

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

January 25, 2011

9:01 a.m.

MEMBERS PRESENT

Senator Bill Wielechowski, Chair
Senator Joe Paskvan, Vice Chair
Senator Albert Kookesh
Senator Kevin Meyer
Senator Cathy Giessel

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 31

"An Act relating to the counting of write-in votes."

- HEARD AND HELD

SENATE BILL NO. 33

"An Act relating to the disposition of remains of a member of the military if the member dies while in a duty status."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB31

SHORT TITLE: COUNTING OF WRITE-IN VOTES

SPONSOR(s): SENATOR(s) THOMAS, FRENCH, MENARD, WIELECHOWSKI

01/19/11	(S)	PREFILE RELEASED 1/7/11
01/19/11	(S)	READ THE FIRST TIME - REFERRALS
01/19/11	(S)	STA, JUD
01/25/11	(S)	STA AT 9:00 AM BUTROVICH 205

BILL: SB33

SHORT TITLE: DISPOSITION OF SERVICE MEMBERS' REMAINS

SPONSOR(s): SENATOR(s) WIELECHOWSKI, PASKVAN, COGHILL

01/19/11	(S)	PREFILE RELEASED 1/14/11
01/19/11	(S)	READ THE FIRST TIME - REFERRALS

01/19/11 (S) STA, JUD
01/25/11 (S) STA AT 9:00 AM BUTROVICH 205

WITNESS REGISTER

GRIER HOPKINS
Staff to SENATOR THOMAS
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Supported SB 31.

GAIL FENUMIAI, Director
Division of Elections
Office of the Lieutenant Governor
Juneau, AK
POSITION STATEMENT: Explained the intent of SB 31.

SARAH FELIX, Attorney
Labor & State Affairs Section
Civil Division
Department Of Law
Juneau, AK
POSITION STATEMENT: Further explained SB 31 and suggested changes recommended by Department of Law.

ALPHEUS BULLARD, Attorney
Legal Services Division
Legislative Affairs Agency
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Explained provisions of SB 31, recommended a change to uncodified session laws.

SENATOR HOLLIS FRENCH
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Testified in support of SB 31.

SENATOR LINDA MENARD
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Testified in support of SB 31.

BEN BROWN
Testified on his own behalf
Juneau, AK
POSITION STATEMENT: Testified in support of SB 31.

HEDDY HUME

Disability Law Center of Alaska
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 31.

ANN GRUENING

Volunteer for U.S. Senator Lisa Murkowski
Juneau, AK

POSITION STATEMENT: Testified in support of SB 31.

MARILYN RUSSELL, President
League of Women Voters of Alaska
Fairbanks, AK

POSITION STATEMENT: Testified in support of SB 31.

SCOTT KINDLE, Attorney
Testified on his own behalf
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 31.

VERDIE BOWEN, Administrator
Division of Veterans Affairs
Department of Military and Veterans' Affairs
Ft Richardson, AK

POSITION STATEMENT: Further explained provisions of SB 33.

MICHAEL CAULFIELD

Intern to Senator Bill Wilechowski
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented SB 33 on behalf the sponsor.

MARK SAN SOUCI, NW Regional Liaison
United States Department of Defense
Anchorage AK

POSITION STATEMENT: Testified in support of SB 33.

RICK DAVIDGE, Chairman
Alaska Veterans Foundation
President, Alaska Chapter 9004
Vietnam Veterans of America
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 33.

ACTION NARRATIVE

[9:01:49 AM](#)

CHAIR BILL WIELECHOWSKI called the Senate State Affairs Standing Committee meeting to order at 9:01 a.m. Present at the call to order were Senators Paskvan, Giessel, Meyer, Kookesh, and Chair Wielechowski.

SB 31-COUNTING OF WRITE-IN VOTES

[9:04:19 AM](#)

CHAIR WIELECHOWSKI announced the consideration of SB 31.

GRIER HOPKINS, staff to Senator Joe Thomas, sponsor of SB 31, said that Alaska just went through an historic election. For the first time in over 50 years, an election for the United States Senate was won by a write-in candidate. This was followed by a two-month long court battle, where the Alaska Superior Court, the Alaska Supreme Court, and a federal District Court judge all found in favor of ensuring voters' intent and making sure that as many people are enfranchised as possible. Each court decision states the importance of voter intent, and that the statutory language currently dealing with write-in ballots is murky and open to interpretation.

