

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

February 21, 2013

8:05 a.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Wes Keller, Vice Chair
Representative Lynn Gattis
Representative Shelley Hughes
Representative Doug Isaacson
Representative Jonathan Kreiss-Tomkins

MEMBERS ABSENT

Representative Charisse Millett

COMMITTEE CALENDAR

HOUSE BILL NO. 3

"An Act relating to voter identification at the polls; and relating to the counting of absentee and questioned ballots."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 3

SHORT TITLE: PHOTO IDENTIFICATION VOTING REQUIREMENT

SPONSOR(S): REPRESENTATIVE(S) LYNN, KELLER

01/16/13 (H) PREFILE RELEASED 1/7/13
01/16/13 (H) READ THE FIRST TIME - REFERRALS
01/16/13 (H) STA, JUD
02/21/13 (H) STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

FORREST WOLFE, Staff
Representative Bob Lynn
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 3 on behalf of Representative Lynn, joint prime sponsor.

KRIS KOBACH, Secretary of State

State of Kansas
Topeka, Kansas

POSITION STATEMENT: Talked about Kansas law regarding voter fraud during the hearing on HB 3.

GAIL FENUMIAI, Director
Division of Elections
Office of the Lieutenant Governor
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 3.

MYRON NANENG, President
Association of Village Council Presidents (AVCP)
Bethel, Alaska

POSITION STATEMENT: Testified in opposition to HB 3.

ALPHEUS BULLARD, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 3.

JEFFREY MITTMAN, Executive Director
American Civil Liberties Union (ACLU) of Alaska
Anchorage, Alaska

POSITION STATEMENT: Talked about constitutional issues related to HB 3.

ACTION NARRATIVE

[8:06:31 AM](#)

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:05 a.m. Representatives Gattis, Hughes, Isaacson, Keller, Kreiss-Tomkins, and Lynn were present at the call to order.

HB 3-PHOTO IDENTIFICATION VOTING REQUIREMENT

[8:07:34 AM](#)

CHAIR LYNN announced that the first order of business was HOUSE BILL NO. 3, "An Act relating to voter identification at the

polls; and relating to the counting of absentee and questioned ballots."

8:07:48 AM

CHAIR LYNN referred to the sponsor's statement. He stated that voting is the foundation of the democratic republic and, to protect that foundation, voters must be who they say they are. Under HB 3, photo identification (ID) would be required in order to cast a vote at a polling place. Chair Lynn characterized that as "proactive insurance that helps guard against potential voter fraud." He opined that one case of fraud is one case too many, because elections can be decided by one vote. He said photo ID is ubiquitous throughout Alaska; it is used to buy alcohol, to enter a federal building, to travel by air, to make some bank transactions, to drive a car, to obtain a passport, and to buy cigarettes. Further, photo ID is required for some tribal ID cards. Chair Lynn remarked on the likelihood of most people to carry some form of photo ID. He said some people claim a requirement to show photo ID in order to vote would be a hassle, but he argued that is of small concern compared to people in Iraq who vote at great risk to their lives and the lives of their families.

CHAIR LYNN noted that there is a provision in HB 3 that would make it possible for someone to vote without photo ID. He concluded that the only purpose of the proposed legislation is to protect the state's voting process, and he asked the committee to support HB 3. He deferred to a member of his staff for further details.

8:10:39 AM

FORREST WOLFE, Staff, Representative Bob Lynn, Alaska State Legislature, presented HB 3 on behalf of Representative Lynn, joint prime sponsor. He stated that HB 3 would strengthen the current voting ID requirements to ensure the security of Alaska's elections, while also respecting Alaska's unique geography and voting population. He said Section 1 lists the forms of photo ID and non-photo ID that are acceptable for voting. Section 2 would allow the ID requirements to be waived if two voting officials know the person who is voting, the voter's name is in the register, and the officials sign next to the voter's name. Sections 3 and 4 would amend the absentee ballot counting and review, as well as the procedures for question ballot review, to conform to the changes made under Section 2 of the bill. Mr. Wolfe said under HB 3, using a

driver's license or other acceptable form of photo ID would still provide the easiest, most convenient way to vote for most of the population. However, because not every Alaskan has photo ID, the proposed legislation would allow a person to use two forms of non-photo ID to cast a vote. He said forms of non-photo ID include a hunting license, fishing license, birth certificate, tribal ID, and voter registration card. As current law allows, a person who cannot meet any of the requirements would still, under HB 3, be allowed to vote a questioned ballot and prove his/her identity at a later date. He stated that HB 3 would protect Alaska elections against voter fraud without disenfranchising Alaska voters.

[8:13:20 AM](#)

KRIS KOBACH, Secretary of State, State of Kansas, prefaced his remarks by noting that the position of Secretary of State in Kansas is similar to the position of Lieutenant Governor in Alaska in that both serve as the chief election official. He said the State of Kansas implemented a strict voter ID law in 2011, which had an impact in the 2012 General Election. He opined that HB 3 is a good bill. He said Kansas, with about 2.8 million people, has four times the population of Alaska. He related that between 1997 and 2010, the State of Kansas had identified approximately 235,000 cases of reported voter fraud, which led to its rigorous voter ID law. He said the Kansas law is significantly stricter than HB 3, because it does not allow the exceptions to the photo ID requirement that are proposed in HB 3. In Kansas, a voter without a photo ID can vote a provisional ballot and bring a photo ID to the election office within a week.

