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of ALASKA
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March 26, 2019

The Honorable Kevin Meyer
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: *19MALA Ballot Measure Applications Review*
AGO No. 2019200204

Dear Lieutenant Governor Meyer:

You asked us to review an application for an initiative bill titled "An initiative requiring meetings of the Alaska Legislature to be held in Anchorage" (19MALA). Because the application complies with the constitutional and statutory provisions governing the initiative process, we recommend that you certify the application.

I. The proposed initiative bill.

19MALA would require that all legislative meetings be held in Anchorage. The bill would also exempt this relocation of legislative meetings from the current statutory mandates that require a statewide election and voter approval of a bond issuance before either the capital or the legislature can be relocated. Specifically, it would amend AS 44.06.050-.060. These provisions require that a nine-member commission determine all costs of relocating any present functions of state government required by initiative or legislative enactment, and further require that state funds cannot be expended to relocate either the capital or the legislature until a majority of voters at a statewide election first approve a bond measure to fund the relocation. Finally, the bill would amend any other statute that currently allows legislative meetings to be held elsewhere in the state, thereby restricting future regular and special legislative session meetings to Anchorage. 19MALA is four sections long, and provides as follows:

Section 1 would require that all regular and special meetings of the Alaska Legislature be held in Anchorage, Alaska.

Section 2 contains two sentences. The first sentence would establish that the requirements of AS 44.06.050-.060 do not apply to the relocation of legislative meetings. Those statutes mandate that (1) a commission be convened to determine the costs required by any initiatives or legislative enactments authorizing relocation of any present functions of state government; (2) the commission determine all bondable and total costs of any such proposed move; and (3) before any state funds are expended to relocate physically the capital or the legislature from its present location in Juneau, voters in a statewide election must first approve a bond issue that includes all bondable costs to the state of the relocation over the twelve-year period following voter approval.

The second sentence of section two would explicitly amend AS 44.06.050-AS 44.06.060[1] to state that those statutes do not apply to the location of legislative meetings.

Section 3 would provide that any state statute or regulation that "states or implies" that the Legislature must or should meet in the state capital—or anywhere other than Anchorage—is repealed to the extent it would conflict with the bill.

Section 4 contains a severability clause.

II. Analysis.

Under AS 15.45.070, the lieutenant governor must review an application for a proposed initiative bill within sixty calendar days of receipt and "certify it or notify the initiative committee of the grounds for denial." The application for the 19MALA initiative was filed with the Division of Elections on February 4, 2019. The sixtieth calendar day after the filing of the initiative is Friday, April 5, 2019.

Under AS 15.45.080, certification shall be denied only if: "(1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors."

A. Form of the proposed initiative bill.

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[1] The second sentence of section two refers to "AS 44.06.05 through AS 44.00.060." This appears to be a minor drafting error, as there is no AS 44.00.060. We believe the drafters intended the text of the second sentence to read "AS 44.06.050 through AS 44.06.060," which would be consistent with both the text of the first sentence and the statutory scheme.

In evaluating an application for an initiative bill, you must determine whether the application is in the "proper form."[2] Specifically, you must decide whether the application complies with "the legal procedures for placing an initiative on the ballot, and whether the initiative contains statutorily or constitutionally prohibited subjects which should not reach the ballot."[3]

The form of an initiative bill is prescribed by AS 15.45.040, which requires four things: (1) that the bill be confined to one subject; (2) that the subject be expressed in the title; (3) that the bill contain an enacting clause stating: "Be it enacted by the People of the State of Alaska"; and (4) that the bill not include prohibited subjects. The list of prohibited subjects is found in article XI, section 7 of the Alaska Constitution and AS 15.45.010. An initiative includes a prohibited subject when it makes or repeals appropriations; enacts local or special legislation; dedicates revenue; or creates courts, defines their jurisdiction, or prescribes their rules.[4] You may deny certification only if the measure violates one of more of these restrictions.[5]

The initiative bill meets all four requirements of AS 15.45.040. It is confined to one subject—the location of meetings of the Alaska Legislature. The subject is expressed in the title, and the bill has the required enacting clause. Finally, as explained further below, it does not include a prohibited subject.

The substance of the bill is primarily contained in the first and second sections. The first section would require that all legislative meetings be held in Anchorage, rather than Juneau, the state capital—or elsewhere in the state. The second section would exempt the bill from the cost study, voter approval, and bonding requirements found in AS 44.06.050-.060, which apply to efforts to relocate the capital or the legislature.[6] As discussed below, although these statutory cost assessment and bonding requirements apply to relocation of "the capital or the legislature," and the bill is about moving "*meetings* of the legislature," it is impossible to meaningfully differentiate the location of "the legislature" from the location of all meetings of the legislature. While the bill would

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2 Alaska Const. art. XI, § 2.

