoff,* 495 P.2d 77 (1972)). The direct question was put before the voters at the next general election (1972), "Shall there be a constitutional convention?" This and each subsequent time it appeared on the ballot, the convention question was decisively defeated.

If a convention were ever called under this section, it would almost certainly require an act of the legislature to implement. Too many features of the act calling the 1955 convention would be unsuitable for a new convention, such as provisions for delegates' districts, ratifying the work of the convention, and other matters. The meaning of the last sentence is unclear. A convention would require an appropriation by the legislature. Does "self-executing" mean that the appropriation would not be subject to the governor's veto?

Section 4. Power

> **Constitutional conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people. No call for a constitutional convention shall limit these powers of the convention.**

The power of a convention to propose constitutional changes cannot be limited ("plenary" means full). Neither a convention called by voters under Section 3, nor one called by the legislature under Section 2, may be restricted in scope.

ARTICLE XIV

APPORTIONMENT SCHEDULE

Article XIV contained the original legislative apportionment schedule which is obsolete, having been modified after each decennial census since 1960. The section was repealed by a 1998 ballot measure placed before voters by the legislature. Description of current legislative election districts may be obtained from the Division of Elections.

ARTICLE XV

SCHEDULE OF TRANSITIONAL MEASURES

This article establishes the legal continuity between the territory and the State of Alaska, and sets in motion the new machinery of state government. Because it deals with transitional matters which are now history, this article is not a part of the constitution, and the courts have ruled that provisions of this article may be amended by statute. A future comprehensive revision of the constitution would likely drop this article from the document.

Section 20 declares the capital of the state to be Juneau. Placing this provision in the transitional articles rather than in the body of the constitution was a major compromise by delegates at the constitutional convention. Location of the capital was perhaps the most divisive of all the issues facing the delegates, and they finally agreed to postpone the issue by putting Section 20 in the transitional article. At the time, however, the consequences of doing so were not altogether clear, and it required a court case *(Starr v. Hagglund,* 374 P.2d 316 (1962)) to establish that the provisions in this article could be changed by statute or initiative rather than the constitutional amendment process.

Article XV contains a provision for three ordinances to be ratified by the electorate: the first adopted the constitution itself; the second adopted the Alaska-Tennessee Plan; and the third abolished fish traps in Alaska. Voters ratified all three ordinances: they approved the constitution by a vote of 17,447 to 8,180; endorsed the Alaska-Tennessee Plan 15,011 to 9,556; and they voted to abolish fish traps by 21,285 to 4,004. These ordinances can be found at the end of this section.

Adoption of the Alaska-Tennessee Plan meant that the voters would elect two “shadow” senators and a representative who would go to Washington, D.C., and lobby for statehood. While they would not have any legal power, they would be a constant reminder to Congress of the aspirations of Alaskans for admission to the Union. As the name suggests, this method was first used in Tennessee in 1795 by settlers who sought statehood. At the time, no clear precedent of procedures for admitting a territory to the Union existed. In 1796, a newly elected legislature in Tennessee appointed two delegates to the U.S. Senate, without permission to do so. In May of that year, the Senate approved a resolution accepting the two as “spectators” and provided them chairs for that purpose. On June 1, Tennessee was granted statehood, and its two spectators were sworn in as senators in December. Considering its success, several states, including Michigan, California, Minnesota, Oregon, and Kansas, employed the Tennessee plan as part of their path to statehood.

The ordinance prohibiting the use of fish traps became effective upon statehood. Fish traps in the territory had become a symbol of nonresident exploitation of Alaska. These efficient devices were owned by canneries and allowed to operate by the federal government. Most residents opposed them because they excluded individual fishermen from a large portion of the salmon harvest in southeast Alaska and were believed to be harmful to the fishery resource as well. The history of fish traps in Alaska is summarized in the U.S. Supreme Court case of *Metlakatla Indian Community, Annette Island Reservation v. Egan,* 362 P.2d 901 (1961).

Sections 26, 27, and 28 provide implementing language for the appropriation limit ratified in 1982 (see Article IX, Section 16). Section 26 exempted expenditures for a capital move from the limit should the move be approved by the voters (it was not); Section 27 is a "sunset" provision, which requires the voters to take affirmative action to continue the life of the amendment (in 1986 voters approved the extension of the amendment); and Section 28 specifies that the appropriation limit is to take effect for the fiscal year beginning July 1, 1983.

Section 29, providing for redistricting of the legislature, was added in 1998.