[8:15:41 AM](#)

MR. KOBACH mentioned an organization called The Brennan Center for Justice, at New York University, which he said has made an outlandish claim - based on a 2006 survey - that as much as 11 percent of the American public lacks a photo ID. Mr. Kobach said the survey "had a lot of problems." He stated, "We in Kansas have the actual numbers." He reported that in the 2012 General Election, out of 1.2 million votes cast, only 838 provisional ballots were issued due to lack of sufficient photo ID at the time the vote was cast. He said 306 people subsequently brought in their photo ID after the election within the allotted time. He said it appears that the remaining 532 people had photo IDs and chose not to bring them to the election, and he surmised the reason may have been that they

felt the margin of victory was wide enough that they thought their vote would not matter. Mr. Kobach concluded that it appeared that virtually everyone had a photo ID in Kansas. He said the State of Kansas ran a media campaign, using radio, television, and print advertisements, to remind people to bring their photo IDs to the polling place. He said the campaign appeared to be successful, but added, "... I think it also reflects the reality that we all know that ... in our lives today you carry a photo ID with you pretty much everywhere you go." He related that the Kansas photo ID law allows for a free non-driver ID to those people who sign a paper verifying that they do not own any of the 12 listed qualifying photo IDs. He said in total, only 120 people requested a free ID from the State of Kansas between January 1 and December 30 of 2012. He said a free one needs to be made available, and he offered his understanding HB 3 would provide a way to get a free ID.

[8:18:46 AM](#)

MR. KOBACH reported that out of 235 cases of voter fraud in Kansas, the most prevalent form was "the vote by mail fraud for absentee ballots." In response, the State of Kansas added two provisions to its law. The first requires county election officials to check the signature on the absentee ballot form and ensure that it matches the signature the state has on file. The second requires a person requesting an absentee ballot either to write his/her Kansas driver's license number on the form or provide a photo copy of a qualifying photo ID. He encouraged the committee to consider adding both those provisions to HB 3.

[8:20:18 AM](#)

CHAIR LYNN asked if any constitutional issues were raised "when that went through the process."

MR. KOBACH answered no. He related that before becoming the Secretary of State, he was a constitutional law professor. He said the Kansas law was drafted "pretty tightly," and he said he thinks HB 3 is, too. He said in 2008, the U.S. Supreme Court ruled in the Crawford v. Marion County Election Board case, regarding the State of Indiana's voter ID law, that there are no violations of anyone's right to vote, as long as the opportunity to obtain a free photo ID is made available by the state. He said as long as the law is not drafted in way that creates barriers to voters in getting to the polls, it should be fine.

MR. KOBACH, in response to Chair Lynn, said the ACLU has a general policy nationwide of opposing any legislation requiring photo identification. He said, "Legally speaking, their opposition was rather hollow; the [U.S.] Supreme Court rejected the main basis of their argument already."

[8:22:06 AM](#)

MR. KOBACH, in response to the chair, said one objection heard to photo ID legislation was that elderly people might have difficulty producing a photo ID. He said the State of Kansas anticipated that objection and wrote a provision in its bill, which allowed someone over 65 years of age to use his/her driver's license as photo ID, even if that driver's license had long expired, because the document would serve to confirm who the person is. Another objection heard was in relation to a person who recently changed his/her name or appearance, and Mr. Kobach said the Kansas law included a provision allowing a person who had recently changed his/her name to sign an affidavit under penalty of perjury and to allow poll workers some discretion in the case of a person whose appearance had changed.

[8:24:39 AM](#)

REPRESENTATIVE ISAACSON asked Mr. Kobach if he thinks Kansas' law discouraged voter participation in any way.

MR. KOBACH said people who are against a voter ID requirement often suggest that those who do not already have photo IDs may be discouraged from voting. He said the best way to track the statistics is to compare similar election years, for example, Presidential elections years versus non-Presidential election years. The voter turnout in 2000 was 66.7 percent, and the turnout in 2012 was 66.8 percent, which Mr. Kobach opined indicates voter turnout for those two Presidential years was nearly identical.

[8:27:06 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked what problems with voter ID requirements were brought to light through the aforementioned Brennan Center for Justice study.

MR. KOBACH opined that the manner in which the study asked if a person had a photo ID immediately available left the person being asked the question with the impression that he/she had to

be carrying the ID. Mr. Kobach said that because the center has not published another survey in the ensuing seven years since the first one, the original survey is "stale," which suggests to him that "it was an outlier result that they obtained." He spoke of a survey, which indicated that the number of those with photo IDs was in the 97-98 percent range; however, he said a survey done by the State of Kansas suggests those numbers are "probably well above 99 percent." He said Kansas considered the (indisc.) U.S. Census-reported number of Kansans over the age of 18, as well as the number of driver's licenses issued in the state to people over the age of 18, and results showed there were 30,000 more Kansas driver's licenses in circulation than there were people living in Kansas. He ventured that probably reflects the fact that people move frequently and some moved out of the state and had not yet cancelled their driver's licenses. He concluded, "I would wager that you'll probably see similar numbers in Alaska; that probably your total number of driver's licenses is pretty close to the total population of people."