MR. HOPKINS explained that the Alaska Supreme Court decision recommends the specific language proposed in SB 31, which looks to clarify the statutory problem. The intent of SB 31 is two-fold. First, it intends to clarify statutory language to ensure that as many Alaskans are enfranchised as possible. When the director uses a uniform standard in judging voter intent, this allows write-in ballots to count. The courts noted that if the legislature intended to require an exact spelling of a candidate's name on a write-in ballot, the legislature would have used more specific language, such as "perfect."

[9:09:49 AM](#)

The second reason for SB 31 is to tighten statutory language and strengthen the public perception of Alaska's democratic process. Having clear, precise language showing how the votes are determined, will hopefully reduce some of the outcry regarding the counting of write-in ballots.

SENATOR MEYER asked if the Director of Elections will be in charge of determining voter intent.

[9:12:09 AM](#)

GAIL FENUMIAI, Director, Division of Elections, Office of the Lieutenant Governor, responded that the Alaska Supreme Court

has ruled that it was to the benefit of the voters to have one person ruling on write-in ballots, using a common-sense approach, and allowing phonetic spelling if the intent of the voter was clear.

SENATOR PASKVAN noted that the Alaska Supreme Court has stated the division's statutory interpretations were common-sense interpretations, and that it is not possible to be all-inclusive in the definitions. He agreed that common sense has to guide the director.

SENATOR KOOKESH asked if the division supports the bill.

MS. FENUMIAI stated that the division has some technical issues with the way the bill has been drafted, which the Department of Law is here to address. The Division of Elections has not always implemented in statute the rulings of the courts.

[9:16:14 AM](#)

SENATOR MEYER said he respects the intent of the common sense approach, but questioned how that could be consistent from director to director.

MS. FENUMIAI said she believes it depends on issues surrounding individual candidates. For instance, minor misspellings should not disenfranchise a voter. The division does not make snap decisions; the election was heavily vetted through the Department of Law.

SARAH FELIX, Attorney, Labor & State Affairs Section, Civil Division, Alaska Department of Law, stated the department's objections have been addressed in a committee substitute.

[9:18:54 AM](#)

SENATOR PASKVAN moved to adopt the proposed committee substitute (CS) for SB 31, labeled 27-LS0350\B, as the working document. There being no objection, version B was before the committee.

MS. FELIX noted that Version B appears to have taken care of her concerns with paragraph 13 in the original bill, which stated that the election board was counting the ballots for write-in candidates; however, in practice, the director was making those decisions on voter intent. She added that the U.S. Supreme Court also found in Bush v. Gore that a single determiner of voter intent was very important.

CHAIR WIELECHOWSKI asked if the Department of Law supports SB 31.

MS. FELIX replied the DOL does not take a position. However, it appears that version B would accomplish what the bill is intended to accomplish.

SENATOR PASKVAN asked if the standards and guidelines set forth by the Alaska Supreme Court are adopted in this proposed bill.

[9:23:20 AM](#)

MS. FELIX responded that statutes are not drafted to refer to court cases, but the division does heavily rely on Supreme Court precedent in counting ballots.

SENATOR PASKVAN asked if she was worried that trying to define language would be viewed as a limitation on the ballot counting guidelines in Miller v Treadwell.

MS. FELIX answered that paragraph 13 is entirely consistent with the standards. That language is taken from an existing federal regulation on the counting of write-in ballots.

CHAIR WIELECHOWSKI asked if there was an estimate of the cost to the state of the litigation over this election.

MS. FELIX responded that the whole case cost \$85,000 - \$100,000 and the state could only recover twenty percent for attorney's fees, which in the Superior Court case amounted to \$17,000. The Supreme Court case was slightly less, and there is the possibility of federal litigation as well.

CHAIR WIELECHOWSKI noted that the tremendous cost of court challenges is another good reason to pass the bill. He asked what the cost would be for taking the case to the U.S. Supreme Court.

MS. FELIX responded that the cost for going to the U.S. Supreme Court would be at least as much as the cost of the state case.

