

**ALASKA STATE LEGISLATURE**  
**FREE CONFERENCE COMMITTEE ON SB 36**

March 2, 2006

8:29 a.m.

**MEMBERS PRESENT**

Senator Gary Stevens, Chair  
Senator Con Bunde  
Senator Lyman Hoffman

Representative Norman Rokeberg  
Representative Kurt Olson  
Representative Berta Gardner

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 36(JUD)  
"An Act relating to absentee ballots."

HOUSE CS FOR CS FOR SENATE BILL NO. 36(JUD) am H  
"An Act relating to absentee ballots."

MOVED FCCS SB 36 OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 36

SHORT TITLE: ABSENTEE BALLOTS

SPONSOR(S): SENATOR(S) THERRIAULT

01/11/05	(S)	PREFILE RELEASED 1/7/05			
01/11/05	(S)	READ THE FIRST TIME - REFERRALS			
01/11/05	(S)	STA, JUD			
01/20/05	(S)	STA AT 3:30 PM BELTZ 211			
01/20/05	(S)	Heard & Held			
01/20/05	(S)	MINUTE(STA)			
02/01/05	(S)	STA AT 3:30 PM BELTZ 211			
02/01/05	(S)	Moved CSSB 36(STA) Out of Committee			
02/01/05	(S)	MINUTE(STA)			
02/02/05	(S)	STA RPT CS	3DP	1NR	
		NEW TITLE			
02/02/05	(S)	DP: THERRIAULT, WAGONER, HUGGINS			

02/02/05 (S) NR: ELTON  
02/08/05 (S) JUD AT 8:30 AM BUTROVICH 205  
02/08/05 (S) Heard & Held  
02/08/05 (S) MINUTE(JUD)  
02/09/05 (S) JUD AT 8:30 AM BUTROVICH 205  
02/09/05 (S) Moved CSSB 36(JUD) Out of Committee  
02/09/05 (S) MINUTE(JUD)  
02/10/05 (S) JUD RPT CS 3DP 1NR  
NEW TITLE  
02/10/05 (S) DP: SEEKINS, THERRIAULT, HUGGINS  
02/10/05 (S) NR: FRENCH  
03/02/05 (S) TRANSMITTED TO (H)  
03/02/05 (S) VERSION: CSSB 36(JUD)  
03/03/05 (H) READ THE FIRST TIME - REFERRALS  
03/03/05 (H) STA, JUD  
03/15/05 (H) STA AT 8:00 AM CAPITOL 106  
03/15/05 (H) Heard & Held  
03/15/05 (H) MINUTE(STA)  
03/17/05 (H) STA AT 8:00 AM CAPITOL 106  
03/17/05 (H) Moved HCS CSSB 36(STA) Out of Committee  
03/17/05 (H) MINUTE(STA)  
03/18/05 (H) STA RPT HCS(STA) 5DP 2NR  
03/18/05 (H) DP: LYNN, GATTO, ELKINS, RAMRAS,  
SEATON;  
03/18/05 (H) NR: GARDNER, GRUENBERG  
04/06/05 (H) JUD AT 1:00 PM CAPITOL 120  
04/06/05 (H) <Bill Hearing Postponed>  
04/22/05 (H) JUD AT 1:00 PM CAPITOL 120  
04/22/05 (H) Scheduled But Not Heard  
04/25/05 (H) JUD AT 1:00 PM CAPITOL 120  
04/25/05 (H) Scheduled But Not Heard  
04/27/05 (H) JUD AT 1:00 PM CAPITOL 120  
04/27/05 (H) Moved HCS CSSB 36(JUD) Out of Committee  
04/27/05 (H) MINUTE(JUD)  
04/29/05 (H) JUD RPT HCS(JUD) 4DP 1NR 1AM  
04/29/05 (H) DP: DAHLSTROM, GRUENBERG, ANDERSON,  
MCGUIRE;  
04/29/05 (H) NR: KOTT;  
04/29/05 (H) AM: GARA  
05/07/05 (H) VERSION: HCS CSSB 36(JUD) AM H  
05/08/05 (S) CONCURRENCE MESSAGE READ AND HELD  
05/09/05 (S) CONFERENCE COMMITTEE APPOINTED  
05/09/05 (S) THERRIAULT (CHAIR), HUGGINS, KOOKESH  
05/09/05 (H) RECEDE MESSAGE READ  
05/09/05 (H) CONFERENCE COMMITTEE APPOINTED  
05/09/05 (H) SEATON, HOLM, GRUENBERG  
02/08/06 (S) 036 AT 5:00 PM FAHRENKAMP 203