[8:29:39 AM](#)

MR. KOBACH, in response to Representative Hughes, confirmed that under the Kansas law, a person with an objection to having a photo ID taken, based on religious beliefs, can sign an affidavit at the polling place to that effect. He said Alaska could add that language to HB 3; however, he offered his understanding that no one took advantage of that waiver on Election Day. He mentioned a provision under another Kansas law, wherein a severely impaired person may get on a permanent absentee voter list.

[8:31:50 AM](#)

MR. KOBACH, in response to a question regarding the ability of a person who does not show up to the polls with a photo ID to bring it in to the county officer at a later date, explained that Kansas gives its counties the discretion of whether the deadline to produce the photo ID is Monday - six days after the election - or Thursday - nine days after the election.

[8:32:32 AM](#)

REPRESENTATIVE KELLER stated his assumption that Mr. Kobach would be available to help the Alaska State Legislature with HB 3 in future.

MR. KOBACH confirmed that is correct. He said he cannot recall whether HB 3 proposes a provision allowing for the lieutenant governor or any election official to promulgate regulations, but said if that provision is added to HB 3, he would be happy to work with whichever state official ends up with that authority. He said sometimes regulations can fill in gaps, for instance, in the aforementioned instance when a person looks much different from his/her photo ID.

[8:34:06 AM](#)

CHAIR LYNN asked what Mr. Kobach deems as the most important reason for such legislation.

MR. KOBACH responded that it is important when there is a close race. He offered examples. He said the legislation would offer the security of knowing a race is fair.

[8:36:49 AM](#)

CHAIR LYNN said there have been similar situations in Alaska where races were won or lost by a narrow margin; in one election a decision was made by a coin toss.

[8:38:02 AM](#)

REPRESENTATIVE ISAACSON questioned whether the proposed legislation would remove any of the current provisions that allow alternative documentation. He directed attention to language on page 4, [lines 4-7], which list "current utility bill, bank statement, paycheck, government check", and he said it appears that under HB 3, those items would still be available "for somebody who has not yet established a voting record." He asked if that is correct.

[8:39:05 AM](#)

GAIL FENUMIAI, Director, Division of Elections, Office of the Lieutenant Governor, clarified that the provision on page 4, [Section 3, subsection (b), paragraph (6), subparagraph (B), sub-subparagraph (ii)], relates to a voter who applied to register to vote by mail and did not show a form of identification at the time to prove his/her identity. She continued, "So, when they go to vote for the first time in person, that is the type of identification they are allowed to provide a poll worker when they show up to vote." In response

to a follow-up question, she indicated that under HB 3, that provision would still apply.

MS. FENUMIAI, in response to a question, said the Alaska Election Code [Title 15] does not currently include religious exemption provisions. She said Alaska does have a provision in regulation for permanent absentee voters; however, those voters are not automatically sent an absentee by-mail ballot, but they are "mailed an application for which they can apply to receive a by-mail ballot for an election." In response to another question, she said although there are provisions for the waiver of certain fees for indigent folks, she does not know about [a fee waiver] for driver's licenses and state IDs.

[8:41:16 AM](#)

REPRESENTATIVE GATTIS observed that HB 3 addresses voter fraud. She asked what voter fraud Alaska has experienced.

MS. FENUMIAI responded, "In my time at the Division of Elections, I have not ... known or seen or heard of any cases of voter fraud where somebody is fraudulently using another individual's identification to vote in order to vote more than once." She said occasionally a person will unintentionally vote twice. For example there are elderly voters who might apply to vote by mail and then appear to vote at their polling place. She said the division catches that before the person's absentee ballot is counted. She said there have been cases of identity theft, including a case where an Anchorage Police Department officer assumed another person's identity. She added, "But that situation is not addressed by what this bill is trying to correct or prevent from happening."

REPRESENTATIVE GATTIS suggested there may be a "stop gap" that has very little to do with voter ID and more to do with "just voting twice."

MS. FENUMIAI answered that is correct.

[8:43:20 AM](#)

REPRESENTATIVE GATTIS talked about small communities where everyone knows each other and where there are no places to go to get a photo ID. She asked how HB 3 might affect them.

MS. FENUMIAI answered that under current law, the photo ID requirement can be waived if one poll worker knows the voter;

under HB 3, the waiver could happen only if both poll workers know the voter, but any voter without a photo ID and not recognized by both poll workers would still have the opportunity to vote a questioned ballot. She said she would guess everyone knows each other in the smaller communities, but she said she cannot swear to that.

[8:44:59 AM](#)

REPRESENTATIVE GATTIS stated concern about changing the requirement from one to two poll workers. She said she sees that as a huge deal in the rural communities. She relayed that she has received feedback from her constituents in the small community of Wasilla who use familiarity or fishing and hunting licenses as ID, but don't necessarily carry two pieces of ID, and find [HB 3] cumbersome absent the presence of actual voter fraud.

MS. FENUMIAI responded that she personally has not heard from the electorate regarding any concerns over HB 3. Further, she reiterated that during her time at the division, she has "not seen a case of voter fraud that this bill is proactively trying ... to prevent."

[8:46:48 AM](#)

REPRESENTATIVE HUGHES said she received comments from people in villages that there might only be one poll worker present at an election. She asked if that is accurate.

