

SENATE FINANCE COMMITTEE  
April 28, 2022  
9:04 a.m.

9:04:10 AM

CALL TO ORDER

Co-Chair Bishop called the Senate Finance Committee meeting to order at 9:04 a.m.

MEMBERS PRESENT

Senator Click Bishop, Co-Chair  
Senator Bert Stedman, Co-Chair  
Senator Lyman Hoffman  
Senator Donny Olson  
Senator Bill Wielechowski  
Senator David Wilson

MEMBERS ABSENT

Senator Natasha von Imhof

ALSO PRESENT

Senator Mike Shower, Sponsor; Scott Ogan, Staff for Senator Shower.

PRESENT VIA TELECONFERENCE

Gail Fenumiai, Director, Division of Elections; Thomas Flynn, Assistant Attorney General, Department of Law.

SUMMARY

SB 39        BALLOT CUSTODY/TAMPERING; VOTER REG; MAIL

SB 39 was HEARD and HELD in committee for further consideration.

#sb39

SENATE BILL NO. 39

"An Act relating to elections; relating to voter registration; relating to ballots and a system of tracking and accounting for ballots; establishing an

election offense hotline; designating as a class A misdemeanor the collection of ballots from other voters; designating as a class C felony the intentional opening or tampering with a sealed ballot, certificate, or package of ballots without authorization from the director of the division of elections; and providing for an effective date."

[9:04:38 AM](#)

Co-Chair Bishop relayed that it was the first hearing for SB 39. The committee's intention was to hear a bill introduction, consider a sectional analysis, and set the bill aside.

[9:05:10 AM](#)

SENATOR MIKE SHOWER, SPONSOR, stated that the genesis of SB 39 came from the 2016 election. He recounted that over the course of two years there were so many articles about the vulnerability of the election system, he decided to investigate the matter to see if there were areas for improvement. He thought different sides of the political spectrum were upset at various times. He read from a Sponsor Statement (copy on file):

If a society does not have confidence in how its public officials are elected, then the very foundation of our Republic is compromised. SB 39 is the product of four years of work attempting to regain the public's confidence in the sacred and unique right to choose our leadership without a shot being fired, unlike what we witness in other parts of the world. Such as when Iraqi's proudly displayed their thumbs covered in ink when they had a chance to freely vote for their leaders.

SB 39 has gone through several changes from its original inception. The latest version has been a collaborative effort built around the concept of "making it easy to vote and hard to cheat". One of the greatest challenges to election reform is the significantly opposing viewpoints across the political spectrum. One view is making it very easy to vote, which may make it easier to cheat. On the opposite spectrum if it's hard to cheat, this can pose the challenge of making it harder to vote. Polarized

partisans have co-opted the issue with accusations from both sides. We believe it's time to move past this narrative and take a positive step forward.

Our office has taken the approach of looking for ways to strike a balance with people on both side of the equation. For example, this bill addresses same day voter registration, on the easier to vote wish list. Our operating principle was to ensure the voter provides sufficient proof they have been an actual resident of the district for 30 days, signs an affidavit affirming so under penalty of perjury, and votes on a question ballot. Both sides were able to reach a consensus. This metric makes it easier to vote, and still hard to cheat. We respectfully ask our colleagues to apply this policy metric when considering amendments to this measure as well as their support for the bill.

SB 39 strives to make the process open and transparent by being a national leader in embracing open source voting, a digital concept which eliminates proprietary hardware and software, allowing open access to the public to mitigate real or imagined concerns over digitally tainted results. Open-source systems are never hooked up online, cell tower or wireless network, and all equipment utilizes off the shelf hardware. Let's put the ballot machine arguments to rest.

Over registration on our voter rolls have been a consistent problem for Alaska with an average of 40,000 people moving into, and 40,000 people moving out of the state, each year. Several measures in SB39 help clean up the rolls. One is requiring the state to use more data bases with better up to date information and requiring the state to educate and inform people who have moved - to unregister. Requiring a yearly report to the legislature will help us improve the accuracy of our voter rolls.

Ballot chain of custody protocols are strengthened. As well as bar code tracking for ballots to maintain a more robust chain of custody when a ballot is out of the control of the Division of Elections and provides

a quick "curing" if a voter makes a technical mistake that would have previously disqualified their vote.

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Senator Shower continued to address the Sponsor Statement:

Digital ballot tracking through a phone or online application will increase ballot chain of custody providing a forensic digital trail. Many measures in the bill allow easier voting opportunities but incur stiff penalties for violating those voting laws, thus making it easier to vote and harder to cheat.