02/08/06 (S) Unable to Take Action, Request Discharge  
02/09/06 (S) COMMITTEE REPORT READ AND HELD TO SECY'S DESK  
02/23/06 (S) CONFERENCE COMMITTEE DISCHARGED  
02/23/06 (S) FREE CONFERENCE COMMITTEE APPOINTED  
02/23/06 (S) STEVENS G (CHAIR), BUNDE, HOFFMAN  
02/27/06 (H) CC REPORT READ  
02/27/06 (H) FREE CONFERENCE COMMITTEE APPOINTED  
02/27/06 (H) ROKEBERG, OLSON, GARDNER  
02/27/06 (H) CONFERENCE COMMITTEE DISCHARGED

**WITNESS REGISTER**

Annette Kreitzer, Chief of Staff  
Office of the Lieutenant Governor  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Explained suggested changes to SB 36

Whitney Brewster, Director  
Division of Elections  
Office of the Lieutenant Governor  
P.O. Box 110017  
Juneau, AK 99811-0017

**POSITION STATEMENT:** Provided information related to absentee ballots

**ACTION NARRATIVE**

**CHAIR GARY STEVENS** called the Free Conference Committee on SB 36 meeting to order at [8:29:59 AM](#). Present were Representatives Norman Rokeberg, Kurt Olson, Berta Gardner and Senator Lyman Hoffman and Chair Gary Stevens. Senator Con Bunde arrived momentarily.

**SB 36-ABSENTEE BALLOTS**

CHAIR GARY STEVENS announced Free Conference Committee Substitute (FCCS) for SB 36 to be up for consideration. He asked for a motion to adopt the \B version.

[8:30:57 AM](#)

REPRESENTATIVE ROKEBERG motioned to adopt Free Conference Committee Substitute SB 36, labeled 24-LS0123\B Kurtz 2/28/06 as the working document.

SENATOR HOFFMAN objected for explanation purposes.

ANNETTE KREITZER, Chief of Staff for Lieutenant Governor Loren Leman, explained that the reason for requesting powers of free conference is because the language that exists in Sections 4 and 5 of the free conference committee substitute (FCCS) does not exist in any previous version of the bill. Section 4 speaks to unlawful interference of voting in the first degree and Section 5 speaks to unlawful interference of voting in the second degree.

Providing background information she explained that the version that passed the House [HCS CSSB36(JUD)am H] had an overly broad reference to AS 15.20.081. She thought this was problematic, but the issue wasn't addressed before the bill passed the House. The needed fix is contained in the new Sections 4 and 5, which are specific in the behavior that is criminalized.

CHAIR GARY STEVENS directed attention to the memo from Sarah Felix that details an explanation of first and second degree misconduct.

MS. KREITZER added the Department of Law (DOL) believes it's important to be specific regarding what is being criminalized.

The second issue that is addressed is the fact that SB 36 contains language that was also in HB 94. That bill was signed by the Governor and has passed into law so the sections of SB 36 that refer to HB 94 are removed in the FCCS.

CHAIR GARY STEVENS mentioned that everyone received a highlighted copy of the different versions, which made it easy to see which sections were removed.

MS. KREITZER explained the third issue relates to Section 4 of HCS CSSB 36(JUD)am H, which amends AS 15.25.060 (c). The first sentence was in HB 94 so it is not in the FCCS. The last sentence in Section 4 was an amendment that Representative Coghill and Representative Guttenberg made on the floor. Describing that sentence as the major difference between the two bills, she said the Lieutenant Governor and perhaps others oppose the language and Representative Coghill has indicated that he is amenable to removing it. The Division of Elections doesn't want to interpret what that sentence means and believes that it is appropriate for the voter to indicate which ballot is desired.

MS. KREITZER noted that the packets contained copies of the Division of Election Procedures and Policy sheet. If a person doesn't select an affiliation when requesting an absentee ballot the division will try and make contact via phone or letter to ask the person to select a ballot. The onus should be on the voter to make the determination, she said.

[8:36:35 AM](#)

REPRESENTATIVE NORMAN ROKEBERG asked if there wasn't a subsequent legal case that added clarity to the issue. Reviewing the division's procedures he asked if there are still six ballots.

MS. KREITZER deferred to Ms. Brewster.

WHITNEY BREWSTER, Director of the Division of Elections, explained that the policy would be updated for the upcoming 2006 primary election. The three ballot choices will be the Republican ballot, the combined ballot and the measures-only ballot.

REPRESENTATIVE ROKEBERG asked what would happen if the person doesn't indicate a ballot choice.

MS. BREWSTER replied the division would first attempt to contact the person by mail. If no response is forthcoming, and a phone number or email is listed as contact information, then the division would make further attempts to contact that person. If the person doesn't respond, no ballot would be sent.

