

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

March 15, 2011
8:09 a.m.

MEMBERS PRESENT

Representative Cathy Engstrom Munoz, Chair
Representative Neal Foster, Vice Chair
Representative Alan Austerman
Representative Alan Dick
Representative Dan Saddler
Representative Berta Gardner

MEMBERS ABSENT

Representative Sharon Cissna

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 17

Urging the United States Congress to pass legislation concerning regulation of drinking water and wastewater treatment by the United States Environmental Protection Agency.

- MOVED CSHJR 17(CRA) OUT OF COMMITTEE

HOUSE BILL NO. 178

"An Act relating to election practices and procedures; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HJR 17

SHORT TITLE: WATER & WASTE WATER REGULATION

SPONSOR(S): COMMUNITY & REGIONAL AFFAIRS

03/07/11	(H)	READ THE FIRST TIME - REFERRALS
03/07/11	(H)	CRA, RES
03/15/11	(H)	CRA AT 8:00 AM BARNES 124

BILL: HB 178

SHORT TITLE: ELECTION PROCEDURES

SPONSOR(S): THOMAS

03/07/11 (H) READ THE FIRST TIME - REFERRALS
03/07/11 (H) CRA, STA
03/15/11 (H) CRA AT 8:00 AM BARNES 124

WITNESS REGISTER

PAUL LABOLLE, Staff
Representative Neal Foster
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HJR 17 on behalf of the sponsor,
Representative Foster.

SHIRLEY MARQUARDT, Mayor
City of Unalaska
Unalaska, Alaska

POSITION STATEMENT: Expressed hope that HJR 17 would be
forwarded.

MARK LYNCH, Manager
City of Cordova
Cordova, Alaska

POSITION STATEMENT: During hearing of HJR 17, related the
situation of the City of Cordova.

CHRIS HLADICK, Manager
City of Unalaska
Unalaska, Alaska

POSITION STATEMENT: Testified in support of HJR 17.

CECILE ELLIOT, Staff
Representative Bill Thomas
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 178 on behalf of the sponsor,
Representative Thomas.

ALPHEUS BULLARD, Attorney
Division of Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 178, answered
questions.

GAIL FENUMIAI, Director
Division of Elections
Office of Lieutenant Governor

Juneau, Alaska

POSITION STATEMENT: During hearing of HB 178, answered questions.

PADDY MCGUIRE, Deputy Director
Election Official Assistance
Federal Voting Assistance Program
U.S. Department of Defense
Washington, D.C.

POSITION STATEMENT: During hearing of HB 178, answered questions.

MARK SAN SOUCI, Regional Liaison Northwest
Defense State Liaison Office
Office of the Deputy Assistant Secretary of Defense
Deputy Under Secretary of Defense (Military Community and Family Policy)
U.S. Department of Defense
Tacoma, Washington

POSITION STATEMENT: Provided testimony on HB 178.

ACTION NARRATIVE

[8:09:38 AM](#)

CHAIR CATHY ENGSTROM MUNOZ called the House Community and Regional Affairs Standing Committee meeting to order at 8:09 a.m. Representatives Austerman, Dick, Saddler, Gardner, and Munoz were present at the call to order.

HJR 17- WATER & WASTE WATER REGULATION

[8:09:51 AM](#)

CHAIR MUNOZ announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 17, Urging the United States Congress to pass legislation concerning regulation of drinking water and wastewater treatment by the United States Environmental Protection Agency.

CHAIR MUNOZ explained that HJR 17 is the result of work the committee performed earlier in the year after hearing about the changes the Environmental Protection Agency (EPA) is requiring such that some communities in Alaska would have to have more sophisticated water treatment systems, which are very expensive. Some years ago there was an exemption for 27 communities in

Alaska that allowed those communities to use secondary treatment of their water. However, that exemption is in flux now and is of great concern for these communities.

8:11:02 AM

PAUL LABOLLE, Staff, Representative Neal Foster, Alaska State Legislature, explained that the communities with the exemption have a 301(h) waiver. The EPA decided that it would not exempt one particular community from that waiver and has hinted that other communities may follow. At the same time, the EPA is not allowing that community to apply for the waiver because the deadline for that waiver expired some years ago. He explained that it's a situation in which the deadline for the waiver has expired, the community didn't apply for the waiver because they had an exemption, and the EPA changed its policy and is no longer recognizing the exemption. Mr. Labolle pointed out that the aforementioned language isn't included in HJR 17 per the request of the community, which is already under the U.S. Department of Justice (DOJ) enforcement. He noted that he has a couple of proposed technical amendments to offer for the committee's consideration.