Our voting laws are complex as this bill demonstrates. These are just a few examples of the effort, thought and compromise put into the bill, but the principles remain. Reasonable people can disagree, but the bi-partisan sponsors in each body carefully crafted a collaborative effort, in an attempt to show Alaskans and perhaps the country that pragmatic working solutions can be achieved. Our office has pre-conferenced the issues where possible to mitigate confusion and expedite the end of session hope to get election reform across the finish line. We welcome the public's and policy maker's discussion on the latest version of SB39 and its "companion" legislation in the House.

Thank you for hearing the bill and I look forward to answering your questions and, with your help, moving bi-partisan common sense election reform by the end of the 32nd legislative session.

Senator Shower emphasized the bi-partisan sponsorship of the bill. He thought the bill integrated the important core concepts of election reform that everyone could agree on. He discussed risks to elections and the potential for cyber-attacks. He referenced 113,000 Alaskans whose data was compromised. He wanted the Division of Elections to have the resources to address problems. He emphasized that the problem concerned all state agencies. He summarized that from 2016 to 2020 there were many articles and reports in the media that discussed the vulnerabilities in the state's election system, and he thought the problems were acknowledged by the federal government. He commented that

there used to be a day when election results were trusted. He thought the bill would restore trust in the election system.

Co-Chair Stedman asked if Senator Shower was referring to elections at the national level and lack of confidence in the last presidential election, or if he was referring to state elections.

Senator Shower stated "both." He referenced automatic voter registration, state agencies, and federal election media coverage as factors in wanting to sponsor the legislation.

Co-Chair Stedman thought it would be nice to have the Division of Elections and the lieutenant governor to come speak on the matter of state elections. He understood that there was not a problem with state elections. He thought care was warranted when discussing the issue unless the lieutenant governor indicated there was a problem.

Co-Chair Bishop mentioned there were multiple individuals available for questions.

[9:14:38 AM](#)

Senator Olson asked if there were any other states that had the same system proposed in the bill.

Senator Shower asked what system Senator Olson was referencing, as there were multiple things proposed in the bill.

Senator Olson wondered if the proposed systems were in use in the other states.

Senator Shower reported that not every state did all of the measures proposed in the bill, but there was a "smattering across the nation" as more states moved towards adopting the systems. He discussed a data breach, and reports from the Division of Elections about data on the dark web. He cited that other states such as California had enacted the ballot chain of custody, in which voters could track online and absentee ballots.

Senator Olson considered places where there was no tracking capability, such as in rural Alaska. He asked about what

kind of inhibitions might make it more difficult to vote for elders and people without internet access.

Senator Shower stated that the lieutenant governor had many discussions about the issue raised by Senator Olson. He noted there was a bill provision that allowed mail-out balloting in locations with less than 750 people. He mentioned ballot harvesting. He thought the lieutenant governor had been clear that many of the villages he had communicated with did not trust the postal service and were concerned about the ability to vote. He thought the state had flexibility in the options for rural places to vote.

[9:17:54 AM](#)

Senator Wielechowski asked the sponsor to explain the open-source software concept and whether there were other states that used the method.

Senator Shower explained that the machines currently used in the state used proprietary software. With an open-source method, everything would be available to see without proprietary information. He discussed "off the self" hardware, such as printers and scanners used in the election system. He noted that there were three major companies that had voting machines and mentioned conspiracy theories about Dominion machines. The goal of the bill was to get to a point where all information was open and transparent, and to provide people with more trust in the election system.

[9:19:57 AM](#)

Senator Wielechowski asked why there needed to be algorithms in election software.

Senator Shower explained that each tabulating machine had its own software, which determined how the machine communicated, tabulated, and collected information. He used the analogy of a plane to describe software running operations. He thought there had been allegations that the voting tabulation machines had been hacked and the information had been connected to the internet. He asserted that any machine connected to the internet was vulnerable. He mentioned that some of the provisions in the bill related to open-source software, and machines without a connection to the internet.

Senator Shower mentioned a documentary named "Kill Chain," which showed individuals real-time hacking voting machines through a Wi-Fi connection. He asserted it was possible to hack voting machines. He emphasized that the bill sought to protect data and nullify conspiracy theories. He discussed a forensic check of machines before and after elections.

Senator Shower continued to address Senator Wielechowski's question. He suggested that many things were left for regulation as per each administration. One of the goals in the bill was to codify elements of the election reform in order to leave nothing to chance.

