

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

May 9, 2007

9:05 a.m.

MEMBERS PRESENT

Senator Lesil McGuire, Chair
Senator Gary Stevens, Vice Chair
Senator Hollis French
Senator Lyda Green
Senator Con Bunde

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 162

"An Act establishing that a general election may be conducted by mail."

HEARD AND HELD

SENATE BILL NO. 171

"An Act relating to the withdrawal of a candidate from a judicial retention election and the removal of such a candidate's name from the general election ballot; and providing for an effective date."

MOVED SB 171 OUT OF COMMITTEE

HOUSE BILL NO. 92

"An Act removing the victims' advocate and the staff of the office of victims' rights from the jurisdiction of the office of the Ombudsman in the legislative branch."

HEARD AND HELD

SENATE JOINT RESOLUTION NO. 9

Proposing an amendment to the section of the Constitution of the State of Alaska relating to marriage.

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 162

SHORT TITLE: VOTING BY MAIL

SPONSOR(s): SENATOR(s) ELTON

04/27/07 (S) READ THE FIRST TIME - REFERRALS
04/27/07 (S) STA, JUD, FIN
05/09/07 (S) STA AT 9:00 AM BELTZ 211

BILL: SB 171

SHORT TITLE: JUDICIAL RETENTION CANDIDACY WITHDRAWAL
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

05/03/07 (S) READ THE FIRST TIME - REFERRALS
05/03/07 (S) STA
05/09/07 (S) STA AT 9:00 AM BELTZ 211

BILL: HB 92

SHORT TITLE: JURISDICTION OF OMBUDSMAN: VICTIMS RTS
SPONSOR(S): REPRESENTATIVE(S) SAMUELS, STOLTZE

01/16/07 (H) PREFILE RELEASED 1/12/07
01/16/07 (H) READ THE FIRST TIME - REFERRALS
01/16/07 (H) STA, FIN
03/20/07 (H) STA AT 8:00 AM CAPITOL 106
03/20/07 (H) Scheduled But Not Heard
03/24/07 (H) STA AT 10:00 AM CAPITOL 106
03/24/07 (H) Moved Out of Committee
03/24/07 (H) MINUTE(STA)
03/26/07 (H) STA RPT 5DP 1DNP
03/26/07 (H) DP: JOHNSON, JOHANSEN, GRUENBERG,
COGHILL, LYNN
03/26/07 (H) DNP: DOLL
04/03/07 (H) FIN AT 1:30 PM HOUSE FINANCE 519
04/03/07 (H) Moved Out of Committee
04/03/07 (H) MINUTE(FIN)
04/04/07 (H) FIN RPT 6DP 4NR
04/04/07 (H) DP: GARA, FOSTER, HAWKER, THOMAS,
STOLTZE, MEYER
04/04/07 (H) NR: CRAWFORD, NELSON, KELLY, CHENAULT
04/13/07 (H) TRANSMITTED TO (S)
04/13/07 (H) VERSION: HB 92
04/16/07 (S) READ THE FIRST TIME - REFERRALS
04/16/07 (S) STA
05/03/07 (S) STA AT 9:00 AM BELTZ 211
05/03/07 (S) -- MEETING CANCELED --
05/09/07 (S) STA AT 9:00 AM BELTZ 211

WITNESS REGISTER

JOANNE SCHMIDT, Staff

to Senator Kim Elton
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 162 on behalf of Senator Elton, sponsor.

JASON HOOLEY, Special Assistant
Office of the Lieutenant Governor
Juneau, Alaska

POSITION STATEMENT: Commented on SB 162 and supported SB 171.

MITCHELL GAY, representing himself
Delta Junction, AK

POSITION STATEMENT: Opposes SB 162.

BEN MULLIGAN, Staff
to Representative Stoltze
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 92 on behalf of Representative Stoltze, co-sponsor.

LINDA LORD-JENKINS, Ombudsman
Office of the Ombudsman
Anchorage, Alaska

POSITION STATEMENT: Opposes HB 92.

KATE BERKHARDT, Assistant Ombudsman
Office of the Ombudsman
Juneau, Alaska

POSITION STATEMENT: Opposes HB 92.

KATHY HANSEN, Victims Advocate Attorney
Office of Victims Rights
Anchorage, Alaska

POSITION STATEMENT: Supports HB 92.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the Senate State Affairs Standing Committee meeting to order at [9:05:38 AM](#). Senators McGuire, Bunde, Green, French, and Stevens were present at the call to order.