8:13:09 AM

MR. LABOLLE informed the committee that the facility program manager for Village Safe Water had provided an updated amount for the amount of declining federal funds. Therefore, he suggested the committee on page 2, line 16, delete "\$49,000,000" and insert "\$42,500,000". He then suggested the committee on page 2, line 18, change the "October 1, 2011" language to "the proposed fiscal year 2012". In response to Representative Saddler, confirmed that the reference is to the federal fiscal year.

8:14:56 AM

REPRESENTATIVE AUSTERMAN moved the amendments proposed by Mr. Labolle, labeled Amendment 1, as follows:

Page 2, line 16;
Delete "\$49,000,000"
Insert "\$42,500,000"

Page 2, line 18;
Delete "October 1, 2011,"
Insert "the proposed fiscal year 2012"

There being no objection, Amendment 2 was adopted.

[8:15:57 AM](#)

REPRESENTATIVE GARDNER moved that the committee adopt Conceptual Amendment 2, as follows:

Page 2, line 31, following "emergency";
Insert "or to make the regulations less
burdensome for communities."

There being no objection, Amendment 2 was adopted.

[8:16:45 AM](#)

REPRESENTATIVE GARDNER related her understanding that one of the problems with the EPA is that it isn't allowed to include costs as part of its argument for or against something. The EPA's focus is on the impact to the environment without regard to the cost to the community or the state. If that's the case, she questioned whether language should be added asking the U.S. Congress to allow the EPA to consider the fiscal impact when making its decisions.

MR. LABOLLE directed attention to the language on page 1, line 14, which references Executive Order 13563 that addresses the issue. He explained that it's not that the EPA can't consider costs rather it's more of a situation in which the EPA acknowledges that the cost may be a problem for the communities, but not that the cost isn't EPA's problem.

[8:18:23 AM](#)

SHIRLEY MARQUARDT, Mayor, City of Unalaska, thanked the committee for bringing forward HJR 17. As was pointed out earlier, this is a problem for Unalaska. However, all the signs point to it becoming an Alaska problem in the near future. She emphasized that it's an incredibly expensive mandate from EPA and only a limited amount of time to comply has been provided. With regard to the language on page 2, line 14, which says "will limit the ability of small communities to address other priorities", Mayor Marquardt opined that it will limit "most" communities. Referring to page 1, line 16, she then opined that EO 13563 isn't being followed in the case of the City of Unalaska. The aforementioned, that is "to be told by an agency in D.C. that you're not spending your money correctly in your

community and you need to stop doing projects that you prefer and start doing just what they've said," is very frustrating, she related. Mayor Marquardt expressed hope that HJR 17 would be forward from the committee.

[8:20:49 AM](#)

MARK LYNCH, Manager, City of Cordova, echoed the comments of Mayor Marquardt. The City of Cordova has a similar situation to that of Unalaska. Although the City of Cordova doesn't face as large a fiscal situation as the City of Unalaska, it's still a significant cost for Cordova. Mr. Lynch related that the City of Cordova's primary concern is the cost. The City of Cordova faces a cost of at least \$10 million for improvements to the city's water system, such that it would comply with the LT2 regulations. Additionally, the City of Cordova, as it has been told, will face a cost of \$10 million for forthcoming upgrades to secondary treatment of its wastewater. The aforementioned will cause a total impact of \$20 million for a community with 700 households, and therefore residents will face an increase in water and sewer bills] in the amount of another \$200-\$250 per month, which is very burdensome. Another concern of the City of Cordova is the LT2 rule regarding the elimination of cryptosporidium. The City of Cordova has been testing for cryptosporidium and has performed historical research, both of which provide no evidence that the City of Cordova has or ever has had any measurable level of cryptosporidium. Therefore, he questioned spending \$10 million to fix a problem that the City of Cordova doesn't have. He noted his agreement with Mayor Marquardt that this issue will be one of the biggest financial impacts on the state in the near term.

[8:23:24 AM](#)

REPRESENTATIVE SADDLER recalled that at the prior hearing on this topic, there was discussion of conversations between the City of Cordova and EPA to reach a settlement. He inquired as to the status of those negotiations.

MR. LYNCH answered that the City of Cordova hasn't had any direct negotiations with EPA, rather the city has only had discussions with the Department of Environmental Conservation (DEC). To date, the negotiations with [EPA] have only discussed the timeframe for compliance. With regard to the cost of these upgrades, Mr. Lynch related that the agency [EPA] acknowledged to the City of Cordova that it was aware of the cost impact [of the upgrades], but has said it's not the agency's problem. Mr.

Lynch acknowledged that EPA is enforcing a regulation and isn't concerned with the cost. However, the cost is a large part of the issue for the community.