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Senator Wilson had a question for the director of the Division of Elections. He recalled that on July 13, 2020, the oversight and review unit of the Department of Administration (DOA) had done a report on the review and effectiveness of security of the Division of Elections. He asked if the director was familiar with the report.

GAIL FENUMIAI, DIRECTOR, DIVISION OF ELECTIONS (via teleconference), was familiar with providing the agency with information for the report.

Senator Wilson asked if Ms. Fenumiai if she had seen the recommendations in the report.

Ms. Fenumiai was not certain she had seen the most recent version of the report and recommendations, and commented that the report had been through many different iterations. She offered to examine the report and get back to the committee.

Senator Wilson asked if SB 39 addressed any recommendations or findings that Ms. Fenumiai had seen in the report.

Ms. Fenumiai relayed that she needed to examine the final report to determine if any of the items were addressed in the bill.

Senator Wilson relayed that the report was embargoed and much of it was redacted. He thought a non-disclosure agreement (NDA) was required to access the report, because it listed many of the state's vulnerabilities. He wanted to

verify that the bill remedied problems identified in the report.

[9:26:06 AM](#)

Senator Wielechowski asked if Ms. Fenumiai had any evidence indicating that any of the state's elections had ever been hacked.

Ms. Fenumiai had not seen evidence that hacking of any of the state's elections had occurred. She detailed that there were hand recounts for the 2020 election, which had not changed the outcome of the election. She thought the most prevalent was a hand recount of the statewide ballot measure 2, and there was no evidence that any results were changed or that results were not reported accurately.

Senator Wielechowski asked if Ms. Fenumiai thought the state could benefit from having a more secure election system, such as the use of open-source software as proposed in the bill.

Ms. Fenumiai did not have sufficient knowledge of open-source software in order to comment. She thought there were many factors to take into consideration when putting out a request for proposal (RFP) for a ballot tabulation system other than being open-sourced. There were other requirements to meet in order to handle the state's processes. She believed there was always room for improvement of security measures, and that the division was looking for and amenable to any measures to provide more secure elections.

Senator Wielechowski thought there had been a great deal of concern in the media and press regarding the security of the Dominion election system, which he thought the state used. He asked if Ms. Fenumiai had any concerns with the system. He asked if she believed the system was safe and not subject to hacking or changing of results.

Ms. Fenumiai had not seen evidence of what Senator Wielechowski described. She continued that the division performed thorough logic and accuracy testing of the systems and functionality tests before and after each election. She noted that the division had multiple levels of checks and balances in place, and the state had been using equipment from Dominion (or its predecessor) since

1998. She detailed that the division did a hand-count verification of a randomly drawn precinct that equated to 5 percent of votes cast in a district that used a scanner, and there had never been an issue with the hand counts. She had a high level of confidence in the system and the people that managed the system at the Division of Elections, as well as in the election workers.

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Senator Shower referenced the DOA report and noted that it had been offered to him with the condition of signing an NDA. Legal counsel had informed that the agreement would put him at risk if he spoke about information in the wrong place, so he had not signed the NDA. He found it problematic that the report was specifically generated for public consumption and recounted that he had learned the information from the former commissioner of DOA. He referenced three and a half pages and 18 recommendations in the report, much of which had been redacted.

Senator Shower continued that he did not know if the bill addressed some or all of the issues referenced in the report, although he had been informed that he was working on issues that had been identified. He noted that the lack of access to the report had been a point of contention. He stated that the audit level that was done by the state was done on a small percentage of a district to check the vote tabulation. He pointed out that the audit did not validate the eligibility of voters. He reiterated that the state did not cross check information and reminded that there was voter data "floating around" that could be used for anyone to vote.

Senator Shower continued his remarks. He asserted that one of the provisions in the bill was an audit that did a slightly deeper dive. He described it as a best practice from the federal government, from the Election Assistance Commission. He qualified that he was not saying that the division was not working hard or was not executing current policy. He asserted that his bill attempted to point out areas of vulnerabilities and things that could be done better. He emphasized that he was not using the word "fraud."

Co-Chair Bishop thought everyone had agreed that there was no fraud in the Alaska state elections in 2020.

Senator Shower stated that there had been allegations of fraud and that he had turned all the information he had received from private citizens over to law enforcement. He had not received information in return. He had been told by law enforcement by that there were maybe a dozen cases of smaller fraud. He thought the fraud was minimal.