MS. FENUMIAI answered that at a voting precinct on Election Day there are always multiple election officials; however, in many of the state's in-person absentee voting locations, in small communities, there is only one official available at that site for the 15-day voting period up through Election Day.

REPRESENTATIVE HUGHES asked if it would be a feasible solution to allow someone in a smaller community to vouch for a voter's identity and whether other states have such a provision.

MS. FENUMIAI answered that she does not know if other states have that provision. She said she thinks it would be the will of the committee to decide whether to use that approach, and she offered her understanding that it could work under HB 3.

[8:48:59 AM](#)

MS. FENUMIAI, in response to Representative Hughes, said she has not seen a tribal ID card, but has been told that some have photo ID and some do not.

REPRESENTATIVE HUGHES, regarding free photo IDs, offered her understanding that if offered, they would be made available through the Division of Motor Vehicles. She questioned how a bedridden or extremely disabled person would be able to get to a DMV office to pick up a photo ID and whether the state would make any accommodation in such circumstances.

MS. FENUMIAI deferred to the DMV.

REPRESENTATIVE HUGHES said she thinks it would be helpful to have that information as part of the discussion.

[8:50:18 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked Ms. Fenumiai to describe the characteristics of small communities, which might have only one poll worker at an in-person absentee voting location.

MS. FENUMIAI said she probably should not have used the term "small communities." She clarified that usually an absentee voting location in a community has only one district ballot, and those locations typically have only one worker. The division's absentee voting stations located in its regional election offices have multiple workers. For example, in Pelican, Alaska, there is only one person who would be considered an election worker, and that person may be the city clerk. There may be other people working in the Office of the City Clerk, but only that one person hired by the division would be the absentee voting official.

REPRESENTATIVE KREISS-TOMKINS related that he drove an elderly woman in Klawock to the polls. He asked if, under HB 3, someone without a driver's license would still be able to vote.

MS. FENUMIAI answered yes, as long as the division is able to validate the identity of the person, based on the identifiers in the voter registration system, as well as certain other databases. In response to a follow-up question, she said those identifiers are found in AS 15.07.060(a)(2) and include: driver's license number, state identification card number, social security number, and date of birth.

[8:53:23 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked if voter fraud is prevalent in other jurisdictions.

MS. FENUMIAI answered she does not know.

[8:54:17 AM](#)

REPRESENTATIVE ISAACSON asked how frequently the division purges the voter list.

MS. FENUMIAI answered it is done annually, following the General Election.

REPRESENTATIVE ISAACSON said he would like to know what criteria are used. He explained that three of his children are out of state, two of which have been gone for several years and have tried unsuccessfully to be removed from Alaska's voter registration rolls ("voter rolls").

MS. FENUMIAI said the purging process is outlined in AS 15.07.130; the process is started in November of each calendar year. She said the division used to be able to remove people solely for not voting, but that was disallowed when the National Registered Voter Act (NVRA) was passed in the 1990s. She said people chosen for list maintenance are those who, in the preceding two years before examination of the voter rolls, have had mail returned as undeliverable, have not had contact with the division, and have not voted or "appeared to vote" in the two prior General Elections. The division sends those people a notice. If that notice is returned as undeliverable, but there is a forwarding address, then the division will send another notice. If the person does not respond within 45 days, the division puts his/her name on the inactive list. Ms. Fenumiai said if the division does not receive the first notice back, it is not allowed to remove the voter from the voter rolls. She said other allowable ways to remove a voter from the voter rolls are when the voter calls and tells the division that he/she wants to be removed; when the person registers to vote in another state and the other state sends that information to the division; and when the division finds out from family members or the Bureau of Vital Statistics, or by reading the obituaries, that a voter has died.

REPRESENTATIVE ISAACSON asked if there are more voters on the voter rolls than people in a community.

MS. FENUMIAI said she has not looked at population statistics recently. She recollected that following the last U.S. Census, she saw a report somewhere that reflected there were about 25,000 less people registered to vote than there were people of voting age in Alaska. She said she could get the statistics from the Department of Labor & Workforce Development and provide them to Representative Isaacson.

REPRESENTATIVE ISAACSON said he would like that information. He offered his understanding that there are 1,500 voters on the voter rolls in the City of North Pole, but only 2,200 total residents, many of whom are under voting age. He said he finds the numbers incongruous. He opined that this is an important issue to discuss. He recalled testimony stating that "the personal recognition, or the waiver, may affect voters' turnout, because the state conducts voter purges approximately every two years during which the voters can be removed from the registry simply for failing to return a postcard in time." He said the accusation is that a person who is not on the voting list, but has ID, might still be refused a vote.

[8:59:10 AM](#)

MS. FENUMIAI said there is an "intent to return" provision under Alaska Statute, which allows a voter registered to vote in the State of Alaska to remain on the voter rolls as long as he/she claims an intent to return. Further, the voter will remain on the voter rolls until he/she asks to be removed or is targeted by the list maintenance procedure previously outlined.

[8:59:46 AM](#)

MS. FENUMIAI, in response to Chair Lynn, said the list maintenance provisions in statute would not be affected under HB 3.

[9:00:09 AM](#)

MS. FENUMIAI, in response to Representative Hughes, clarified her previous explanation regarding list maintenance provisions.