[8:24:54 AM](#)

REPRESENTATIVE GARDNER asked if the EPA within its mandate has orders to consider cost or is it doing all it can do.

MR. LYNCH related his understanding that the EPA to date hasn't taken cost into account. He said he was glad to see that President Obama signed EO 13563, which specifies that EPA should take into account the cost and benefit. However, he said he hasn't had any discussions with DEC or EPA since the EO was signed, and thus he didn't know whether it would impact the City of Cordova's case.

MR. LABOLLE, drawing from his reading of U.S.C. 33, related his understanding that although EPA has fairly broad latitude, it specifies it has to consult with the state in almost every section that discusses policy implementation as well as enforcement. In further response to Representative Saddler, Mr. Labolle surmised that EPA has the ability, but not the mandate to consider cost unless consider one considers EO 13563.

[8:27:19 AM](#)

CHRIS HLADICK, Manager, City of Unalaska, testified in support of HJR 17. He reminded the committee that the City of Unalaska is in settlement negotiations with the U.S. Department of Justice (DOJ). If the City of Unalaska has to go to secondary treatment, it will spend on the order of \$52 million in 2014. He explained that breaks down to \$32 million for the secondary treatment and \$10 million for the new LT2 plant similar to Cordova. The City of Unalaska will also have to build new landfill cells because secondary treatment will create sludge, which will reduce the life expectancy of the landfill cells by about 20 percent. The new landfill cells cost \$9.5 million. He noted that the city has had discussions with EPA regarding the cost increases of 200 percent and EPA doesn't care.

[8:29:17 AM](#)

REPRESENTATIVE DICK returned to the issue of cryptosporidium, and opined that millions of dollars are being spent for something that doesn't exist. He then questioned whether a

"WHEREAS" clause could be inserted to address cryptosporidium since it doesn't exist in Alaska.

MR. LABOLLE pointed out that the broad brush language on page 2, line 7, would cover cryptosporidium.

REPRESENTATIVE DICK opined that the existing language in the resolution seems to relate a general complaint and doesn't have the shock the situation with cryptosporidium would have. He remarked that he didn't want to delay HJR 17, but he wasn't ready to offer specific language either.

CHAIR MUNOZ suggested that Representative Dick work on conceptual language to offer in the House Resources Standing Committee, of which he is a member.

[8:31:09 AM](#)

REPRESENTATIVE AUSTERMAN moved to report HJR 17, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 17(CRA) was reported from the House Community and Regional Affairs Standing Committee.

[8:31:37 AM](#)

The committee took an at-ease from 8:31 a.m. to 8:34 a.m.

HB 178-ELECTION PROCEDURES

[8:34:23 AM](#)

CHAIR MUNOZ announced that the final order of business would be HOUSE BILL NO. 178, "An Act relating to election practices and procedures; and providing for an effective date."

[8:34:45 AM](#)

CECILE ELLIOT, Staff, Representative Bill Thomas, Alaska State Legislature, speaking on behalf of the sponsor, Representative Thomas, provided the following testimony [in reference to the proposed committee substitute (CS) Version 27-LS0304\E, Bullard, 3/11/11]:

Over 5 million military personnel and overseas civilians face a variety of legal and logistical obstacles to participating in American elections. Of

those, 61,000 represent uniform service members, their dependents, and civilian overseas voters who claim Alaska as their voting residence. There are several challenges that these voters face, similar to the challenges that our domestic absentee voters face: being in remote areas, unable to get their ballots back in time. Some of these challenges were addressed in the MOVE Act, which is the Military Overseas Voter Empowerment Act which is an amendment to the Uniform Overseas Citizens Voter Act. The MOVE Act was passed in 2009 and established some requirements for states to accommodate these voters. The main challenge for these voters is getting their ballots in time. So, the MOVE Act requires that ... a ballot be distributed 45 days ahead of time, which is accommodated in this bill. In order to do that, HB 178 moves the primary back two weeks; ... Sections 15 through 22 all provide for that. Also there are a number of places in the bill that shave time off either end to allow for the division to provide for this 45-day ballot transmission time.

MS. ELLIOT then informed the committee that currently overseas votes can be accepted up to 15 days after the election, while domestic absentee votes can be accepted only up to 10 days after the election. This legislation proposes to align overseas and domestic absentee votes such that both votes can only be accepted up to 10 days after the election. Ms. Elliot pointed out that the witnessing requirement is a challenge for overseas voters as well as remote Alaskans. Therefore, HB 178 removes the witnessing requirement. The Division of Elections has assured the sponsor that it is comfortable with what is required to establish an eligible voter. She noted that more than half the states have removed the witnessing requirement. The legislation also provides for the use of email to distribute and return ballots.