SB 162 - VOTING BY MAIL

[9:05:59 AM](#)

CHAIR MCGUIRE announced consideration of SB 162.

SENATOR GREEN moved to adopt committee substitute (CS) to SB 162, labeled 25-LS0667\M, as a working draft. Hearing no objections, Version M was before the committee.

JOANNE SCHMIDT, Staff, to Senator Kim Elton, introduced the bill to the committee. The bill gives the Division of Elections and voters another option for casting votes by establishing that a general election may be conducted by mail. She said there are a variety of benefits to vote by mail which may include giving parents with small children, seniors, or the disabled the ability to participate in an election without having to leave their homes. Oregon has reported an increase from 53 percent to 89 percent voter turnout in its vote by mail general elections. Voter turnout in Alaska is about 23 percent, which is the standard national average. By mail voting is estimated to cost one-third to one-half less than polling place elections, an average of \$4.30 per vote by polling, and \$1.23 by mail.

[9:07:56 AM](#)

SENATOR STEVENS said he has concerns with fraud with the vote by mail system.

[9:08:45 AM](#)

MS. SCHMIDT replied that security measures could be implemented. Oregon has been very successful preventing fraud by using security envelopes and matching signatures which minimize tampering. Vote by mail came about after the computer-based election systems used in Florida proved to be terribly fraudulent. This bill would not prevent voters from casting ballots at polls.

SENATOR BUNDE asked for clarification of Oregon's increased voter turnout numbers, and if polling places in Alaska remained the same how vote by mail would save money.

[9:11:10 AM](#)

MS. SCHMIDT answered that at the beginning Oregon's voter turnout was 23 percent just like the national average. Over a five year period of vote by mail the number went up to 59 percent and finally last year to 89 percent, which is unprecedented in the nation. This bill would allow the Division of Elections to make the decision to hold an election by mail. If they choose to do so, it would be up to them whether or not to remove some of the polling places and federal regulations

provide that a polling place cannot be arbitrarily removed, particularly in rural communities.

SENATOR BUNDE said there are rural communities with very high voter turnout. He asked if the Division of Elections asked for this legislation.

MS. SCHMIDT answered no but they don't oppose it either. The heart of the legislation is a desire to get people involved in the democratic process.

SENATOR BUNDE said voter participation in his district is over 60 percent.

[9:12:53 AM](#)

CHAIR MCGUIRE asked what the difference is between a person asking for an absentee ballot, which they can do now, and voting by mail.

MS. SCHMIDT answered that every registered voter with a valid address would be mailed a ballot, rather than just by request.

[9:13:51 AM](#)

SENATOR FRENCH said he is more of a proponent of this idea than he thought. Experience shows that vote by mail gets more people involved in the democratic process. He is not aware of any instance of voter fraud from vote by mail that has produced an adverse election result. He believes this is a way to get more people voting and he enthusiastically supports the bill.

SENATOR BUNDE said he supports more people involved in the voting process, but doesn't think this bill achieves that goal.

CHAIR MCGUIRE said she also has concerns about fraud and the idea of block voting. Block voting can occur when someone is mailed a ballot, doesn't know the issues or the candidates, and asks their neighbors for opinions. This concerns her, because when a vote is cast it should mean something. The act of asking for a ballot says something. Also, if a voter is being pressured by a family member to vote a certain way, a polling place may provide relief from that pressure.

[9:18:02 AM](#)

SENATOR STEVENS said he thought it would be relatively easy to vote another person's ballot and wondered if that was of concern to the Division of Elections.

JASON HOOLEY, Special Assistant, Office of the Lieutenant Governor, Juneau, said the integrity of the voting process and preventing fraud are the greatest concerns.

SENATOR BUNDE asked why the Division of Elections didn't propose this type of process previously.

MR. HOOLEY answered that to his knowledge the division and the bill sponsor have not talked a great deal about the legislation. He believes the division would like more time to collaborate with the sponsor to further understand the intentions of the bill. Voter participation and engagement and increasing turnout are shared goals.

[9:21:10 AM](#)

CHAIR MCGUIRE said she would like to see an analysis of where voters have found difficulty requesting an absentee ballot. She believes that the ability to vote at home makes the difference for some between voting or not. She wondered if there were other options considered that would increase voter access by mail.

CHAIR MCGUIRE asked for clarification of the methods used in Oregon to prevent voter fraud.

MS. SCHMIDT answered that in Oregon the ballot is first placed in a secrecy envelope then placed inside another envelope. The outside envelope is signed by the voter, which is then matched to the signature on the voter's registration form.