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

4 AS 15.45.010; *see also* Alaska Const. art. XI, § 7 (prohibiting dedicating revenue, creating courts, defining court jurisdiction or prescribing court rules).

5 *See Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 n.22 (Alaska 2003) (*citing Brown v. Bd of Educ.*, 349 U.S. 294 (1955)).

6 *See* AS 44.06.050.

theoretically allow for legislative *offices* to remain in Juneau, it is hard to imagine that legislators would not move their offices, personnel, and operational needs with them to Anchorage, where all legislative meetings would occur. Thus, from a practical standpoint, section two appears to effectuate a partial repeal of AS 44.06.050-.060.

In reviewing the bill, we carefully considered whether the initiative included a prohibited subject, either by making or repealing an appropriation, or by enacting local or special legislation. We conclude the provision does not constitute an impermissible appropriation or repeal of an appropriation, or enact local or special legislation. The Alaska Supreme Court has adopted a "deferential attitude toward initiatives"[7] and has consistently recognized that the constitutional and statutory provisions pertaining to the use of the initiative should be liberally construed in favor of allowing an initiative to reach the ballot.[8] Indeed, the Court has "sought to preserve the people's right to be heard through the initiative process wherever possible."[9]

Looking to sections one and three, which require that legislative meetings be held in Anchorage, we conclude that the bill would not enact special or local legislation. This issue has already been squarely addressed by the Alaska Supreme Court. In *Boucher v. Engstrom*, the Court affirmed the Lieutenant Governor's decision to certify an initiative to relocate the capital from Juneau to a site other than Anchorage and Fairbanks. The Court recognized that "the question of the location of Alaska's capital has obvious statewide interest and impact. Access to Alaska's seat of government is of substantial importance to citizens of Alaska throughout the state," and that "[l]egislation . . . need not operate evenly on all parts of the state to avoid being classified as local or special."[10] The *Boucher* court further held that even if a proposed initiative did not have statewide application, it would be constitutional so long as the initiative "bears a fair and substantial relationship to legitimate purposes."[11] The Court relied in part on an Oklahoma Supreme Court decision holding that the very fact that a measure would

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

8 *McAlpine v. University of Alaska*, 762 P.2d a81, 91 (Alaska 1988); *Yute Air*, 698 P.2d at 1181.

9 *Hughes v. Treadwell*, 341 P.3d 1121, 1125 (Alaska 2015); *Pebble Ltd. P'ship ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1076 (Alaska 2009).

10 *Boucher v. Engstrom*, 528 P.2d 456, 461, 463-64 (Alaska 1974).

11 *Id.* at 464.

relocate the capital to a particular spot "does not make it a special law."[12] Similarly here, the bill's requirement that meetings of the Alaska Legislature be held in a single location—Anchorage—does not make it a special law. On the contrary, the location of the Alaska Legislature, like the location of the capital, is plainly a matter of statewide interest.[13] Accordingly, in 2001 the Lieutenant Governor's Office certified an initiative application that proposed relocating legislative sessions from Juneau to the Matanuska-Susitna Borough.[14] And in 1993, our office recommended certification of an initiative petition providing for the capital to be moved to Wasilla.[15] The bill therefore does not enact special or local legislation.

The bill also does not violate the Alaska Constitution's prohibition on making or appealing appropriations by initiative.[16] The proposed initiative does not itself make an appropriation, which "involves setting aside funds for a particular purpose."[17] Rather, section two of the bill exempts the relocation of legislative meetings from statutory provisions that would otherwise appear to mandate a cost analysis, statewide vote, and bond issuance before any such legislative relocation could occur. This effort does not violate the ban on appropriations by initiative, nor contravene the two "core objectives" of the constitutional limitation, which are "(1) to prevent give-away programs that appeal to the self-interest of voters and endanger the state treasury; and (2) to preserve legislative discretion by ensuring that the legislature, and only the legislature, retains control over the allocation of state assets among competing needs."[18] This bill does not threaten nor impede the legislature's power to control state spending or expend funds,

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12 *Id.* at 462 (*quoting Coyle v. Smith*, 113 P.944 (1911).

13 Even if it were not, a reasonable factual basis to exists to support moving legislative meetings to the state's main population center.

14 *See Alaskans for Effficient Government, Inc. v. Knowles*, 91 P.3d 273, 274 (Alaska 2004).

15 1993 Inf. Op. Att'y. Gen. (August 24; 663-94-0113).

16 Alaska Const. Art. IX, § 7.

17 *McAlpine*, 762 P.2d at 88.

18 *Lieutenant Governor of State v. Alaska Fisheries Conservation Alliance, Inc.,* 363 P.3d 105, 108 (Alaska 2015). While 19MALA effectively repeals the current statutory cost-study, election, and bonding mandates, it does not *prohibit* the legislature from later electing to appropriate funds to carry out a study or fund the costs of the relocation.

and it ultimately leaves to the legislature discretion regarding any future appropriations.[19] As a result, it does not violate the ban on appropriations by initiative.