MS. ELLIOT specified that Sections 15-22 address moving the primary back two weeks, while Sections 9 and 12 address the 10-day receipt of the ballot post election. Removal of the witnessing requirement is located in Sections 2, 5, 7, 9, 11, and 13. She highlighted that much of HB 178 is conforming language to the timeframes. With regard to expanding opportunities for domestic absentee voters, the legislation provides for ballots to be provided in regional offices 22 days prior to the election for early voting. The aforementioned allows voters to obtain a ballot in a regional office when

they're available. She then pointed out that Section 23 allows a municipal clerk to serve as an absentee voting official for the purposes of distributing absentee ballots, which is another way in which the opportunity to vote for those living remotely is expanded.

[8:40:37 AM](#)

MS. ELLIOT directed the committee's attention to Section 24, which repeals four sections. She then explained that there is a specialty absentee ballot that is sent out 60 days [in advance of the election] to those voters who don't fall under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) but have similar circumstances and requirements. The goal is to accommodate [specialty absentee ballot voters] in the same manner as UOCAVA voters and eliminate that section [AS 15.20.081(h)] of statute. Although Section 10 attempts to address the repealer, more work is necessary and thus there will be an amendment in the next committee of referral. Ms. Elliot moved on to the repeal of AS 15.20.081(i), which is the statute specifying that an absentee ballot application is valid for the next two general elections [after application]. Since most of these voters move a lot, much time and money is spent trying to [track these absentee ballot voters and obtain accurate information]. Therefore, if these absentee ballot voters apply each year, it's known where the ballot is going. Ms. Elliot noted that Gail Fenumiai, Director, Division of Elections, is available to address the specifics.

[8:43:25 AM](#)

MS. ELLIOT, in response to Chair Munoz, specified that the repeal of AS 15.20.081(h) would remove the 15-day post election receipt requirement since a new provision is being proposed that requires receipt of [overseas and domestic absentee votes] by 10 days post election.

[8:45:07 AM](#)

REPRESENTATIVE AUSTERMAN moved to adopt CSHB 178, Version 27-LS0304\E, Bullard, 3/11/11, as the working document. There being no objection, Version E was before the committee.

[8:46:13 AM](#)

REPRESENTATIVE GARDNER inquired as to why in Section 24 of Version E AS 15.20.081(h) is being repealed rather than merely replacing "15" with "10".

8:46:35 AM

ALPHEUS BULLARD, Attorney, Division of Legal and Research Services, Legislative Affairs Agency, answered that if the goal is to move to a uniform 10-day [deadline for overseas and domestic absentee voters], then there is no need for AS 15.20.081(h).

8:47:05 AM

CHAIR MUNOZ requested an explanation of the repeal in Section 24 of AS 15.28.081(i).

MR. BULLARD recalled that repeal of AS 15.28.081(i) is in response to a request from the Division of Elections. He explained that at one time there was a federal requirement that an absentee ballot submitted by an absentee uniformed services voter would be valid through the next two regularly scheduled elections. However, that's no longer a federal requirement. Furthermore, he related his understanding that the requirement resulted in ballots being sent to places where voters are no longer located. For further explanation, he deferred to the Division of Elections. In further response to Chair Munoz, Mr. Bullard explained the remaining repealers in Section 24. He explained that AS 15.20.082 provides for a special absentee ballot that is sent to voters located overseas or in remote areas of the state. Again, this may be best answered by the Division of Elections. However, he related his understanding that only a handful of the aforementioned ballots were being requested. The hope was that the changes to AS 15.20.081, which govern normal absentee ballots, would cover those voters as would other changes encompassed in HB 178. In Section 24 the repeal of AS 15.20.160 provides that a person may not receive a fee from the voter for attesting to any voter certificate required in voting absentee. Since HB 178 dispenses with the witnessing requirement, AS 15.20.160 didn't achieve anything.

8:49:46 AM

REPRESENTATIVE GARDNER referred to the language in Section 1, page 1, lines 7-8, and asked whether the desire is to have the person be an Alaska resident.

MR. BULLARD clarified that the parent can already vote, the language is an expansion of the franchise to certain persons, the children, of persons domiciled in the state.

REPRESENTATIVE GARDNER asked if this language addresses a situation in which one of the parents is in the military and the family is with that parent when the child turns 18 and isn't an independent resident anywhere.

MR. BULLARD said that would be an accurate characterization.

[8:51:08 AM](#)

REPRESENTATIVE SADDLER, referring to page 9, line 26, asked if the repeal of AS 15.20.082 would eliminate the special overseas advance ballot.