REPRESENTATIVE HUGHES, referred to Representative Isaacson's previous statement regarding his daughters, and she ventured there must be flaws in process since there are folks on the list that don't want to be on it. She indicated concern that a requirement for two poll workers may result in litigation. She asked, "Would this bill trigger a need where we would start

having two in all these communities and therefore paying a lot more people for the second worker?"

MS. FENUMIAI said she does not have a legal background, but under HB 3, if a person was not personally known by both poll workers, he/she would still be allowed to vote via the normal process, and the division would then have to look at the identifiers provided by that voter.

REPRESENTATIVE HUGHES asked Ms. Fenumiai if she thinks it would be a good idea to include a provision in HB 3 to allow a person to come back with ID within a certain amount of time after an election, like the State of Kansas does.

MS. FENUMIAI said she does not think that provision is needed, because currently anyone can vote a questioned ballot. She questioned whether such a provision would work with Alaska's expansive geography; Alaska's election offices are spread throughout the state, but they are not located in every community. Furthermore, she expressed concern that it may slow down the counting process, which by law has to be completed 15 days after election.

[9:04:05 AM](#)

MS. FENUMIAI, in response to Representative Hughes, clarified that those voters who registered to vote by mail without providing photo ID must show photo ID when they vote for the first time by mail or in person. She said other accepted forms of identification showing the voter's name and current address are listed on page 4, [lines 4-7], of HB 3, and include copies of utility bills, bank statements, paychecks, government checks, or other government documents. She continued as follows:

If ... I go vote at a polling place, and I don't have my identification currently, and I'm not ... personally known by an election worker, I would vote a questioned ballot. I'm an active, registered voter in our state voter registration system; my identity has been validated when I registered to vote; I would not need to submit an additional form of identification when I voted my questioned ballot.

MS. FENUMIAI, in response to a follow-up question, stated that HB 3 would not change the process of using or counting a provisional ballot. She directed attention to language in Section 4, on page 4, [lines 8 through 21], which states reasons

[under AS 15.20.207(b)] that a questioned ballot may not be counted. She continued:

The only provision that was changed in that section was the provision on being personally known by the election officials to the new proposed provision of being personally known by two election officials. And if they're not eligible for that waiver, as long as they provided the identifiers required that I mentioned earlier, their ballot would count.

[9:07:32 AM](#)

REPRESENTATIVE HUGHES expressed concern over balancing the ID requirements of those who vote in person and those who do not.

MS. FENUMIAI outlined the process by which a voter applies to vote by mail. She said the voter submits a signed application, which contains the voter's name, residence address, ballot mailing address, and identifiers unique to that voter. The division compares the identifiers on the application to the information on its system, and if the voter is eligible, he/she is marked to receive a ballot. After receiving the ballot either by mail, by facsimile, or through the on-line ballot delivery system, the voter votes the ballot and completes the open affidavit envelope by signing it and providing an identifier. The signing needs to be witnessed by at least one person "over the age of 18."

MS. FENUMIAI, in response to a follow-up question, said a person who votes electronically must print the affidavit envelope, sign it, and scan it back to the division with the ballot as a portable document format (PDF) through the on-line delivery system.

REPRESENTATIVE HUGHES ventured that an affidavit could be used in the case where a person comes to the polling place to vote, but does not have photo ID and is not recognized by the election workers.

MS. FENUMIAI explained that under HB 3, if a person goes to the polling place on Election Day without proper identification and is not properly known by two election officials, then the person would be allowed to vote a questioned ballot. She stated that the information in the affidavit mentioned by Representative Hughes is information already requested by the questioned ballot open affidavit envelope.

[9:12:23 AM](#)

REPRESENTATIVE KELLER relayed that he is a joint prime sponsor of HB 3, and he stated his intent is "to ensure the integrity and the confidence in every ... single Alaska vote." He emphasized the importance of making every reasonable accommodation, so that no one is burdened in the process. He offered his understanding that Mr. Kovach had talked about problems particular to the elderly [and voting], and he asked if the division could make a regulation that would allow someone already on the voter list to use an expired driver's license or ID. Further, he asked if there is any [language in the bill] that the division could not handle through regulation.

MS. FENUMIAI responded that although current law states that the ID must be "current and valid", the division could draft a regulation to address that.

[9:14:21 AM](#)

MS. FENUMIAI, in response to Representative Kreiss-Tomkins, said Alaska currently has approximately 506,000 registered voters.

[9:14:47 AM](#)

MS. FENUMIAI, in response to a request from Representative Isaacson to clarify the number of poll workers typically in attendance, stated that the division strives to have four to six workers depending on precinct size; statute requires at least four. She said she has never heard of a precinct with less than two workers. She reiterated there is usually only one voting official at each [in-person absentee voting] location for the 15-day voting period up through Election Day. In response to a follow-up question, she said she has not heard of any situation in which two poll workers showed up at different times resulting in only a single worker present. Furthermore, she stated this is unlikely, because poll workers work the entire shift.

[9:18:06 AM](#)

REPRESENTATIVE GATTIS related that in her community she has observed an increase in early voters each year, and her friends in the Bush are starting to utilize that opportunity. She opined, "So, that one poll worker, I think, does make a difference." She said she advocates for her friends in the

Bush, as well as for the local polling places used by her constituents.