We acknowledge, however, that some of the bill's language is potentially contradictory or confusing. For example, there is an obvious tension between the first two sentences of section two. The first sentence states that the commission cost study, voter approval, and bonding provisions of AS 44.06.050-.060 "shall not apply" to the bill. But as currently written, AS 44.06.060 instructs that a commission must "determine the costs required by initiatives . . . authorizing relocation of any of the present functions of state government," and AS 44.06.055 provides that state monies may not be expended to relocate the legislature until after a statewide election at which voters approve a bond issue for the bondable costs of the relocation. Therefore on their face, those provisions do appear to apply here. But the second sentence of section two provides that AS 44.06.050-.060 "are amended to state that they do not apply to the location of legislative meetings." By proposing to explicitly amend those statutes, the second sentence of section two thus appears to trump the first and acknowledge—at least implicitly—that but for this proposed amendment, those provisions would otherwise apply.

Relatedly, we acknowledge there could be some potential confusion about the bill's effect. The bill as drafted purports to move only "meetings" of the Alaska Legislature to Anchorage. The sponsors' language thus appears to be an attempt to distinguish a relocation of "the legislature" from a move of all legislative "meetings."[20] But the effect of this bill—although not explicit in its text—would be to relocate the legislature. Indeed, it is not at all apparent how the concepts differ on any practical level. The Alaska Constitution provides for both regular and special sessions of the legislature, but does not mandate where they occur.[21] By statute, however, the legislature must "convene" at the capital in Juneau, although special sessions may be held "at any location in the state."[22] Regular meetings of the Alaska Legislature historically occur in Juneau,

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[19] 1993 Inf. Op. Att'y Gen. (August 24; 663-94-0113).

[20] The Alaska Legislature is created by Article II of the Alaska Constitution. "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." Alaska Const. Art. II, §2; *See also* AS 24.05.010-.020.

[21] Alaska Const. Art. II §8 (regular sessions), §9 (special sessions).

[22] AS 24.05.090 ("The legislature shall convene at the capital each year on the third Tuesday in January at 1:00 p.m."); AS 24.05.100(b) ("A special session may be held at any location in the state."); AS 44.06.010 (declaring Juneau the capital of Alaska).

and multiple statutes contemplate that the functions of state government, including legislative meetings, occur there.[23] By proposing to move "[a]ll regular and special meetings of the Alaska Legislature" to Anchorage, the bill appears to contemplate a move of "the legislature" itself, and thus contemplate a partial repeal of AS 44.06.050-.060.[24] Still, we do not believe that these issues affect your review. As explained above, the Lieutenant Governor's review of a proposed initiative is limited to the form of the application and the proposed bill for compliance with constitutional and statutory provisions, and therefore the bill should not be rejected because of these perceived ambiguities.[25]

Finally, we recognize that the bill is not drafted in conformity with the Legislative Affairs Agency's Manual of Legislative Drafting (2019). For example, section two of the bill provides that "[t]he provisions of AS 44.06.050 through AS 44.00.060[sic] are amended to state that they do not apply to the location of legislative meetings," but the bill provides no proposed language to that effect. Similarly, section three provides that "[a]ny and all language in any statute or regulation" that "states or implies that the Legislature must or should meet in the capital or elsewhere than Anchorage is repealed to

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[23] *See* AS 24.10.130(a) ("A member of the legislature may be entitled to reimbursement for the expenses of moving between the member's place of residence and the capital city for the purpose of attending a regular session of the legislature."); AS 24.06.031 (creating exemption on certain restrictions on legislative employee fundraising when "in the capital city or in the municipality in which the legislature is convened in special session if the legislature is convened in a municipality other than the capital city" during the 90 days preceding election); AS 24.10.030 (providing chief clerk and senate secretary "shall remain at the capital until the completion of their work is determined by the director of the [legislative] council."); AS 44.99.007 (authorizing governor to declare by proclamation emergency temporary location or location for the seat of government when, due to emergency resulting from effects of enemy attack or imminent enemy attack, "it becomes imprudent, inexpedient, or impossible to conduct the affairs of state government at the normal location of the state government."). By statute, Juneau is the "capital city." AS 44.06.010.

[24] Our conclusion is reinforced by the overall statutory language of AS 44.06.et seq. Although AS 44.06.050 is intended to guarantee the people of Alaska "their right to know and to approve in advance all costs" of relocating only "the capital and the legislature," the language of 44.06.060, which requires the creation of a commission to determine the costs of any such relocation, appears somewhat broader in that it applies to the costs of relocating "any of the present functions of state government."