MR. BULLARD clarified that it would eliminate the special absentee ballot under AS 15.20.082, which is a ballot that can be transmitted 60 days prior to the date of the election. Given the other changes encompassed in the legislation, such as the candidate withdrawal deadlines, it's possible for the Division of Elections to prepare a ballot a bit earlier.

REPRESENTATIVE SADDLER surmised then that the other changes encompassed in HB 178 will make the system work well enough that this special advance ballot is no longer necessary.

MR. BULLARD remarked that Representative Saddler's question may be more of a policy question.

MS. ELLIOT related her agreement with Representative Saddler's understanding.

[8:52:39 AM](#)

REPRESENTATIVE GARDNER pointed out that Section 3 allows a municipality to designate a person to provide ballots to qualified voters 15 days prior to the election. However, Section 4 allows for election supervisors to provide ballots 22 days prior to the election. She inquired then why Section 3 wouldn't specify 22 days prior to the election as well.

MS. ELLIOT explained that early voting can only be done in a regional office. Therefore, the 22 days refers to the ability of a voter to receive an absentee [ballot] at a regional office because the ballots are ready at that time. Current statute

allows 15 days to receive a ballot, but the Division of Elections related that regional offices have prepared ballots ready and available prior to [the 15-day deadline], and thus voters have been turned away at the regional office. Therefore, the change to the 22-day deadline allows early voting at a regional office. Ms. Elliot clarified that the ballots are available in the regional offices 22 days prior to the election, but it takes about a week to transmit the ballots elsewhere in the state, which is why there's a difference between the deadlines for Sections 3 and 4.

REPRESENTATIVE GARDNER asked if the last part of Section 3 can be read to allow the distribution of ballots earlier, if they are available.

MS. ELLIOT deferred to the Division of Elections. The timeframe, she opined, was just to allow ballots to arrive elsewhere in the state.

[8:55:27 AM](#)

REPRESENTATIVE GARDNER posed a scenario in which the ballots are available in the regional office 22 days prior to the election and a municipal clerk receives the ballots 20 days prior to the election. She asked if the language of Section 3 would allow the municipal clerk to distribute the ballots.

[8:56:09 AM](#)

GAIL FENUMIAI, Director, Division of Elections, Office of Lieutenant Governor, explained that the regional offices receive the ballots about 28 to 25 days prior to the election. At that point, the division needs to sort, account for, and distribute the ballots to a variety of voting locations throughout the state in order that absentee voting can begin 15 days prior to the election. She told the committee that the 15th day requirement in Section 4 was inserted in statute some time ago because prior to that the language referred to "when ballots were available". The legislature in the 1990s made the change to the 15th day requirement because it didn't like the open-endedness of the voting that would allow voting to start at different times at different locations.

[8:57:09 AM](#)

REPRESENTATIVE GARDNER pointed out that the language in Section 4(a)(2) refers to "on or after the **22nd** [15th] day before an

election". She interpreted that to mean that on the 23rd day before an election, the election supervisor couldn't distribute the ballot. Therefore, [the ballots can't be distributed] any earlier than the 22nd day prior to an election]. However, the language in Section 3 refers to "at least 15 days before the election". She asked if a municipal clerk who has been provided ballots 20 days prior to the election would be precluded from providing ballots to voters who are requesting an absentee ballot earlier than 15 days prior to the election. Or, can the municipal clerk make the [absentee] ballots available as soon as he/she has them, she asked.

MS. FENUMIAI related her understanding that Section 3 means that the Division of Elections has to send ballots to the various locations in the state at least 15 days prior to the election. Section 4(a)(3), on the other hand, specifies when voting before an absentee voting official may begin, which is on or after the 15th day prior to the election.

REPRESENTATIVE GARDNER remarked that the goal of HB 178 is to make it easier for the voter when the ballot is available. She posed a scenario in which an election clerk has a ballot 20 days prior to the election. Twenty days prior to an election, regional offices are allowed to provide ballots to [absentee] voters. Would a municipal clerk who has the ballot 20 days prior to the election be able to provide it to a voter, she asked.

MS. FENUMIAI answered, "The way the statute is written right now, no." However, if that's the pleasure of the legislature, the division would have no problem making that work, so long as the ballots were available for voting.

[8:59:32 AM](#)

CHAIR MUNOZ requested explanation of the difference between early voting and absentee voting, and asked whether that's addressed in this statute change.