[9:19:15 AM](#)

CHAIR LYNN asked if not having two election workers on site would prevent anyone from voting.

MS. FENUMIAI answered that under Sections 3 and 4 of HB 3, a person voting absentee in person without proper ID would still get to vote an absentee in-person ballot. The ballot would be reviewed by a bipartisan board, as is currently done, and as long as the identifiers listed in AS 15.07 060(a)(2) and (3) were provided, the ballot would be counted. In response to a follow-up question from the chair, she confirmed that the proposed legislation would not disenfranchise anyone.

[9:21:54 AM](#)

MYRON NANENG, President, Association of Village Council Presidents (AVCP), stated that AVCP, which represents 56 villages on the Yukon-Kuskokwim ("Y-K") Delta, opposes HB 3. He talked about young people from villages trying to get IDs and being disappointed because of "other requirements." He said, for example, just to register a name change requires a list of documents. He said having to make a number of trips in and out of Bethel just to get an ID is expensive. For example, from some villages the cost of a round-trip ticket is about \$800. He said he thinks the requirement for voter ID proposed under HB 3 will disenfranchise many people living in the villages. Mr. Naneng said many people in rural Alaska know their fellow community members, but he questioned how many villagers a person hired as an election worker from outside the village would know.

CHAIR LYNN asked if most of the people in Mr. Naneng's association and in the villages have tribal ID of some sort.

MR. NANENG answered that not every village participates with AVCP programs, and most do not have access to tribal IDs. He said some of the villages have their own IDs and some do not have access to the equipment needed to get tribal IDs.

CHAIR LYNN asked Ms. Fenumiai for her response to Mr. Naneng's testimony.

[9:26:17 AM](#)

MS. FENUMIAI reiterated that without photo ID, voters would still be able to vote a questioned ballot. She said under the federal Help America Vote Act (HAVA) of 2002, no voter can be denied the right to cast a ballot.

CHAIR LYNN asked, "Would that then take care of the concerns that were expressed by Mr. Naneng?"

MS. FENUMIAI answered that it would; however, she said some voters have issues with voting a questioned ballot. She explained that some people have the misperception that their questioned ballot is not going to count. Further, some people do not want to go through the extra process involved in voting a questioned ballot. She said she can guarantee the voters of Alaska that every questioned ballot that is cast is reviewed by a board and, as long as the voter is eligible to have cast the ballot and provides the required information on that questioned ballot open affidavit, it is counted accordingly per state law.

[9:27:47 AM](#)

MR. NANENG responded as follows:

I think that, like you say, it discourages a lot of people from being able to vote ... with that added burden. If that is the case, would the whole village, having voted on Election Day without their ... ballots from one village then ... end up as being questioned ballots?

CHAIR LYNN asked Mr. Naneng if he thinks "this" would be "one of those ... potential hassles that we talked about earlier."

MR. NANENG answered yes.

[9:28:24 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked Mr. Naneng how many of the tribal governments in the Y-K Delta have ID cards.

MR. NANENG estimated at least 20 villages - the ones that have put together tribal ordinances for enrollment. Currently, he said, there is a requirement to have a tribal ID card in order to qualify for Indian Health Service (IHS). In response to Representative Kreiss-Tomkins, he confirmed that every one of the tribal ID cards has on it a photo of the individual to whom the card was issued.

REPRESENTATIVE KREISS-TOMKINS noted that someone had submitted written testimony stating that she has never seen tribal ID cards with photos on them. He remarked that that information conflicts with the testimony from Mr. Naneng.

MR. NANENG indicated that photo IDs for individuals are a requirement associated with tribal enrollment.

[9:30:36 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked Mr. Naneng what the total number of villages is out of which the aforementioned 20 {have put together tribal ordinances for enrollment}.

MR. NANENT answered 56.

[9:30:57 AM](#)

MR. NANENG, in response to the chair, offered his understanding that in Bethel, individuals who vote show ID, because they have access to a DMV office. In the villages, he relayed, the election place workers know the voters by name.

[9:31:42 AM](#)

REPRESENTATIVE HUGHES expressed concern that every vote should be counted. She asked for further clarification of the changes proposed under Section 4 of HB 3.

MS. FENUMIAI reiterated that the only change proposed in Section 4 is to switch one of the reasons a questioned ballot may not be counted from if a voter was not "[PERSONALLY KNOWN BY THE ELECTION OFFICIAL]" to "was not eligible for waiver of the identification requirement under AS 15.15.225(b)". She deferred to Mr. Bullard of Legislative Legal and Research Services to offer further information regarding the statute referenced. She reviewed the reasons a questioned ballot may not be counted [as shown in paragraphs (1) and (2), in Section 4]. She stated, "The division's interpretation of this has been for quite some time that ... if you execute the certificate [and] you provide the identifiers required by statute, ... the ballot would count. That hasn't changed, according to the way the division interprets this bill."

[9:34:37 AM](#)

REPRESENTATIVE HUGHES directed attention to language on page 4, beginning on line 12, which read: "has not provided the identification required by AS 15.15.225(a)". She offered her understanding that this language is part of the changes proposed in Section 4.

MS. FENUMIAI clarified that that is current language in statute, and she deferred to Mr. Bullard for further explanation.