Section 1. Continuance of Laws

> **All laws in force in the Territory of Alaska on the effective date of this constitution and consistent therewith shall continue in force until they expire by their own limitation, are amended, or repealed.**

Section 2. Saving of Existing Rights and Liabilities

> **Except as otherwise provided in this constitution, all rights, titles, actions, suits, contracts, and liabilities and all civil, criminal, or administrative proceedings shall continue unaffected by the change from territorial to state government, and the State shall be the legal successor to the Territory in these matters.**

Section 3. Local Government

> **Cities, school districts, health districts, public utility districts, and other local subdivisions of government existing on the effective date of this constitution shall continue to exercise their powers and functions under law, pending enactment of legislation to carry out the provisions of this constitution. New local subdivisions of government shall be created only in accordance with this constitution.**

Section 4. Continuance of Office

All Officers of the Territory, or under its laws, on the effective date of this constitution shall continue to perform the duties of their offices in a manner consistent with this constitution until they are superseded by officers of the State.

Section 5. Corresponding Qualifications

Residence, citizenship, or other qualifications under the Territory may be used toward the fulfillment of corresponding qualifications required by this constitution.

Section 6. Governor to Proclaim Election

When the people of the Territory ratify this constitution and it is approved by the duly constituted authority of the United States, the governor of the Territory shall, within thirty days after receipt of the official notification of such approval, issue a proclamation and take necessary measures to hold primary and general elections for all state elective offices provided for by this constitution.

Section 7. First State Elections

The primary election shall take place not less than forty nor more than ninety days after the proclamation by the governor of the Territory. The general election shall take place not less than ninety days after the primary election. The elections shall be governed by this constitution and by applicable territorial laws.

Section 8. United States Senators and Representative

The officers to be elected at the first general election shall include two senators and one representative to serve in the Congress of the United States, unless senators and a representative have been previously elected and seated. One senator shall be elected for the long term and one senator for the short term, each term to expire on the third day of January in an odd-numbered year to be determined by authority of the United States. The term of the representative shall expire on the third day of January in the odd-numbered year immediately

following his assuming office. If the first representative is elected in an even-numbered year to take office in that year, a representative shall be elected at the same time to fill the full term commencing on the third day of January of the following year, and the same person may be elected for both terms.

Section 9. Terms of First Governor and Lieutenant Governor

The first governor and lieutenant governor shall hold office for a term beginning with the day on which they assume office and ending at noon on the first Monday in December of the even-numbered year following the next presidential election. This term shall count as a full term for purposes of determining eligibility for re-election only if it is four years or more in duration. (An amendment to this section was approved by the voters of the state August 25, 1970, and became effective October 10, 1970. The term "secretary of state" was changed to "lieutenant governor.")

Section 10. Election of First Senators

At the first state general election, one senator shall be chosen for a two-year term from each of the following senate districts, described in Section 2 of Article XIV: A, B, D, E, G, I, J, L, N and O. At the same election, one senator shall be chosen for a four-year term from each of the following senate districts, described in Section 2 of Article XIV: A, C, E, F, H, J, K, M, N and P. (These districts are now obsolete.)

Section 11. Terms of First State Legislators

The first state legislators shall hold office for a term beginning with the day on which they assume office and ending at noon on the fourth Monday in January after the next general election, except that senators elected for four-year terms shall serve an additional two years thereafter. If the first general election is held in an even-numbered year, it shall be deemed to be the general election for that year.

Section 12. Election Returns

The returns of the first general election shall be made, canvassed, and certified in the manner prescribed by law. The governor of the Territory shall certify the results to the President of the United States.

Section 13. Assumption of Office

When the President of the United States issues a proclamation announcing the results of the election, and the State has been admitted into the Union, the officers elected and qualified shall assume office.

Section 14. First Session of Legislature

The governor shall call a special session of the first state legislature within 30 days after the presidential proclamation unless a regular session of the legislature falls within that period. The special session shall not be limited as to duration.

Section 15. Office Holding by First Legislators

The provisions of Section 5 of Article II shall not prohibit any member of the first state legislature from holding any office or position created during his first term.

Section 16. First Judicial Council

The first members of the judicial council shall, notwithstanding Section 8 of Article IV, be appointed for terms as follows: three attorney members for one, three and five years respectively, and three nonattorney members for two, four and six years respectively. The six members so appointed shall, in accordance with Section 5 of Article IV, submit to the governor nominations to fill the initial vacancies on the superior court and the supreme court, including the office of chief justice. After the initial vacancies on the superior and supreme courts are filled, the chief justice shall assume his seat on the judicial council.