MS. FENUMIAI explained that Section 4 addresses absentee in person voting, which takes place at various locations throughout the state. The absentee in person voting begins 15 days prior to the election. The majority of absentee voting officials have ballots for one specific house district, the district in which the site is located. Absentee voting stations, such as the airports and the Division of Election's regional offices, have ballots for all 40 House districts. An individual who votes

absentee in person must complete an absentee in person oath and affidavit envelope, which includes the voter's name, current residence address, and a [unique] identifier. The absentee voting official witnesses and signs the aforementioned confirming the individual was issued a ballot. That ballot is placed in an envelope, sealed, and sent to the Division of Elections Offices for review by a bi-partisan absentee review board to determine the eligibility of the voter to cast that specific ballot. Those ballots are counted post election day. Early voting is done at the division's four regional elections offices where there is full access to the voter registration system in order to validate the voter's eligibility and not require further review by a review board. In further response to Chair Munoz, Ms. Fenumiai specified that the four regional stations are located in Juneau, Anchorage, Fairbanks, and Nome. She noted that there is also a satellite office in Wasilla. She clarified that both absentee in person and early voting start 15 days prior to an election, in all locations in the state.

[9:02:36 AM](#)

REPRESENTATIVE GARDNER posed a scenario in which a voter has moved, but didn't change his/her address with the Division of Elections. Although such a voter can't sign the voter roll, she surmised that the voter could still vote on statewide and national matters, but not on local matters in either the district in which the voter currently resides or resided prior to moving.

MS. FENUMIAI replied yes.

[9:03:58 AM](#)

REPRESENTATIVE DICK, referring to page 7, line 26, inquired as to the impact of moving the date of the primary on the filing date for candidates. He further inquired as to whether there would be problems with moving the primary when there are appeals.

MS. FENUMIAI said that the filing deadline has remained June 1st. However, the candidate withdrawal deadline has been backed up four additional days, which places it 52 days before the primary versus the existing 48 days prior to the primary. The change would allow the Division of Elections, for the primary election, an additional four days to print and mail ballots by the 45th day prior to the election for the UOCAVA voters. Under the existing withdrawal date, it's not feasible to have an

official ballot printed by a ballot printer on ballot stock. She said she wasn't sure to which appeal deadlines Representative Dick was referring.

[9:05:36 AM](#)

[Chair Munoz passed the gavel to Representative Austerman.]

[9:05:41 AM](#)

REPRESENTATIVE DICK recalled the process he went through in order to validate his residence. With the changes proposed in the legislation, he questioned whether there's enough time for that process to occur.

MS. FENUMIAI responded that she believes so as the timeframe for which to file an appeal to a candidate's challenges hasn't changed.

[9:06:17 AM](#)

REPRESENTATIVE SADDLER asked if the use of email to request ballots is secure.

MS. FENUMIAI related her understanding that the sponsor isn't stating that the Division of Elections must use email as a form of electronic communication, but rather that it's an option. In the 2010 election cycle there were, throughout the U.S., various pilot projects regarding transmittal of ballots electronically. She noted that not all of the projects were regarding email transmissions. Although the division hasn't reviewed those [pilot projects], she assured the legislature that when the division modernizes its form of electronic transmission of ballots, it will be performed in the most secure manner possible. In further response to Representative Saddler, she confirmed that the division is very concerned about security and ensuring that the individual who requests the ballot is the individual who receives the ballot and is, in fact, the individual who votes the ballot.

REPRESENTATIVE SADDLER related that the provision [allowing the use of email to transmit ballots] is of serious concern, particularly given the opportunity for electronic mischief. He wanted to hear more regarding how the division can prove the security of the identity of the individual requesting and submitting a vote via email.

MS. FENUMIAI said the division would have to perform research into the use of email.

[9:08:24 AM](#)

REPRESENTATIVE AUSTERMAN asked if the Division of Elections currently receive ballots by fax.

MS. FENUMIAI replied yes, clarifying that the division allows the transmission of blank ballots and the return of a voted ballot by fax. In further response to Representative Austerman, Ms. Fenumiai confirmed that the division feels very comfortable with the aforementioned. She highlighted that a voter voting by fax has to provide the same information on the voter's oath and affidavit that a voter voting by mail does. The voter voting by fax also has the option to return the ballot received via fax by mail. She confirmed that would be the same for electronic email voting.

[Representative Austerman returned the gavel to Chair Munoz.]

[9:09:13 AM](#)

REPRESENTATIVE GARDNER commented that she had looked at HB 178 primarily in terms of it meeting the election needs of military voters. However, she questioned whether any of the existing or proposed voting provisions apply only to military voters.

MS. FENUMIAI pointed out that there are specific definitions related to the term absent uniformed services voter and overseas voter per the federal UOCAVA. Although all voters are treated in same manner, the MOVE Act requires that absent uniformed voters and overseas voters receive their ballots at least 45 days prior to a federal election.