CHAIR MCGUIRE said the bill will be held over so that the sponsor and the Division of Elections can discuss the legislation. She said Alaska's overall voter turnout number is dismal, and she is especially concerned about the lack of young people voting.

[9:24:03 AM](#)

SENATOR STEVENS said many people don't vote because they don't feel prepared. Not voting is also a right. He would like to see more voter turnout by informed voters.

CHAIR MCGUIRE said she would like to hear information on the repeated argument that increasing voter turnout results in more Democrats voting.

MS. SCHMIDT said quite a bit of research was done in Oregon and they found that Republicans and Democrats favored voting by mail equally. This was also true for males and females. Additionally,

when a voter has the opportunity to spend more time thinking about whom they're voting for, if they have their ballot for a couple weeks and can read the voter pamphlet they may likely be more informed.

[9:26:37 AM](#)

MITCHELL GAY, Delta Junction, said he is forming a group called Alaska Liberty and Freedom Movement and his greatest concern with the bill is the possibility of voter fraud. Another problem he sees with vote by mail has to do with Alaska's large military and temporary worker population. Many of these people register to vote to establish residency and don't take the time to go to the polls for an election, but a vote by mail system would change that. Even though they are registered voters they are not permanent Alaska residents so their votes would not reflect what permanent residents feel. Vote by mail would create issues and conflicts particularly in this area. His group is creating a petition addressing mail-in voting in his region. He believes most people in his area would be against vote by mail in any form except for absentee voting.

[9:29:22 AM](#)

CHAIR MCGUIRE asked for clarification of the changes his group is proposing in its petition.

MR. GAY answered there is almost equal numbers of temporary and permanent residents in his area and a mail-in vote on borough issues would not truly represent the residents there.

CHAIR MCGUIRE set SB 162 aside for further discussion.

SB 171 - JUDICIAL RETENTION CANDIDACY WITHDRAWAL

[9:30:27 AM](#)

CHAIR MCGUIRE announced consideration of SB 171.

JASON HOOLEY, Special Assistant, Office of the Lieutenant Governor, Juneau, said this legislation allows judicial candidates to withdraw their name from general election ballots if the candidate informs the Division of Elections 48 days prior to the election. This opportunity is currently available to political and nominating petition candidates but not judicial candidates. In 2006, the division was contacted by a judicial candidate who was considering withdrawing his name, but no explicit statutes existed for the situation. The division was advised by Department of Law that the same standards for

political and nominating petition candidates' withdrawal could apply.

CHAIR MCGUIRE closed public testimony on SB 171.

SENATOR GREEN moved to report SB 171, from committee with individual recommendations and accompanying zero fiscal note. Hearing no objections, the motion carried.

HB 92 - JURISDICTION OF OMBUDSMAN: VICTIMS RTS

9:32:57 AM

CHAIR MCGUIRE announced consideration of HB 92.

BEN MULLIGAN, Staff, to Representative Stoltze, bill co-sponsor, introduced the bill to the committee. The bill would remove the Office of Victims Rights (OVR) from the Ombudsman's jurisdiction. When the OVR was created it was meant to act as a sister agency to the Ombudsman. The reason for this bill is to remove a potential conflict between the two offices. For example, the Ombudsman could be representing an incarcerated individual and ask the OVR for information about that individual's victim.

9:34:37 AM

LINDA LORD-JENKINS, Ombudsman, Anchorage, testified that she is opposed to the bill. She recognizes the importance of the work done by the OVR and referrals are routinely made to them if it appears they are better suited to handle a complainant's issues. This legislation is a result of a complainant's dissatisfaction with OVR action.

MS. LORD-JENKINS stated that OVR has taken the position that their office is a special Ombudsman for crime victims. This position is contrary to every public statement of mission previously made by OVR. Arguments that Ombudsman oversight would add an unnecessary layer of investigation or reverse an OVR decision reflects a misunderstanding of her office's function. Investigation of OVR actions and whether they comply with their own statutes and regulations is what is considered. OVR functions do not require exemption from Ombudsman jurisdiction.

MS. LORD-JENKINS also said Ombudsman oversight does not present a huge burden of labor for OVR. In the years since OVR was created, The Ombudsman has received only two complaints against the agency. Additionally an agency cannot be forced to take an action. If an investigation "reveals arbitrary and capricious

exercises of discretion based on improper or irrelevant grounds" then the Ombudsman is authorized to recommend alternate courses of action.