[9:32:57 AM](#)

Senator Shower asserted that there had been malicious activity, and thought it was important to acknowledge that the state had been hacked. He mentioned the state not checking signature verification. He thought the state could not legitimately claim that all the vulnerabilities had been addressed, or that the election was secure. He thought the bill was designed to be able to say that vulnerabilities were addressed and there was a forensic trail.

Senator Olson asked if Ms. Fenumiai if the Division of Elections was in favor of the bill.

Ms. Fenumiai stated that the division would take the direction of the legislature. She thought the bill was a "pretty major overhaul" of the current election process and system.

[9:35:30 AM](#)

Senator Wilson understood that SB 39 had been amended to add a piece of legislation from the lieutenant governor's office. He asked if Ms. Fenumiai was in support of the change.

Co-Chair Bishop asked Senator Wilson to remind the committee what section of the bill he was referencing.

Senator Wilson did not have the information at hand. He understood that new version of the bill was a compromise from other pieces of legislation.

Co-Chair Bishop asked if Senator Wilson could wait for the sectional analysis to address the bill section in question.

Senator Wilson agreed.

Senator Wielechowski referenced his question to Ms. Fenumiai as to whether the election had been hacked, to which she answered "no." He mentioned that there were hackers that had stolen voter information. He asked if the state knew the identity of the hackers and what happened to the information that was stolen from 100,000 Alaskan voters.

Ms. Fenumiai acknowledged that there had been data exposure in which someone had accessed data for about 103,000 Alaskan voters. She did not know what happened to the data and had seen no instances within the voter registration system that led the division to believe anything malicious had been done with the information. She reiterated that the division had not seen how the information was taken and maliciously used. There had been no information imported back into the system, and the loophole in the code was fixed immediately. She believed there was a federal press release about who the actors were, but she did not have the information at hand.

Co-Chair Bishop asked if Ms. Fenumiai could forward the information to the committee if it was public information.

Ms. Fenumiai agreed.

Senator Wielechowski asked if Ms. Fenumiai knew if there was an attempt to impact the results of the election through the hacking being discussed or via other hackings.

Ms. Fenumiai stated that based on the information that was provided by the federal government, there was no proof that there was any type of influence on the election based on the involvement of any foreign actors. She thought the federal government had put out a report in March 2022.

[9:39:13 AM](#)

Senator Wilson asked if there had been data hacked from another department that could impact voter registration. He asked if there could be future vulnerabilities in a data dump. He referenced testimony on the subject.

Ms. Fenumiai did not have first-hand knowledge of what Senator Wilson was referencing. She was not aware of the issue as Senator Wilson described.

Senator Wilson relayed that he had gone to the lieutenant governor's office regarding the concern, which was verified. He thought the lieutenant governor's office had contacted Ms. Fenumiai regarding the matter.

Ms. Fenumiai stated she had spoken to an agency and had been informed that no such activity had taken place and there was nothing that the division should be alarmed about.

Senator Shower emphasized that he was not making any accusations toward the Division of Elections. He noted that the bill contained a cyber section of tools. He alleged that the division director had indicated that previously hacked information could be used. He continued that the state did not know if the information had been used in a manner to obtain ballots. He emphasized that there were many vulnerabilities that the bill could fix. He stated he could reference dozens of articles and press releases from 2016 to 2020 indicating how vulnerable the system was, and how influenced we were by foreign operatives such as Russia or China.

Co-Chair Bishop stated that it was not known who had hacked the data. He mentioned a 14-year old that had hacked into the Pentagon.

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Co-Chair Bishop considered the open-source software provision. He pondered making algorithms public. He acknowledged his lack of expertise in technology. He thought it seemed like open-source information public; it was similar to having a key to Fort Knox.

Senator Shower acknowledged he was not an expert. He used a military facility analogy to describe technology that could not be hacked because it was "air-gapped," which had no connection or port to log in to. He asserted that it was possible to make voting machines un-hackable. He offered to bring expert testimony to provide further information on open source. He described the open-source concept as having the codes, the algorithms, and the software would be available for inspection while the tested and controlled the voting machines. He mentioned de-identifying voter data.

Co-Chair Bishop had more questions about the integrity of open-source software and security. He discussed further examination of the topic at a later time.

Senator Shower relayed that he had asked his staff to summarize the lengthy Sectional Analysis at a high level.

9:47:00 AM

SCOTT OGAN, STAFF FOR SENATOR SHOWER, spoke to a Sectional Analysis (copy on file). He detailed that Section 1 removed language and allowed voters to register to vote within 30 days of an election. Section 2 pertained to same-day voter registration, allowed an electronic image of a signature to be taken and used, and required an affidavit verifying residency under the penalty of perjury. He noted that the penalty of perjury was added into the Committee Substitute in the Senate Judiciary Committee. Section 3 pertained to a designated language preference for ballots.