REPRESENTATIVE HUGHES noted that [the list of qualifiers in Section 4, subsection (b), paragraph (2)] are connected by an "and", and she asked for further clarification.

[9:37:36 AM](#)

ALPHEUS BULLARD, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), stated that HB 3 addresses identification requirements for in-person voting of a regular ballot; it would not change any laws or regulations relating to provisional ballots, absentee ballots, or questioned ballots. He said Section 4 deals with whether a questioned ballot can be counted or not, and the only change in Section 4 is a conforming amendment relating to Section 2 of the bill.

REPRESENTATIVE HUGHES reiterated her query as follows:

It sounds like the way the law is now is if the identification is not shown ... when the questioned ballot is cast, that we have other provisions that we fall back on. But when I read this, it appears that in order for a questioned ballot to be counted, all of these things must be met, including this Section 1, as ... it's being proposed to be amended, that these ID pieces would have to be shown at the time of voting if the questioned ballot is to be counted. But you're saying, "No, there's a back-up plan." Is that correct?

[9:39:44 AM](#)

MR. BULLARD suggested going through Section 4 to provide some clarity. He directed attention to the word "or", on page 4, line 16, between paragraphs (2) and (3). He explained that a questioned ballot may not be counted if the voter fails to properly execute the certificate "which ... includes these identifiers," or "either (2) or (3)." He said the language in

bold and underlined [on lines 18-19, text provided previously], just provides that if the person who has cast the questioned ballot did not provide any of the identification, which would be either photo ID or two forms of ID under Section 1 of the bill and were not known and did not provide the identifier [then the questioned ballot may not count]. He said, "It's just making it comprehensive." He stated, "All the sections require the voter casting a questioned ballot to have those identifiers; this is just incorporating the universe of possible circumstances."

REPRESENTATIVE HUGHES responded as follows:

The "or" is between whether it's a first-time voter or not a first-time voter, so, that's not what I'm talking about. It is within the list of what's required for the first-time voter; it's within the list of what's required for ... the other voters. I do not see the word "or," and it seems like all these things are required, so now if we amend this, we would require the identification pieces in Section 1; it wouldn't be that you could forget that and look at other identifiers.

MR. BULLARD directed attention to lines 13-14, on page 4, which he said shows what is not eligible for waiver of the identification requirements under AS 15.15.225(b). He said, "That legally accomplishes the same end as this new language or the old language in paragraph (3) of HB [3]. ... That is how identification requirements are waived."

[9:42:26 AM](#)

MR. NANENG asked, "Since rural Alaska has historically voted for one party, is this legislation an effort to make their votes invalid?"

CHAIR LYNN answered, "Absolutely not." He emphasized the value in everyone's vote.

[9:43:04 AM](#)

REPRESENTATIVE ISAACSON thanked Mr. Naneng for testifying. He asked him what time table IHS has placed to comply with the photo ID requirement in order to receive medical treatment.

MR. NANENG said he does not know, but said currently everyone is receiving medical treatment. He related that he was told the

next time he requested services he would need to provide tribal ID.

REPRESENTATIVE ISAACSON said it sounds like [IHS] is moving rapidly.

MR. NANENG responded that he is not sure.

[9:44:11 AM](#)

JEFFREY MITTMAN, Executive Director, American Civil Liberties Union (ACLU) of Alaska, said he would focus the committee's attention on the constitutional aspects of the bill, in particular to a review done by two bodies: the federal courts, which look at federal voting questions, and the Alaska Department of Justice. He said Alaska is covered under the Voting Rights Act (VRA) of 1965, "landmark legislation" passed by U.S. Congress to ensure all Americans would have equal rights to vote. He said Alaska has a history of discriminatory treatment against its Native citizens. On that basis, he said, the entirety of Alaska is covered under the VRA. Mr. Mittman stated that because the changes proposed in HB 3 would have the effect of diminishing the right of Alaska Natives to vote, ACLU of Alaska believes the proposed legislation would not be constitutional and would likely be rejected by the Department of Justice, and, if litigation were brought, would be found invalid by the courts. Mr. Mittman emphasized the importance of remembering that the right to vote, unlike buying alcohol, getting a job, or receiving medical treatment, is a fundamental right of democracy.

[9:46:20 AM](#)

MR. MITTMAN stated that under HB 3, a person would be treated differently depending on his/her location and ability to obtain the necessary identification. Further, because there is no free ID available, the proposed legislation would impose a mandatory responsibility to obtain identification that requires payment of a fee. He said identification cards, voter registration, and applications for birth certificates all involve a fee. He stated that it is not legal to impose a fee on Alaska voters as a prerequisite to voting; that is considered analogous to a poll tax.

MR. MITTMAN posited that it is important to note there is no evidence of voter fraud, which he said would be considered in reviews by the Department of Justice and the courts, because

while they will give deference to the intent of the legislature, "there would need to be some indication of what the legislature is trying to achieve other than having the effect of disenfranchising Alaska voters." He said courts do not look at the generality of what other states do; they would consider the situation in Alaska. He stated when people in villages have used the system of recognition by a poll worker as a reasonable system of ensuring against fraud, the courts would wonder why that state would replace that means of identification with "some arbitrary, bureaucratic requirement that there be some sort of photo ID, which has no way of increasing any protections against alleged fraud."