Section 17. Transfer of Court Jurisdiction

Until the courts provided for in Article IV are organized, the courts, their jurisdiction, and the judicial system shall remain as constituted on the date of admission unless otherwise provided by law. When the state courts are organized, new actions shall be commenced and filed therein, and all causes, other than those under the jurisdiction of the United States, pending in the courts existing on the date of admission, shall be transferred to the proper state court as though commenced, filed, or lodged in those courts in the first instance, except as otherwise provided by law.

Section 18. Territorial Assets and Liabilities

The debts and liabilities of the Territory of Alaska shall be assumed and paid by the State, and debts owed to the Territory shall be collected by the State. Assets and records of the Territory shall become the property of the State.

Section 19. First Reapportionment

The first reapportionment of the house of representatives shall be made immediately following the official reporting of the 1960 decennial census, or after the first regular legislative session if the session occurs thereafter, notwithstanding the provisions as to time contained in Section 3 of Article VI. All other provisions of Article VI shall apply in the first reapportionment.

Section 20. State Capital

The capital of the State of Alaska shall be at Juneau.

Section 21. Seal

The seal of the Territory, substituting the word "State" for "Territory," shall be the seal of the State.

Section 22. Flag

The flag of the Territory shall be the flag of the State.

Section 23. Special Voting Provision

Citizens who legally voted in the general election of November 4, 1924, and who meet the residence requirements for voting, shall be entitled to vote notwithstanding the provisions of Section 1 of Article V.

Section 24. Ordinances

Ordinance No. 1 on ratification of the constitution, Ordinance No. 2 on the Alaska-Tennessee Plan, and Ordinance No. 3 on the abolition of fish traps, adopted by the Alaska Constitutional Convention and appended to this constitution, shall be submitted to the voters and if ratified shall become effective as provided in each ordinance.

Section 25. Effective Date

This constitution shall take effect immediately upon the admission of Alaska into the Union as a state.

Section 26. Appropriations for Relocation of the Capital

If a majority of those voting on the question at the general election in 1982 approve the ballot proposition for the total cost to the State of providing for relocation of the capital, no additional voter approval of appropriations for that purpose within the cost approved by the voters is required under the 1982 amendment limiting increases in appropriations (Article IX, Section 16). (Adopted by voters November 2, 1982; however, the ballot measure referred to in this section was defeated, so this provision is inoperative.)

Section 27. Reconsideration of Amendment Limiting Increases in Appropriations

If the 1982 amendment limiting appropriation increase (Article IX, Section 16) is adopted, the lieutenant governor shall cause the ballot title and proposition for the amendment to be placed on the ballot again at the general election in 1986. If the majority of those voting on the proposition in 1986 reject the amendment, it shall be repealed. (Adopted November 2, 1982.)

Section 28. Application of Amendment

The 1982 amendment limiting appropriation increases (Article IX, Section 16) applies to appropriations made for fiscal year 1984 and thereafter. (Adopted November 2, 1982.)

Section 29. Applicability of Amendments Providing for Redistricting of the Legislature

The 1998 amendments relating to redistricting of the legislature (art. VI and art. XIV) apply only to plans for redistricting and proclamations of redistricting adopted on or after January 1, 2001. (Adopted November 3, 1998.)

Agreed upon by the delegates in Constitutional Convention assembled at the University of Alaska, this fifth day of February, in the year of our Lord one thousand nine hundred and fifty-six, and of the Independence of the United States the one hundred and eightieth.

WM. A. EGAN
President of the Convention

R. ROLLAND ARMSTRONG
DOROTHY J. AWES
FRANK BARR
JOHN C. BOSWELL
SEABORN J. BUCKALEW, JR.
JOHN B. COGHILL
E.B. COLLINS
GEORGE D. COOPER
JOHN M. CROSS
EDWARD V. DAVIS
JAMES P. DOOGAN
TRUMAN C. EMBERG
HELEN FISCHER
VICTOR FISCHER
DOUGLAS GRAY
THOMAS C. HARRIS
JOHN S. HELLENTHAL
MILDRED R. HERMANN
HERB HILSCHER
JACK HINCKEL
JAMES HURLEY
MAURICE T. JOHNSON
YULE F. KILCHER
LEONARD H. KING
WILLIAM W. KNIGHT
W.W. LAWS
ELDOR R. LEE
MAYNARD D. LONDBORG
STEVE McCUTCHEON
GEORGE M. McLAUGHLIN
ROBERT J. McNEALY
JOHN A. McNEES
M.R. MARSTON
IRWIN L. METCALF
LESLIE NERLAND
JAMES NOLAN
KATHERINE D. NORDALE
FRANK PERATROVICH
CHRIS POULSEN
PETER L. READER
BURKE RILEY
RALPH J. RIVERS
VICTOR C. RIVERS
JOHN H. ROSSWOG
B.D. STEWART
W.O. SMITH
GEORGE SUNDBORG
DORA M. SWEENEY
WARREN A. TAYLOR
H.R. VANDERLEEST
M.J. WALSH
BARRIE M. WHITE
ADA B. WIEN