Mr. Ogan continued that Section 4 stipulated a qualified voter registering on the day of or within 30 days of an election may vote only an absentee in-person, special needs, or questioned ballot. Qualified voters that register to vote within 30 days of an election shall not vote on a regular ballot. Section 5 related to the voter certificate envelope and giving voters a choice to register partisan or undeclared or as affiliated. The Senate Judiciary Committee had deleted, "a voter's choice to register as a non-partisan, as undeclared, or as affiliated with a political party or political group."

Mr. Ogan explained that Section 6 stipulated a person who has re-registered under this subsection may vote only an absentee in-person, special needs, or questioned ballot until the next election that occurs at least 30 days after the date of re-registration. Section 7 would require that a person who has moved to a new precinct to vote only an absentee in-person, special, needs, or questioned ballot. He explained that Section 8 stipulated a person for whom no evidence of registration in the precinct could be found may only vote an absentee in-person, special needs, or questioned ballot.

Mr. Ogan continued to address the Sectional Analysis and explained that Sections 9 through 13 were about voter rolls. The Senate Judiciary Committee CS made some

additional database suggestions in Section 12. The CS also changed language in Section 10 to include contracting those that did not live in the state. Section 14 pertained to poll watchers, which had to be citizens of the United States. He mentioned proof showing appointment by party committee, party district committee, organization or organized group, or candidate the watcher represents. The Senate Judiciary CS renamed ballot proposition in place of an initiative or referendum. He explained that Section 15 added a new paragraph that required all official ballots contain a watermark, seal, or other security identifier.

Co-Chair Bishop asked Mr. Ogan for further discussion on Section 15 after he was done presenting the Sectional Analysis.

Mr. Ogan agreed. He added that the Judiciary CS added an election official's signature as an identifier to Section 15.

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Co-Chair Bishop referenced an earlier conversation with the sponsor regarding duplicate absentee ballots. He thought the section might need more work and thought the sponsor had agreed.

Senator Shower asked for more detail.

Co-Chair Bishop referenced a recent occurrence of a United States Mail trailer destroyed by fire. He pondered that the division did not have enough watermarked ballots to replace any that were destroyed.

Senator Shower discussed the Division of Elections carrying out work at the direction of the legislature, as stated by Ms. Fenumiai. He stated that the bill tried to give guidance and direction. He mentioned an electronic ballot, watermark seals and other identifiers, or an election official's signature. He believed the bill created enough leeway to create a workable system. He mentioned ballots from Nagiak and verifiable ballot tracking. He mentioned a Quick Response (QR) code, and other ways to authenticate and identify ballots. He relayed that the QR code had been taken out of the bill for being contentious.

Mr. Ogan relayed that there had been stories over the years of various people finding ballots. He thought making it difficult to counterfeit ballots would provide public confidence. He discussed managing public perception. He noted that the Division of Elections was not political but had a responsibility to provide confidence.

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Mr. Ogan continued to address the Sectional Analysis, and informed that Section 16 was all about ballot security and incorporated new chain of custody protocols. The section also addressed a toll-free election offense hotline. The CS stipulated that a ballot chain of custody document must accompany a ballot or group of ballots. Section 17 added a new subsection to provide language assistance at polling places. The CS stipulated that the director shall provide each election board with notices about where to find the election office hotline.

Mr. Ogan provided that Section 18, Section 19, and Section 20 pertained to questioned ballot procedures. Section 21 pertained to risk-limiting audits. Section 22 provided for an online system tracking absentee ballots, and Section 23 required a return envelope to be postage-paid. The CS added that the envelope may not identify the voter's party affiliation.

Mr. Ogan relayed that Section 24 through 28 concerned absentee and early voting stations. The bill proposed to change absentee voting stations to early voting stations.

Senator Shower noted that change to the voting stations was a negotiated position from working with other members. He thought the Division of Elections director would say there was a difference between how early voting and absentee voting worked. He stated he was not opposed to the change although did not think it was required. He thought absentee voting was used more in the Bush, and early voting was used primarily on the road system. He did not feel strongly about the change.

Mr. Ogan addressed Section 29, which allowed officials to verify if a voter's address was correct. Section 30 dealt with voter eligibility, and if it could not be immediately verified, required that the voter cast an absentee ballot. He noted that there was a star next to items listed as

potential amendments. He continued that Section 31 allowed for absentee voting by mail only and limited who could send the ballot. He referenced reports of individuals that thought they got multiple ballots from unknown sources and that he suspected there were multiple applications.