REPRESENTATIVE GARDNER questioned whether those elements of the compliance to the MOVE Act and UOCAVA also apply to an absentee voter who simply lives and works overseas.

MS. FENUMIAI replied no, specifying that such a voter doesn't meet the definition per UOCAVA. She related her understanding that the sponsor's intent is to include those [absentee overseas] voters as well as voters in remote areas of the state with the MOVE Act provisions. Currently, those voters [in remote areas of the state] receive a 60-day special advanced blank ballot with a list of candidates, the need for which would be eliminated under HB 178.

REPRESENTATIVE GARDNER surmised then that in this effort to comply with the specific federal requirements for military overseas, the legislation broadens compliance to include any otherwise qualified voter who receives an absentee or early ballot. She asked whether the legislation includes language that specifies an individual has to be active duty military in order to qualify for a certain provision.

MS. FENUMIAI related her understanding that the 45-day ballot would only apply to those voters who meet the definition under UOCAVA. She related her further understanding that the sponsor is working on an amendment to include those overseas voters who are working or traveling overseas prior to an election as well as remote voters in the state who currently receive the 60-day special advanced ballot. Alaskan voters who are outside the state [but within the U.S.] would obtain an absentee ballot when they are normally ready for distribution, which is 25 to 28 days prior to the election.

[9:13:10 AM](#)

REPRESENTATIVE DICK related claims he has heard that there is no connection between death certificates and voter records. He asked if the aforementioned is possible. He further asked whether HB 178 would enhance the possibility of voters voting for a deceased individual.

MS. FENUMIAI responded that in her time with the division she has never experienced someone trying to vote in the name of a deceased individual. Although the Motor Voter Act limits the Division of Elections' ability to remove voters from the rolls, the division does remove voters from the rolls based on information from the family, obituaries, and the Division of Vital Statistics.

[9:14:49 AM](#)

REPRESENTATIVE SADDLER asked if HB 178 removes the witness requirement for all absentee voters or just those UOCAVA voters.

MS. FENUMIAI related her understanding that HB 178 removes the witness requirement for all voters. She reminded the committee that individuals who vote by mail have to provide a unique identifier, such as their date of birth, social security number, or driver's license number. The division validates that information prior to sending a ballot to that voter. Although

witnessing does provide an extra check and balance, she pointed out that a voter signs that under penalty of perjury he/she is the individual he/she says. Again, she related that in her time at the division she hasn't experienced individuals voting other individual's ballots and mailing them in fraudulently. In further response to Representative Saddler, Ms. Fenumiai opined that the Division of Elections has a good process for validating the identity of voters.

[9:17:09 AM](#)

CHAIR MUNOZ asked if other states require witnesses for their absentee voters.

MS. FENUMIAI answered that she believes it's mixed.

MS. ELLIOT informed the committee that approximately half the states have a witnessing requirement and approximately seven of those only require a witness when the voter has assistance with voting.

[9:18:04 AM](#)

REPRESENTATIVE SADDLER pointed out that the Alaska permanent fund dividend (PFD) requires two witnesses. He further pointed out that the state's jury pools are drawn from the PFD applicants. Representative Saddler opined that he has serious concerns with eliminating witness requirements, particularly with regard to voting electronically.

MS. FENUMIAI clarified that the existing witnessing requirements require one witness over the age of 18 or an officer who is authorized to administer an oath. She noted that the witness [documents] aren't required to be notarized. In response to Representative Gardner, Ms. Fenumiai confirmed that the witness doesn't have to be an Alaskan or an American. The witness merely validates that the voter is who he/she says he/she is on the ballot.

[9:19:13 AM](#)

REPRESENTATIVE SADDLER asked if the sponsor received evidence that it was difficult for overseas voters/military voters to obtain a witness.

MS. ELLIOT deferred to Paddy McGuire. She then offered that the removal of the witnessing requirement was requested by federal

organizations to make it easier on those service members and overseas voters who are in situations in which they don't have anyone to witness their ballot.

[9:20:53 AM](#)

PADDY MCGUIRE, Deputy Director, Election Official Assistance, Federal Voting Assistance Program, U.S. Department of Defense, regarding the elimination of the witness requirement, relayed that one of the big issues is the lack of uniformity. Therefore, uniformity among the states is being encouraged. Since slightly less than half of the states and territories have the witness requirement on ballots, it's a source of confusion. Therefore, the [department] is strongly encouraging states to eliminate the witness requirement.

[9:22:09 AM](#)

REPRESENTATIVE SADDLER surmised then that the drive to eliminate the witness requirement isn't necessarily that voters can't find witnesses overseas rather it's the desire for uniformity.