ATTEST:
THOMAS B. STEWART *Secretary of the Convention*

ORDINANCE NO. 1

RATIFICATION OF CONSTITUTION

Section 1. Election

The Constitution for the State of Alaska agreed upon by the delegates to the Alaska Constitutional Convention on February 5, 1956, shall be submitted to the voters of Alaska for ratification or rejection at the territorial primary election to be held on April 24, 1956. The election shall be conducted according to existing laws regulating primary elections so far as applicable.

Section 2. Ballot

Each elector who offers to vote upon this constitution shall be given a ballot by the election judges which will be separate from the ballot on which candidates in the primary election are listed. Each of the propositions offered by the Alaska Constitutional Convention shall be set forth separately, but on the same ballot form. The first proposition shall be as follows:

"Shall the Constitution for the State of Alaska prepared and agreed upon by the Alaska Constitutional Convention be adopted?"

Yes ____ No ____

Section 3. Canvass

The returns of this election shall be made to the governor of the Territory of Alaska, and shall be canvassed in substantially the manner provided by law for territorial elections.

Section 4. Acceptance and Approval

If a majority of the votes cast on the proposition favor the constitution, then the constitution shall be deemed to be ratified by the people of Alaska to become effective as provided in the constitution.

Section 5. Submission of Constitution

Upon ratification of the constitution, the governor of the Territory shall forthwith transmit a certified copy of the constitution to the President of the United States for submission to the Congress, together with a statement of the votes cast for and against ratification.

ORDINANCE NO. 2

ALASKA-TENNESSEE PLAN

Section 1. Statement of Purpose

The election of senators and a representative to serve in the Congress of the United States being necessary and proper to prepare for the admission of Alaska as a state of the Union, the following sections are hereby ordained, pursuant to Chapter 46, SLA 1955.

Section 2. Ballot

Each elector who offers to vote upon the ratification of the constitution may, upon the same ballot vote on a second proposition, which shall be as follows:

"Shall Ordinance Number Two (Alaska-Tennessee Plan) of the Alaska Constitutional Convention, calling for the immediate election of two United States Senators and one United States Representative, be adopted?"

Yes ____ No ____

Section 3. Approval

Upon ratification of the constitution by the people of Alaska and separate approval of this ordinance by a majority of all votes cast for and against it, the remainder of this ordinance shall become effective.

Section 4. Election of Senators and Representative

Two United States senators and one United States representative shall be chosen at the 1956 general election.

Section 5. Terms

One senator shall be chosen for the regular term expiring on January 3, 1963, and the other for an initial short term expiring on January 3, 1961, unless when they are seated the Senate prescribes other expiration dates. The representative shall be chosen for the regular term of two years expiring January 3, 1959.

Section 6. Qualifications

Candidates for senators and representative shall have the qualifications prescribed in the Constitution of the United States and shall be qualified voters of Alaska.

Section 7. Other Office Holding

Until the admission of Alaska as a state, the senators and representative may also hold or be nominated and elected to other offices of the United States or of the Territory of Alaska, provided that no person may receive compensation for more than one office.

Section 8. Election Procedure

Except as provided herein, the laws of the Territory governing elections to the office of Delegate to Congress shall, to the extent applicable, govern the election of the senators and representative. Territorial and other officials shall perform their duties with reference to this election accordingly.

Section 9. Independent Candidates

Persons not representing any political party may become independent candidates for the offices of senator or representative by filing applications in the manner provided in Section 38-5-10, ACLA 1949, insofar as applicable. Applications must be filed in the office of the director of finance of the Territory on or before June 30, 1956.