MS. LORD-JENKINS' concern is if the Ombudsman doesn't have jurisdiction to investigate complaints against OVR who does. OVR has asserted that complainants can protest to the Alaska Bar Association. However, the bar investigates ethical complaints not allegations about the completeness of an investigation. Ombudsman review of the statutes indicates OVR's assertion that the legislature has authority to investigate complaints against OVR is not entirely correct. Alaska statute 24.65.110(d) requires that no confidential information be released to any person. Before the legislature determines that OVR should be removed from Ombudsman jurisdiction, a legal opinion should be requested.

MS. LORD-JENKINS said the question has been raised that the Ombudsman has a conflict of interest when investigating OVR complaints because the Ombudsman accepts complaints from inmates against the Department of Corrections. The number of complaints filed by inmates is large but the Ombudsman does not advocate for inmates. The Ombudsman's role is to determine if a state agency action is fair and reasonable. Additionally, mechanisms are in place to prevent a conflict between an OVR represented victim and a person accused of the crime. Ms. Lord-Jenkins strongly encourages rejecting the bill.

[9:44:49 AM](#)

SENATOR BUNDE asked if this bill originates from a single case.

MS. LORD-JENKINS answered yes.

SENATOR FRENCH commented that AS 24.55.100 authorizes the Ombudsman to investigate the administrative acts of agencies. Investigation of the governor, lieutenant governor, a member of the legislature, and justices of the Supreme Court are excluded. He asked if this bill would add the Office of Victims Rights to that list of excluded offices.

MS. LORD-JENKINS answered yes.

SENATOR FRENCH asked if individuals with complaints against defense or prosecuting attorneys had the right to be heard by the Ombudsman.

MS. LORD-JENKINS answered yes, the Ombudsman has jurisdiction over the Department of Law.

[9:46:48 AM](#)

SENATOR FRENCH referred to the sponsor statement that says, "The OVR is staffed by attorneys with specialized knowledge; the Ombudsman is not. This raises the question of 'institutional competency' when the Ombudsman lacks that special legal knowledge necessary to investigate." He noted that the Ombudsman is already overseeing legal decisions and asked how many years this has been the case.

MS. LORD-JENKINS answered since the office was formed in 1975.

SENATOR FRENCH asked who would handle a complaint against OVR actions if this bill passed.

MS. LORD-JENKINS answered she did not know.

[9:49:46 AM](#)

KATE BERKHARDT, Assistant Ombudsman, Juneau, said if this bill passed OVR would be immune from all oversight. An individual could complain about OVR to their legislator but statutes ensuring confidentiality would prevent OVR from providing information to the legislator investigating the complaint.

KATHY HANSEN, Victims Advocate Attorney, Office of Victims Rights, Anchorage, said Ms. Lord-Jenkins is mistaken about the statutory role and obligations of the OVR. Alaska statute 24.65 assigned advocacy and ombudsman duties to the Office of Victims Rights. The Court of Appeals held that the OVR is the special Ombudsman for crime victims in Alaska. If HB 92 does not pass an Ombudsman will have the authority to investigate an Ombudsman. OVR's position is that would be an unnecessary layer of oversight and waste of resources. If there is a question about OVR's statutory authority the place to address it is in AS 24.65.

MS. HANSEN said she is concerned that if HB 92 does not pass victims might go to the Ombudsman or the OVR for help and they might obtain different findings. Ombudsman findings might not be based on a complete understanding of the criminal justice system. She said legislative intent in AS 24.65 was to give the OVR director final discretionary decision on cases that come before them. Even superior court judges cannot review the discretionary decisions of the OVR. All the court can do is hear

complaints that OVR is not following its own statutory requirements.

MS. HANSEN said provisions in AS 24.65.200 exempt OVR from subpoena or discovery of privileged information. Even the Ombudsman is prohibited from access to privileged information held by the OVR. The simple fix is to pass HB 92. If the legislature decides it wants the Ombudsman to have oversight over OVR, AS 24.55 will need to be substantially restructured.

[9:58:27 AM](#)

CHAIR MCGUIRE said her concern is for an individual to retain access to the complaint process. The senator feels if this bill passes, an individual's rights may get quashed.

MS. HANSON responded that protecting those rights is an important concern. ORV already has greater protections in place for crime victims than the Ombudsman. Because the OVR is staffed by bar certified attorneys they operate under Alaska Bar Association ethical standards. If a client is dissatisfied with the way a case is investigated they can go to the bar association or to their legislator for assistance.

[10:00:58 AM](#)

CHAIR MCGUIRE announced HB 92 would be set aside for further discussion.

CHAIR MCGUIRE adjourned the Senate State Affairs meeting at [10:01:36 AM](#).