[9:27:40 AM](#)

MS. FENUMIAI informed the committee that the Lieutenant Governor and the Division of Elections are going to undertake a comprehensive review of the 2010 general election and look at statutes and potential legislative changes that may be required. So there might possibly be additional election-related legislation presented this session.

CHAIR WIELECHOWSKI asked for clarification on SB 31 from Alpheus Bullard.

9:28:35 AM

ALPHEUS BULLARD, Attorney, Legal Services Division, Legislative Affairs Agency, Alaska State Legislature, spoke to the Supreme Court's decision. He noted that when you craft statutes, you want to be sure it is clear what is being conveyed. Five or ten years from now, people will not be as familiar with that case as they are today. He would suggest some sort of uncodified provision in the session laws.

SENATOR PASKVAN wondered whether the language in the bill would restrict the ability of the director to make decisions.

MR. BULLARD replied that he did not believe the language in paragraph 13, in either version of the bill, would operate to restrict any future employee of the Division of Elections in interpreting voter intent.

SENATOR HOLLIS FRENCH, co-prime sponsor of SB 31, said he signed on to the bill because he believes it is important to do what the Supreme Court directed, which is to make sure that future elections are done in a regular manner.

9:32:00 AM

SENATOR LINDA MENARD, co-prime sponsor of SB 31, said she wants to make sure that in the future the standard for voter intent is very clear.

SENATOR WIELECHOWSKI asked for public testimony.

9:33:42 AM

BEN BROWN, representing himself, testified in support of the bill. He was here in Juneau for the ballot counting. Just because there may be some ambiguity, although not enough to result in a different outcome, this is an opportunity for the Alaska Legislature to clean up a very important part of the Alaska Elections Act. There is no way to prevent future litigation, but it is very likely that a judge would grant a Motion for Summary Judgment with this language in the statute. This would be a miniature legal expense.

9:34:46 AM

ANN GRUENING, volunteer for U.S. Senator Lisa Murkowski, testified in support of SB 31. She stated she spent over twenty

hours observing the write-in vote count in Juneau, and witnessed Murkowski ballots being repeatedly challenged for imperfectly formed letters, or a heart or a star in place of a dot over an "i." The most offensive objections were the ballots challenged because of shaky handwriting. Elections Director Gail Fenumiai pored over every challenged vote, and she was consistent in counting only those votes which could be phonetically pronounced as "Murkowski," and where the voter's intent was obvious.

[9:36:41 AM](#)

MARILYN RUSSELL, President, League of Women Voters of Alaska, said the League supports SB 31 because it enfranchises the greatest number of voters to the greatest extent possible. The League has always supported efforts to expand voting and voting rights to as many citizens as possible. That is what this bill does.

[9:37:42 AM](#)

HEDDY HUME, Disability Law Center of Alaska, explained that the Disability Law Center is a federally mandated protection and advocacy agency for the State of Alaska. Their comments on this bill are in regard to the Help America Vote Act (HAVA). As part of that grant, they have a protection and advocacy role for voter access (PAVA) for people with disabilities. She explained that spelling errors will be systematically more pervasive in people with disabilities. If a voter's intent can be ascertained, that intent should be followed. They hope that voters with disabilities are not disenfranchised because of an overly restrictive interpretation of the write-in voting laws.

[9:39:26 AM](#)

SCOTT KINDLE, attorney, stated he was testifying on his own behalf. He had the honor of representing Lisa Murkowski's campaign, but is not testifying on her behalf. He explained the law has always allowed for voter intent, which should be paramount over any technical concerns.

Mr. Kindle believes there are two possible reasons for passing SB 31. First, candidates cannot say that misspelled ballots are not allowed; this bill is a reaffirmation of the law as it has always been. Elections law is all about the faith of the public. Adopting the Supreme Court language is entirely appropriate, and you simply can't make it too specific. One single person making calls on questioned ballots makes it consistent.

[9:46:20 AM](#)

CHAIR WIELECHOWSKI closed public testimony and held SB 31 in committee.

SB 33-DISPOSITION OF SERVICE MEMBERS' REMAINS

[9:47:40 AM](#)

CHAIR WIELECHOWSKI announced consideration of SB 33.