Section 10. Party Nominations

Party nominations for senators and representative shall, for this election only, be made by party conventions in the manner prescribed in Section 38-4-11, ACLA 1949, for filling a vacancy in a party nomination occurring after a primary election. The names of the candidates nominated shall be certified by the chairman and secretary of the central committee of each political party to the director of finance of the Territory on or before June 30, 1956.

Section 11. Certification

The director of finance shall certify the names of all candidates for senators and representatives to the clerks of court by July 15, 1956. The clerks of court shall cause the names to be printed on the official ballot for the general election. Independent candidates shall be identified as provided in Section 38-5-10, ACLA 1949. Candidates nominated at party conventions shall be identified with appropriate party designations as is provided by law for nominations at primary elections.

Section 12. Ballot Form; Who Elected

The ballot form shall group separately the candidates seeking the regular senate term, those seeking the short senate term, and candidates for representative. The candidate for each office receiving the largest number of votes cast for that office shall be elected.

Section 13. Duties and Emoluments

The duties and emoluments of the offices of senator and representative shall be as prescribed by law.

Section 14. Convention Assistance

The president of the Alaska Constitutional Convention, or a person designated by him, may assist in carrying out the purposes of this ordinance. The unexpended and unobligated funds appropriated to the Alaska Constitutional Convention by Chapter 46, SLA 1955, may be used to defray expenses attributable to the referendum and the election required by this ordinance.

Section 15. Alternate Effective Dates

If the Congress of the United States seats the senators and representative elected pursuant to this ordinance and approves the constitution before the first election of state officers, then Section 25 of Article XV shall be void and shall be replaced by the following:

"The provisions of the constitution applicable to the first election of state officers shall take effect immediately upon the admission of Alaska into the Union as a State. The remainder of the constitution shall take effect when the elected governor takes office."

ORDINANCE NO. 3

ABOLITION OF FISH TRAPS

Section 1. Ballot

Each elector who offers to vote upon the ratification of the constitution may, upon the same ballot, vote on a third proposition, which shall be as follows:

"Shall Ordinance Number Three of the Alaska constitutional convention, prohibiting the use of fish traps for the taking of salmon for commercial purposes in the coastal waters of the State, be adopted?"

Yes ____ No ____

Section 2. Effect of Referendum

If the constitution shall be adopted by the electors and if a majority of all the votes cast for and against this ordinance favor its adoption, then the following shall become operative upon the effective date of the constitution:

"As a matter of immediate public necessity, to relieve economic distress among individual fishermen and those dependent upon them for a livelihood, to conserve the rapidly dwindling supply of salmon in Alaska, to insure fair competition among those engaged in commercial fishing, and to make manifest the will of the people of Alaska, the use of fish traps for the taking of salmon for commercial purposes is hereby prohibited in all the coastal waters of the State."

APPENDIX:

CONSTITUTIONAL AMENDMENTS APPEARING ON THE BALLOT

Shading denotes failure to be ratified

Election Date	Subject of Amendment	Provisions Affected	Resolution Number	Votes For	Votes Against
8/23/66	Residency Requirement to Vote for President	Article V, Section 1	SJR 1 (1966)	**36,667**	12,383
8/27/68	Commission on Judicial Qualifications	Article IV, Section 10	HJR 74 (1968)	**32,481**	12,823
8/27/68	Compensation of Judicial Qualification Commission	Article IV, Section 13	HJR 74 (1968)	**27,156**	17,467
8/25/70	Establish Voting Age at 18 Years	Article V, Section 1	HJR 7 (1969)	**36,590**	31,216
8/25/70	Remove English Requirement for Voting	Article V, Section 1	HJR 51 (1970)	**34,079**	32,578
8/25/70	Secretary of State Designated Lieutenant Governor	Article III, Sections 7-11, 13-15; Article XI, Sections 2-6; Article XIII, Sections 1 and 3; Article XV, Section 9	SJR 2 (1970)	**46,102**	18,781
8/25/70	Chief Justice Elected by Supreme Court	Article IV, Section 2	HJR 11 (1970)	**44,055**	19,583
8/25/70	Term of Office for Judicial System Administrator	Article IV, Section 16	HJR 11 (1970)	**43,462**	18,651
8/22/72	Residency Requirement for Voting	Article V, Section 1	HJR 126 (1972)	**31,130**	20,745
8/22/72	Prohibition of Sexual Discrimination	Article I, Section 3	HJR 102 (1972)	**43,281**	10,278
8/22/72	Right of Privacy	Article I, Section 22	SJR 68 (1972)	**45,539**	7,303