[25] *See* 1993 Inf. Op. Att'y Gen. (November 29; 663-94-0083) (citing *Boucher v. Engstrom*, 528 P.2d at 460 n.13).

the extent of that type of statement or implication," but it does not endeavor to identify those provisions. The drafting manual, however, provides that *after* determining which specific statutes must be changed to achieve the requester's purpose, the drafter should follow one of three techniques to amend a statute: regular amendment, repeal and reenactment of the affected section with the same coding, or repeal of the affected section and enactment of a new section with different coding—none of which appear to have been followed here. (Manual at 16) The Manual also requires that drafters of provisions creating new statutes—as section one would do—should give the new proposed section or chapter coding that will place it close to related sections of existing statutes. Section one offers no title or chapter identifier. Still, as outlined above, we do not believe these technical drafting irregularities are a basis to deny certification. There is no requirement in AS 15.45.030 or AS 15.45.040 that initiatives comply with the Manual of Legislative Drafting. In addition, our office has previously advised against denying certification based solely on nonconformance with the drafting manual so long as the constitutional standards are met, recognizing that if the bill were enacted, any defects would be corrected by the revisor of statutes.[26]

B. Form of the application.

The form of an initiative application is prescribed by AS 15.45.030, which provides that the application must include the

> (1) proposed bill;
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> (2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and
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> (3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

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[26] 1989 Inf. Op. Att'y Gen. (December 1; 663-90-0141)(citing 1989 Inf. Op. Att'y Gen. at 4 (Mar. 21; 663-89-0306)); 1986 Inf. Op. Att'y Gen. at 2 (April 10; 663-86-0394, 0422). *See also* AS 01.05.031(b) (providing "revisor shall edit and revise the laws for consolidation without changing the meaning of any law" and directing procedure for doing so).

The application meets all three requirements. While an initial review of the proposed initiative may not appear to be a "bill" in the sense that it lacks the title and chapter identifier typically used and referenced in the Manual of Legislative Drafting, the language plainly amounts to a proposed change in state law, and is a "bill" as that term is generally understood.[27]

The second requirement regarding the necessary number of qualified sponsors is also met. We understand that the Division of Elections has reviewed the sponsor signatures and determined that the application contains the signatures and addresses of 191 qualified voters. The application also includes a designation of an initiative committee, who subscribed to the application, thus satisfying the third element.

III. Proposed ballot and petition summaries.

We have prepared a ballot-ready petition title and summary to assist you in complying with AS 15.45.090(2) and AS 15.45.180, as is our office's standard practice. Under AS 15.45.180 a ballot proposition must include a "true and impartial summary of the proposed law." That provision also requires that an initiative's title be limited to twenty-five words, and that the number of words in the body of the summary be limited to the number of sections in the proposed law multiplied by fifty. "Section" is defined as "a provision of the proposed law that is distinct from other provisions in purpose or subject matter."

19MALA Ballot Summary Proposal

Because the bill has four sections, the maximum number of words in the summary may not exceed 200. There are thirteen words in the title and 74 words in the following summary, which we submit for your consideration:

An Act Requiring Meetings of the Alaska Legislature To Be Held in Anchorage

> This act would amend state law to require that all meetings of the Alaska Legislature, including regular and special sessions, be held in Anchorage. If passed, this bill would also exempt the relocation from current laws which mandate that before the legislature may be moved, (1) a commission must determine the costs of the relocation; and (2) voters at a statewide election must approve a bond issuance to fund the total costs of the move.
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> Should this initiative become law?

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[27] The Alaska Legislature's glossary of legislative terms defines "bill" as "[a] proposed law that has been introduced in either house of the Legislature. Also known as a measure." http://akleg.gov/docs/pdf/glossary.pdf (last visited March 7, 2019).

This summary has a Flesch test score of 49.1. We believe the summary satisfies the target readability standards of AS 15.80.005.[28]

IV. Conclusion.

The proposed bill and application is in the proper form and the application complies with the constitutional and statutory provisions governing the use of the initiative. We therefore recommend that you certify the initiative application and notify the initiative committee of your decision. You may then begin to prepare a petition under AS 15.45.090.

Please contact us if we can be of further assistance to you on this matter.

Sincerely,

KEVIN J. CLARKSON
ATTORNEY GENERAL

By:
Janell Hafner
Assistant Attorney General

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[28] Under AS 15.80.005(b), "The policy of the state is to prepare a neutral summary that is scored at approximately 60." While this is below the target readability score of 60, the Alaska Supreme Court has upheld ballot summaries scoring as low as 33.8 for a complicated ballot initiative. *See* 2007 Op. Att'y Gen. (Oct. 17; 663-07-0179); *Pebble*, 215 P.3d at 1082-84. In our view, the nature of the amendments in section two regarding statutory requirements about a relocation cost assessment and bond issuance make it difficult to provide a summary with a higher readability score.