MR. MITTMAN stated that for these reasons, the ACLU of Alaska believes the courts would find HB 3 unconstitutional. He concluded, "Given the lack of evidence, given statements from the Division of Elections that there does not appear to be a problem, we would recommend that the legislature not entangle the court in ... litigation and in Department of Justice review of a really unnecessary bill." He offered to answer questions.

[9:49:06 AM](#)

CHAIR LYNN asked Mr. Mittman how he would respond to someone saying, "The absence of evidence of fraud is not evidence of its absence."

MR. MITTMAN talked about having very strict requirements, such as a retinal scan and blood sample and photo ID and five people to verify one identity, in order to guarantee every single person is who he/she claims to be; however, he said that is not "the balance" - what is "reasonable" and "appropriate." He said the courts would consider what the legislature is trying to achieve and what the effect of the bill that is actually drafted is, and, on that basis, "the allegation that you can't disprove a negative - that you can't disprove that there's fraud - would not be sufficient to override the unconstitutionality of HB 3."

CHAIR LYNN offered his understanding that Mr. Mittman had mentioned language in HB 3 relating to rural areas. He asked him to point to the language.

MR. MITTMAN explained the reason rural areas come into effect is because of a requirement that the individual must have a driver's license with a photo. In rural areas where there is no DMV to issue a photo, there are driver's licenses without photos. By changing the requirement, those people in rural

areas would have to fly to another part of the state to obtain a driver's license with a [photo] ID. He said the ACLU of Alaska's written testimony, included in the committee packet, references that courts have already looked at a requirement like this in Texas, where in order to get a photo ID, people had to drive out of a county, and the bill was invalidated. He reiterated that DMV offices do not exist in every small village.

[9:52:54 AM](#)

CHAIR LYNN asked if Mr. Bullard had overall comments to make regarding HB 3.

MR. BULLARD said he would associate himself with some of [Mr. Mittman's] testimony by reiterating that Alaska is a covered jurisdiction under the VRA. Any statutes that are enacted to address election procedures and voting are going to be subject to preclearance by the Department of Justice or through declaratory action filed in the United States District Court in the District of Columbia. Further, he stated that voting is a fundamental right, as recognized under the Constitution of the State of Alaska. He said HB 3 would be subject to challenge under those provisions.

CHAIR LYNN asked Mr. Bullard if, with what he knows presently, he anticipates any problems with the constitutionality of the proposed legislation.

MR. BULLARD answered that he does not want to speak to what may or may not be. He said, "There are legal issues, and I don't know how a court would find."

[9:54:27 AM](#)

REPRESENTATIVE KREISS-TOMKINS recollected that Mr. Kobach had said Kansas law provides for a waiver of the photo ID fee. He remarked that he does not see such a provision in HB 3, and he asked if Alaska currently has any similar language in statute.

MR. BULLARD responded that the only comparable provision is in AS 18.65.310, which allows a person 60 years of age or older to get a state ID card, which is "similar in most respects to a driver's license," at no cost. He said the fee for someone under the age of 60 is \$15.

REPRESENTATIVE KREISS-TOMKINS asked Mr. Bullard to confirm that someone under the age of 60 who is getting a photo ID for the first time in order to vote would have to pay at least \$15.

MR. BULLARD answered that is accurate.

[9:55:57 AM](#)

CHAIR LYNN, after ascertaining that there was no one else who wished to testify, closed public testimony.

[9:56:24 AM](#)

REPRESENTATIVE GATTIS expressed appreciation for the testimony heard from Mr. Kobach; however, she proffered that Alaska is different from Kansas. She stated that she is a proponent of the adage, "If it ain't broke, don't fix it," and she said that is how she feels about HB 3. She read a quote from one of her constituents, as follows:

I find irony that so many take such great offense to any infringement of our right to bear arms, yet those same people are so anxious to add layers of red tape to the right to vote with legislation like this. Both the right to bear arms and the right to vote are crucial to the maintenance of our free society, and neither should be infringed upon with governmental regulations and/or restrictions.

REPRESENTATIVE GATTIS said she thinks it would be clear, after hearing her read that, how she intends to vote.

[9:57:35 AM](#)

REPRESENTATIVE HUGHES requested more information from the DMV about "getting the photo ID and whether that's free and how easy it is for people who are disabled." She opined that consideration should be given to the following: those over 65 who may be using expired documents; exempting those who are disabled; "considering whether there would be need for religious objections"; whether there should be an allowance for people to show photo IDs to the division after an election; and whether a single voting official at the in-person absentee voting locations is sufficient with the increasing number of absentee votes being cast. She opined that the bill needs more work.

[9:58:47 AM](#)

REPRESENTATIVE ISAACSON echoed the comments of Representative Hughes. He opined that the committee needs to find out the requirements of IHS, because "ID could become moot if IHS has already moved to have everybody photographed and carded for medical purposes."

[10:00:06 AM](#)

REPRESENTATIVE KREISS-TOMKINS concurred that more time is needed for consideration of the questioned ballot process, tribal voting IDs, and the documentation of voter fraud in Kansas.

[10:00:39 AM](#)

CHAIR LYNN announced that HB 3 was held over.

[10:01:27 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:01 a.m.