Election Date	Subject of Amendment	Provisions Affected	Resolution Number	Votes For	Votes Against
8/22/72	Eliminate City Representation on Borough Assemblies	Article X, Section 4	SJR 52 (1972)	**30,132**	19,354
8/22/72	Authorize Limited Entry Fisheries	Article VIII, Section 15	SJR 10 (1971)	**39,837**	10,761
8/22/74	Voting on Constitutional Amendments at General Elections	Article XIII, Section 1	HJR 20 (1973)	**56,017**	20,403
11/02/76	Action on Veto of Bills	Article II, Sections 9 and 16	HJR 11 (1975)	**71,829**	39,980
11/02/76	Authorize Permanent Fund	Article IX, Sections 7 and 15	HJR 39 (1976)	**75,588**	38,518
11/02/76	Administration and Review of State Land Disposals	Article VIII, Section 10	SJR 45 (1976)	46,652	**64,744**
11/02/76	Direct Financial Aid to Students	Article VII, Section 1	HJR 73 (1976)	54,636	**64,211**
11/07/78	Powers of Legislative Interim Committees	Article II, Section 11	SJR 16 (1978)	48,078	**68,403**
11/04/80	Legislative Annulment of Regulations	Article II, New Section	HJR 82 (1980)	58,808	**82,010**
11/04/80	Disqualification of Legislators	Article II, New Section	SJR 2 (1980)	47,054	**99,705**
11/04/80	Interim and Special Legislative Committees	Article II, Section 11	HJR 80 (1980)	41,868	**102,270**
11/04/80	Appointment and Confirmation of Members	Article III, Section 26	HJR 20 (1980)	56,316	**90,506**
11/02/82	Veterans' Housing Bond Authority	Article IX, Section 8	HJR 71 (1982	**111,460**	69,497

Election Date	Subject of Amendment	Provisions Affected	Resolution Number	Votes For	Votes Against
11/02/82	Changes in Commission on Judicial Qualifications	Article IV, Section 10	HJR 32 (1981)	**123,172**	53,424
11/02/82	Limiting Appropriation Increases	Article IX, Section 16; Article XV, Sections 26-28	SJR 4 (1981)	**110,669**	71,531
11/06/84	Legislative Annulment of Administration Regulations	Article II, New Section	HJR 5 (1983)	91,171	**98,855**
11/06/84	Limit Length of Legislative Session	Article II, Section 8	HJR 2 (1984)	**150,999**	94,299
11/04/86	Legislative Annulment of Administrative Regulations	Article II, New Section	SJR 40 (1986)	65,176	**94,299**
11/08/88	Resident Hiring Preference	Article I, Section 23	HJR 18 (1988)	**162,997**	30,650
11/06/90	Budget Reserve Fund	Article IX, Section 17	SJR 5 (1990)	**124,280**	63,307
11/08/94	Right to Bear Arms	Article I, Section 19	SJR 39 (1994)	**153,300**	57,636
11/08/94	Rights of Crime Victims	Article I, Sections 12 and 24	HJR 43 (1994)	**178,858**	27,641
11/05/96	Voter Approval of Changes to Statehood Act	Article XII, Section 14	SJR 3 (1996)	**157,936**	71,082
11/3/98	Same Sex Marriage	Article I, Section 25	SJR 42 (1998)	**152,962**	71,631
11/03/98	Redistricting	Article VI, Sections 1-11; Article XI, Section 3; Article XIV, Sections 1-3; Article XV, Section 29	HJR 44 (1998)	**110,768**	101,686
11/07/00	Prohibition on Wildlife Initiative	Article XI, Section 7	HJR 56 (2000)	96,253	**179,552**

Election Date	Subject of Amendment	Provisions Affected	Resolution Number	Votes For	Votes Against
11/07/00	Amendment Provision; Prohibit Court Intervention	Article XIII, Section 1; New Section	SJR 27 (2000)	114,310	**151,467**
11/07/00	Confirmation of Board Appointees	Article III, Section 26; Article IX, Section 15	SJR 34 (2000)	72,419	**194,975**
11/02/04	Requirements for Initiative and Referendum	Article XI, Section 3	HJR5 (2004)	**149,236**	139,642
11/02/10	Increase Number of Legislators and Districts	Article II, Section 1; Article VI, Sections 4 and 6	SJR 21 (2010)	99,490	**147,744**
11/08/16	State Debt for Student Loans	Article IX, Section 8	SJR 2 (2015)	130,867	**165,275**

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