CHAIR GARY STEVENS asked what happens if a registered party member doesn't select a ballot choice.

MS. BREWSTER replied if the person is eligible for only one particular ballot, they would receive that ballot whether the box is checked or not. However, if a person were eligible for multiple ballot types, the division would need to receive confirmation regarding ballot choice.

CHAIR GARY STEVENS recapped the idea is that it isn't up to the division to decide which ballot the person receives. The responsibility rests with the individual.

SENATOR LYMAN HOFFMAN asked about ballot choices.

MS. BREWSTER said there would be the Republican ballot, the combined ballot and the measures-only ballot.

SENATOR HOFFMAN asked if all of Section 4 "in the old bill" [HCS CSSB 36(JUD)am H] is removed.

MS. KREITZER said that's correct.

REPRESENTATIVE BERTA GARDNER asked whether a person who makes no ballot designation would get the measures-only ballot.

MS. BREWSTER explained that this is the first year that a measures-only ballot choice would be available so the division would need to address that issue. That is a possible remedy, she added.

CHAIR GARY STEVENS summarized the division would attempt to contact the person regarding ballot choice, but if the individual doesn't respond, then the division might send the measures-only ballot. He remarked he was a bit unclear about the procedure.

SENATOR BUNDE offered the view that it would be inconsistent to ask people to indicate a ballot preference and then send a measures-only ballot if no preference was indicated.

MS. BREWSTER said the division would much prefer that the voter specify a ballot choice. If someone didn't specify and received the measures-only ballot they might be disappointed that no candidates were on the ballot.

SENATOR BUNDE responded the voter would more likely feel disenfranchised if they received the measures-only ballot as a default.

REPRESENTATIVE GARDNER opined if someone requested an absentee ballot and didn't indicate any preference they would feel disenfranchised to get nothing

8:42:00 AM

MS. KREITZER reminded members that there was a lawsuit over the issue, which is why initiatives in the primary are on a separate ballot as well as on the Republican ballot and the combined ballot. The specific purpose of the lawsuit was that the voter didn't want to be required to choose between the Republican

ballot and the combined ballot just to be able to vote on the initiatives.

The court issued a temporary restraining order (TRO) saying that a voter didn't have to select candidates to vote on the initiatives. She interprets that to mean that a person who does not indicate a party affiliation on the absentee ballot application would still receive the ballot measures. "You don't have to be a member of a party or select a party's ballot to be able to vote on the initiatives."

REPRESENTATIVE ROKEBERG remarked that explanation makes the history clear, but it usurps legislative power to have the courts dictating which ballot will be received.

CHAIR GARY STEVENS asked him to restate his position.

REPRESENTATIVE ROKEBERG said, by law, the Legislature should direct how the Division of Elections handles the issue. The courts shouldn't be involved. The issue of whether or not an extra measures-only ballot should be created for someone that objected to making a choice should have been subject to public policy debate in the Legislature. He suggested that this puts the division in a difficult situation.

SENATOR BUNDE asked for clarification that the division would try and contact him if he didn't designate a ballot choice.

MS. BREWSTER said yes.

SENATOR BUNDE asked if she was suggesting that he would receive the issues-only ballot if the division were not successful in contacting him.

MS. BREWSTER said under the current procedures the division wouldn't send a ballot.

SENATOR BUNDE opined that is appropriate. If he couldn't be reached, it's no more appropriate to send an issues-only ballot than a candidate and issues ballot.

MS. BREWSTER clarified that the division doesn't want to be in the position of guessing which ballot a voter might want.

SENATOR BUNDE observed that that is a wise position.

REPRESENTATIVE KURT OLSON asked what percentage of the ballots would be absentee this year.

MS. BREWSTER responded in the 2004 primary about 900 people didn't designate a ballot choice.

REPRESENTATIVE OLSON said his next question went to that point and he would assume that about the same number wouldn't designate this election, which made him question the zero fiscal note.

MS. BREWSTER advised that the division is establishing a stand-alone absentee office and federal funds from the Help America Vote Act would pay for the program expansion this year.

CHAIR GARY STEVENS recapped that Section 4 is removed and, according to division policies, if a person doesn't designate a ballot choice no ballot would be mailed. The division shouldn't be in the position of choosing a ballot for the voter.

MS. KREITZER clarified she is not the director and notwithstanding her opinion, whatever the director of the Division of Elections says is what the division policy and procedure will be.

[8:47:40 AM](#)

REPRESENTATIVE GARDNER voiced objection and asserted that people should be encouraged to vote. When someone fills out an absentee ballot application and provides a minimum of identifying information they're going to expect to receive a ballot. Some people simply don't want to reveal any political leanings and that is their right, she said. They should receive a ballot even if it's issues-only.