10:00:00 AM

Co-Chair Bishop asked about the reference to individuals receiving several ballots. He wondered if people could have been confused by a sample ballot sent by the Division of Elections.

Senator Shower stated that under testimony, many people had reported having multiple ballots, and after discussion it seemed like what they thought were ballots were instead applications. He discussed poll workers that reported receiving multiple ballots. He mentioned people from Hoonah testifying to seeing a person with a briefcase asking people if they wanted a ballot, which he thought was illegal. He had turned the information over to law enforcement. He discussed multiple applications sent by different parties, which he thought continued after people left the state. He wanted the state to educate individuals about un-registering at the time they left the state. He mentioned a former legislator that received ballots after leaving the state. He thought multiple ballot applications were confusing to people.

10:02:13 AM

Mr. Ogan continued to address the Sectional Analysis. He explained that Section 32 renamed absentee voting stations as "early voting" stations, Section 33 required absentee ballot applications to permit the person to declare an official affiliation (if any). Section 34 eliminated the witness requirement for absentee ballots, which would be replaced with signature verification. Section 35 required a U.S. Postal Service barcode for a ballot received after election day, and Section 36 created a permanent absentee provision that allowed a person to receive absentee ballots in perpetuity. He detailed that the Senate Judiciary CS had amended the provision to allow absentee voting for a four-year period. Section 37 allowed further review of certificates and envelopes. He explained that the original bill allowed for early counting of absentee ballots, which was amended out of the bill due to security concerns. He

clarified that individuals would still be permitted to handle the envelopes.

Mr. Ogan addressed Section 38, pertaining to signature verification and proposed a major change that dropped the second signature. Section 39 allowed that an absentee ballot may be rejected if it was not signed, postmarked, or the ballot is delivered by mail after election day and is not postmarked on or before election day or does not have a U.S. Postal Service tracking barcode that verifies mailing on or before election day. An absentee ballot may also be rejected if the signature on the certificate is not consistent with the signature in the voter's registration record. This section also removes the basis for rejecting an absentee ballot due to a lack of a witness or the attesting official's signature. He thought it should be noted that the Senate Judiciary Committee had approved the no-second-signature policy because it would be replaced with signature verification technology.

Mr. Ogan continued that Section 40 dealt with the transition for signature verification. Section 41 allowed properly cured ballots to be counted. Section 42 established an online ballot tracking system, and there were some private sector apps that did so. Additionally, Section 42 also established secure procedures for voters whose ballots were rejected due to defects. He noted that the Senate Judiciary CS gave express authorization for the division to contract for the services.

[10:06:37 AM](#)

Senator Wilson asked about signature verification. He asked Mr. Ogan to discuss the process and address digital signatures.

Mr. Ogan deferred to Ms. Fenumiai.

Senator Wilson repeated his question about how signature verification would work for digital signatures. He wondered if signatures would be collected in a database.

Ms. Fenumiai stated that the procedure would be new for the division, which was currently capturing voter signatures digitally in the registration database. She envisioned that the process would look similar to that used by the Municipality of Anchorage elections. The signature was

clipped from the envelope as it went through the recording machine, and the batch would perhaps be sent to the review board to be reviewed against stored signatures. She qualified that she was speaking off the cuff.

Senator Wilson asked what would happen in an individual used a different variation of their own signature.

Ms. Fenumiai thought that a notification would be sent to the voter asking the individual to supply a new signature.

Co-Chair Bishop handed the gavel to Co-Chair Stedman.

[10:09:29 AM](#)

Mr. Ogan continued to give a high-level overview of the Sectional Analysis. He shared that Section 40 had to do with the signature verification transition, and Section 41 allowed properly cured ballots to be counted. Section 42 established an online ballot tracking system that the voter may cure.

Co-Chair Stedman handed the gavel to Co-Chair Bishop.

Mr. Ogan wanted to address a previous question from Senator Wilson. He stated that the CS had amended the bill to give the division the ability to procure a private contractor. He continued that Section 43 was about a change of voting venue and granted grounds for an election contest. Section 44 allowed the division to do all-mail elections for certain smaller communities. The previous committee's CS reduced the size of the communities to less than 750 people.

Mr. Ogan continued that Section 45 required the division to adopt a forensic examination of each precinct tabulator before and after each election and specified that the tabulators may not be connected to internet or cellular network 24 hours before the polls or 14 days after the polls were closed. The Senate Judiciary CS allowed for legislative council-appointed subject matter expert full access to all election data machines and systems.