MR. MCGUIRE opined that any hurdle decreases participation, and characterized the witness requirement as a solution in search of a problem.

[9:22:58 AM](#)

REPRESENTATIVE GARDNER inquired as to the specific language in the legislation that applies only to military personnel.

MS. FENUMIAI pointed out that the provision regarding mailing the ballot 45 days per the MOVE Act is specific to absent uniformed voters and overseas voters, which is specific to the definition of a military overseas voter. Ms. Fenumiai related that currently in statute an absent uniform services officer or absentee voter qualifying under certain statutes is allowed to have the extended absentee ballot application whereas non military, non overseas voters have to apply every year. However, HB 178 proposes repealing that provision.

MS. ELLIOT explained that the specialty absentee ballot is a ballot that's sent to those voters who are similar to a UOCAVA voter, but don't fall under the umbrella of a UOCAVA voter. This legislation attempts to eliminate the specialty absentee ballot and align [the recipients of the specialty absentee ballot] with the same provisions as the UOCAVA voter because the

needs of the two types of voters are the same for the purposes of voting. Because of the MOVE Act, the 45-day transmittal time of the ballot is established. Although the aforementioned is repealed in [Version E] in an attempt to address it in Section 10, the language doesn't quite work. Therefore, an amendment is forthcoming to address that. The intention, she clarified, is to accommodate those voters in similar situations as UOCAVA voters in the same manner as a UOCAVA voter.

[9:28:27 AM](#)

CHAIR MUNOZ asked if the MOVE Act allows for email of the federal ballot.

MS. ELLIOT clarified that the MOVE Act requires that the state provide electronic transmission of information and ballots. Currently in statute, electronic transmission in regulation is basically fax. This legislation proposes to allow email as a form of electronic transmission. In further response to Chair Munoz, Ms. Elliot confirmed that allowing the use of a fax satisfies the federal law's electronic transmission requirement. She related that one state is receiving voted ballots via email. Ms. Elliot agreed to provide information to the committee regarding what other states are doing to allow for email of the state ballot.

[9:31:04 AM](#)

CHAIR MUNOZ announced that Representative Gardner has some amendments that will be brought before the committee at a future date. Chair Munoz then related that her main concerns are the removal of the witness requirement and emailing the ballot.

MS. ELLIOT reiterated that it's a Class C felony if one falsifies information when voting. Furthermore, the vote by email provision isn't critical to HB 178 rather it was an opportunity to provide that in statute since it will likely occur. The email transmission of information and a ballot is [critical to HB 178].

[9:32:25 AM](#)

CHAIR MUNOZ asked if the committee is interested in working on amendments to address the aforementioned amendments.

REPRESENTATIVE SADDLER replied yes, adding that he wants to be sure he understands the various aspects of voting.

REPRESENTATIVE DICK said that he needs more time to review this [legislation]. He noted that the elimination of the witness requirement is of concern for him as well.

[9:33:30 AM](#)

MARK SAN SOUCI, Regional Liaison Northwest, Defense State Liaison Office, Office of the Deputy Assistant Secretary of Defense, Deputy Under Secretary of Defense (Military Community and Family Policy), U.S. Department of Defense, thanked the committee for hearing this legislation and for all the hard work of staff. With regard to concerns about eliminating the witness requirement, Mr. San Souci related the situation of troops deployed to Afghanistan who may not have access to a fax machine and have erratic mail delivery. However, this deployed military has a satellite with laptops, which is the primary means of communication. Therefore, if those troops are able to receive a ballot via email, then those people who are defending the freedoms of U.S. citizens would be able to vote and have more certainty that it would count. In such situations, witnesses are hard to find. With regard to the consideration of electronic transmission, Mr. San Souci said his research has found that up to 20 states are sending ballots via email. States that are accepting ballots being returned via email are Colorado, Indiana, Mississippi, Minnesota, North Dakota, and South Carolina. He noted that such legislation has moved through the Washington State Senate.

[9:35:46 AM](#)

REPRESENTATIVE SADDLER clarified that he supports the effort to extend the franchise of voting to soldiers overseas, but he wanted to ensure that integrity of the process is maintained.

MR. SAN SOUCI informed the committee that that there was a 2009 study by the Pugh Foundation, which found that the vast majority of voting failure occurred with ballot transmission and return. He recalled that 17 percent of the ballots that weren't counted were tied to ballot transmission return. Therefore, any consideration given to the military voters is greatly appreciated.

[9:36:39 AM](#)

MS. ELLIOT, in response to Chair Munoz, agreed to develop a new committee substitute with amendments from the committee.

9:37:06 AM

CHAIR MUNOZ announced that HB 178 would be held over.

9:37:18 AM

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 9:37 a.m.