MS. BREWSTER responded she understands the issue of protecting privacy, but individuals have the option of checking the issues-only box. If no designation is made, the division has no way of knowing that the individual wants their privacy protected.

CHAIR GARY STEVENS asked for verification that personal information on the absentee ballot application couldn't be seen by anyone including postal clerks.

MS. BREWSTER said that's correct.

REPRESENTATIVE ROKEBERG stated agreement with what Senator Bunde and Ms. Brewster articulated regarding division policy, but he took exception to Representative Gardner's characterization. He said he appreciated her viewpoint and perhaps her concern would be ameliorated if the absentee ballot application clearly indicated that if a ballot designation weren't made then no primary ballot would be sent.

MS. KREITZER directed attention to a copy of an absentee by mail ballot application. Block 13 asks for primary election ballot choice and it says, "(August Election Only - For information on ballot types, see reverse side No. 8)". The last sentence of instruction No. 8 says, "If you do not make a selection, your application will be returned to you."

REPRESENTATIVE ROKEBERG offered the suggestion that the division be given recommendations on how to approach the issue.

CHAIR GARY STEVENS agreed and observed that the application has to be changed anyway because it currently indicates that the application must be received at least 7 days prior to the election and that has been changed to 10 days. He asked if the reprinting had already taken place.

MS. BREWSTER responded it had not.

CHAIR GARY STEVENS stated that it should be very clear that if the applicant doesn't make a ballot choice designation, then no ballot would be sent. He asked Ms. Brewster if she could accept that recommendation.

MS. BREWSTER responded affirmatively.

REPRESENTATIVE GARDNER asked her to restate what was being agreed to.

MS. BREWSTER said "We are agreeing to modify the existing form to make it more clear in [Block] 13 that an individual must check a primary election ballot choice in order to receive a ballot."

CHAIR GARY STEVENS said that seems clear and reasonable. He asked Ms. Kreitzer if there were other issues to address.

MS. KREITZER said the three major issues had been covered.

CHAIR GARY STEVENS asked her to explain why the division was requesting the application be received 10 days prior to the election rather than the current 7 days.

MS. KREITZER replied changing from 7 to 10 days gives the division more flexibility in processing all the absentee ballot applications and it would give the voter more certainty as well.

[8:54:07 AM](#)

CHAIR GARY STEVENS mentioned the fiscal note and asked Ms. Kreitzer if she had any comments.

MS. KREITZER said she had no additional comments.

CHAIR GARY STEVENS asked if there were other questions or comments.

REPRESENTATIVE GARDNER articulated the concern that someone may not get a ballot even though they sent in an absentee ballot application. A court case was mentioned that found that a person who doesn't designate party affiliation should get a ballot and the Division of Elections is saying that if a ballot choice isn't made the person won't get one. "I think it's wrong and I don't think we're complying with Representative Coghill's amendment." That amendment says "If the voter did not indicate affiliation with a political party or group when registering to vote, the director shall provide the voter with a ballot offering the greatest range of candidates from different political parties and groups." Under this bill the person would get nothing, she said. She continued to say:

In spite of an understanding that the division will make every effort to contact them and ask them which they want, I don't think this serves Alaskans well. I think it interferes with voting rights of individuals who have made the effort. Even if they've not checked one box on their application, I think it's wrong.

SENATOR HOFFMAN said Block 13 clarifies that the applicant must check a box to receive a ballot, which should suffice.

REPRESENTATIVE GARDNER responded it ameliorates the problem, but it doesn't correct it.

CHAIR GARY STEVENS said he understood her point, but the onus is on the voter. The division should not be placed in the position of deciding which ballot to send.

REPRESENTATIVE GARDNER suggested it would be better to say in bold type that, "If a party ballot is not selected, the voter will get ballot measures only."

SENATOR BUNDE added if an applicant really wanted a combined or Republican ballot he/she would be disenfranchised under that proposal. If the division attempts to contact the person to clarify the ballot choice and a response is not forthcoming, the state has done due diligence.

REPRESENTATIVE ROKEBERG stated that he doesn't personally agree with the closed primary ballot selection process, but the Legislature opted to create a split ballot system in the primary election so that ought to be adhered to.

CHAIR GARY STEVENS asked if the objection was maintained.

SENATOR HOFFMAN removed his objection.

CHAIR GARY STEVENS asked for a roll call. FCCS SB 36 [version B] moved from committee with Representatives Rokeberg and Olson voting yea, Representative Gardner voting nay, and Senators Hoffman, Bunde and Chair Gary Stevens voting yea.

There being no further business to come before the committee, Chair Gary Stevens adjourned the meeting at [8:59:21 AM](#).