Co-Chair Bishop asked if the division had the capability to conduct a forensic audit.

Ms. Fenumiai stated that the division did not have the capability to conduct a forensic audit and would need to get a succinct definition of what was included. She considered "forensic audit" was an open-ended term. She stated that the division was not familiar with the process.

[10:12:32 AM](#)

Senator Shower referenced subsection (f) of Section 45 and acknowledged that there were many new provisions proposed in the bill. He noted that the bill directed the division to hire a technical subject matter expert, which would be a part of the cost on the fiscal note.

Mr. Ogan continued to address the Sectional Analysis. Section 46 stipulated that the division could only use open-source software technology. He commented that open-source technology would make a forensic audit easy. He noted that the Senate Judiciary Committee had made conforming changes that the election machines must conform with voluntary voting guidelines and would have to be federally certified. Section 47 also related to open-source software. Section 48 would ensure that postage paid return envelopes were not considered an incentive to vote, which was a crime. He thought a free mobile phone application should be offered if the ballot tracking utilized an app.

Mr. Ogan detailed that Sections 49, 51, 52, and 53 were all proposed to change the criminal code associated with election violations. He addressed Section 50, which dealt with ballot harvesting. The bill did not ban ballot harvesting, but the proposed to disallow people from being hired for the task. Section 55 dealt with cyber-security.

[10:15:31 AM](#)

Senator Wielechowski had seen many times that individuals with disabilities had needed assistance with ballot pick-up and delivery. He asked if a candidate or campaign staffer could assist an individual with disabilities with a ballot pick-up and delivery under the proposed bill.

Co-Chair Bishop asked to include the topic of unpaid volunteers to Senator Wielechowski's question.

Senator Shower stated that the goal of the bill was to primarily stop from bringing people to the state and paying

them to canvas neighborhoods and do ballot harvesting. He mentioned a former staffer that had been part of a group of over 200 people that were paid and trained to collect ballots during the governor's race. He stated that initially the bill made ballot harvesting illegal, but the provision was amended. He noted that one amendment would exclude mail carriers. He thought individuals were not affected unless being paid to collect ballots.

Senator Wielechowski asked about the philosophy behind the provision if there were other security measures in place to ensure ballot integrity. He asked what harm was being done to society for people to go collect ballots.

Mr. Ogan thought the potential abuse of ballot harvesting was that individuals were targeted. He asked what would prevent a person with nefarious intent from harvesting ballots and then failing to mail them. He thought ballot harvesting was a contentious issue. He thought there was recent case law on the subject. He thought some case law found it was not a violation of First Amendment rights to ban ballot harvesting, while other jurisdictions found it was. He summarized that the bill strove to make it harder to cheat and easier to vote, and that included putting sidebars on ballot harvesting.

[10:19:33 AM](#)

Senator Wielechowski thought political parties collecting their ballots had the effect of getting more people to vote. He commented that it would be a serious crime if people were collecting ballots to shred, and thought it was already addressed in the bill.

Co-Chair Bishop thought there was ballot tracking so it would be known if the ballots were shredded.

Mr. Ogan thought the proposed ballot tracking would mitigate much of the concern, which was one of the reasons he was more comfortable allowing ballot harvesting. He personally wanted to see ballot harvesting banned, but the bill sponsor wanted to be reasonable.

Senator Shower understood Senator Wielechowski's point and thought if the bill was enacted the provision could be stripped away. He thought there had never been indictments or law enforcement activity around ballot harvesting. He

added that in consultation with other members that wanted to ban ballot harvesting, the current provision was a compromise. He cited that there were exemptions, which he thought included volunteers.

Mr. Ogan continued to address the Sectional Analysis. Section 56 increased the minimum compensation for all election workers to at least \$15.00 an hour. Section 57 pertained to Legislative Council power to contract with technical subject matter experts to do full forensic audits. He noted that there had some debate over whether Legislative Council or the Legislative Budget and Audit Committee was the right body for the audit, and the sponsor had chosen Legislative Council because it had the authority to litigate against the administration if necessary.

Senator Shower wanted to comment that there had been a healthy debate on the subject. It was agreed that the legislature needed to have the authority to fund and direct some type of audit if there were allegations. He mentioned that he had been asking for the report mentioned by Senator Wilson for over a year. He emphasized that it was important to have the authority.