[9:49:40 AM](#)

MICHAEL CAULFIELD, intern for SENATOR WIELECHOWSKI, sponsor of SB 33, presented the sponsor statement, as follows:

The Department of Defense requires active duty service members, reservists and guard members to complete a Record of Emergency Data (DD Form 93) annually or prior to deployment. This form identifies the person authorized to direct disposition of a service member's remains in the event that service member is killed in the line of duty. The intent of SB 33 is to ensure that active duty service members who make the ultimate sacrifice are properly honored by ensuring that their remains are disposed of by the person of their choosing. The Department of Defense requires active duty service members, reservists and guard members to complete a Record of Emergency Data (DD Form 93) annually or prior to deployment. This form identifies the person authorized to direct disposition of a service member's remains in the event that service member is killed in the line of duty.

SB 33 will place the state in alignment with Department of Defense procedures, so that the person designated to handle disposition of remains is not called into question. Without compliance with these procedures, the handling of the remains may be delayed, and the service member's wishes not honored. Around twenty states have laws which comport with Department of Defense rules on disposition. At least four other states, including Alaska, are pursuing laws to comport. SB 33 is supported by the Office of the Deputy Under Secretary of Defense.

[9:50:53 AM](#)

SENATOR PASKVAN moved to adopt the proposed committee substitute (CS) for SB 33, labeled 27-LS0188/I, as the working document. There being no objection, version I was before the committee.

SENATOR MEYER asked if this issue was a problem in the past.

MR. CAULFIELD answered that the disposition automatically defaults to the spouse. If the soldier who dies is estranged from the spouse, but still married, it would automatically default to the spouse instead of the person indicated on the form. So it can be an issue of debate.

MARK SAN SOUCI, Northwest Regional Liaison for Military Families, United States Department of Defense, stated that easing the administrative burdens on families is the least they can do. The person who directs disposition of remains is called the PAD, and that all service members are directed by the military to complete the DD93 form annually and before any deployment. The form gives them a choice of surviving spouse, a blood relative of legal age, or adopted relatives of the decedent. The DD93 is an essential part of the military record, and SB 33 will insure that the DD93 is recognized as an authoritative document. The intent of SB 33 is that Alaska statute recognizes the federal law in this regard.

MR. SAN SOUCI said that 11 states have already enacted similar laws, and nine states have bills being actively considered. The remaining states still require use of a state-specific form, instead of a DD93. Some have asked whether the last will and testament is affected, and the response is that while the requirement of a PAD is directed by Congress, a will is not. A will can be over 10 years old and way out of date.

MR. SAN SOUCI said that the National Funeral Directors' Association supports this legislation. He thanked the sponsor and co-sponsors.

CHAIR WIELECHOWSKI noted a similar bill in the House.

[9:58:57 AM](#)

VERDIE BOWEN, Administrator, Division of Veterans Affairs, Alaska Department of Military and Veterans Affairs, stated he was here to answer questions.

SENATOR PASKVAN asked Mr. Bowen if he supported the bill.

MR. BOWEN responded that last year there were unclaimed remains of service members. Even if only a few cases occur, the law is still needed to protect service members.

CHAIR WIELECHOWSKI asked if the administration supports the bill.

[10:01:14 AM](#)

MR. BOWEN responded that the administration has no position.

[10:01:23 AM](#)

RICK DAVIDGE, Chairman, Alaska Veterans Foundation, and President, Alaska Chapter 904, Vietnam Veterans of America, stated that problems usually arise when someone is killed in training and the form has not been updated. He questioned why the Coast Guard was included in the bill because they are not under the Department of Defense (DOD), but instead under the Department of Homeland Security.

[10:04:33 AM](#)

CHAIR WIELECHOWSKI closed public testimony.

[10:05:09 AM](#)

SENATOR PASKVAN moved to adopt the proposed committee substitute (CS) for SB 33, labeled 27-LS0188\I, as the working document. There being no objection, version I was adopted as the working document.

CHAIR WIELECHOWSKI held SB 33 in committee.

[10:05:34 AM](#)

There being no further business to come before the committee, Chair Wielechowski adjourned the meeting at 10:05 a.m.