[10:24:30 AM](#)

Mr. Ogan continued to address the Sectional Analysis. Section 58 authorized the municipal clerk to act as an absentee voting official at an early voting station. Section 59 allowed for late registration in municipal elections. Section 60 repealed provisions requiring notice of rejected absentee ballots to be provided to voters within 10 days of certification of a primary election and 30 days of certification of a general election. This section also repeals a provision requiring that registration for municipal elections be made 30 days prior to an election. He commented that Section 60 was a compromise that was not in the original bill. He continued that Section 61 through 65 were all effective dates.

Senator Wielechowski had seen a couple of scenarios that had occurred many times. He had brought the matter up with the bill sponsor. He described people who had a house in his district yet were registered to vote in another district. He asked about the law on the matter.

Ms. Fenumiai stated that the voter's residence address was what was given to the division on the voter registration application until the person told the division otherwise. She stated that people should change the residence address with the division when they moved. She knew some people owned multiple homes. She noted that the Department of Law was available for comment.

Senator Wielechowski was curious about the Department of Law's perspective on the matter. He asked if individuals were committing a crime by living in one district and was registered to vote in another.

[10:27:38 AM](#)

THOMAS FLYNN, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW (via teleconference), thought Ms. Fenumiai had stated the matter accurately in saying that a voter's address for voter registration was presumed accurate until the voter said otherwise in writing. He mentioned that there were several ways in which updated voter addresses could be captured, such as on the Permanent Fund Dividend application.

Senator Wielechowski asked if the action was a crime.

Mr. Flynn answered in the negative. There was also a situation where a voter's residence address was where the individual intended to return while they were temporarily at another address.

Senator Wielechowski asked if a crime was committed if a candidate encouraged a person to vote in a district in which they were registered to but did not live.

Mr. Flynn wanted to go through the crimes in statute before answering the question. He commented that if a person was intentionally directing a person to vote in a way that was not accurate, some statutes might come in to play.

Senator Wielechowski described a scenario where people had moved out of state but were still voting. He asked if the behavior was a crime and if the bill provided a remedy.

Mr. Flynn cited a section of the bill that dealt with maintenance notices sent to people living out of state. He mentioned people with the intent to return. He did not

think there was necessarily a crime but wanted to review the statutes.

10:30:32 AM

Senator Wielechowski asked about the applicable law and guessed there were tens of thousands of people that were registered to vote at an address at which they did not live. He thought it was an enormous problem. He asked if the division thought it was a problem and whether it was taking steps to fix the problem.

Ms. Fenumiai thought that Senator Wielechowski posed a legal question to be addressed by the Department of Law. She cited that the statutes were clear about if a voter had an intent to return, and the statute had been on the books for a long time.

Mr. Flynn directed attention to AS 15.05.020 which pertained to the rules of determining a residence of a voter.

Senator Wielechowski thought there had been concerns in recent elections over whether people had sent an absentee ballot and had then voted in person. He asked about what would happen and which ballot would be counted.

Ms. Fenumiai stated that in the situation Senator Wielechowski described, the division would have the absentee ballot in possession and the outcome would be dependent upon when the individual went to vote at the polls. If the division had logged the voter's ballot prior to the date the precinct registers were printed, the voter's record would say "already voted." If a person returned a by-mail ballot that was logged after the precinct registers were printed, the division's system could not capture the ballot put into the ballot box. She continued that when voter history was done, the division ran duplicate ballot checks and would find that the person had voted a by-mail ballot and it would not be counted.

10:34:26 AM

Senator Wilson discussed FN 4, from the Office of the Governor (OMB Component 21). He asked about the estimated cost in outgoing years. He thought the \$7 million cost was broken down but wanted to have more detail.

Ms. Fenumiai explained that the \$7 million incorporated signature verification and reprinting all of the division's envelopes, and it was not yet determined what other materials would need to be reprinted. There was an estimate for prepaid postage. Additional costs such as staff for monitoring the cure process and hotline were given a ballpark figure. She was not able to come up with the ongoing costs. The \$5 million was associated with the procurement of a new voting system, which was put out for a future year because a prior bill had an effective date in later years while the current bill had an effective date of 2024.

Co-Chair Bishop thought it was safe to say that the fiscal notes were a moving target the bill was finalized.

Ms. Fenumiai stated that the division had done its best to provide accurate numbers on the fiscal note based on cost estimations for what was included in the bill. She discussed the importance of a thorough analysis of the new elements proposed in the bill for determining costs. She emphasized that until there was a request for proposals (RFP) issued, the cost of a new system was not known. She had used current costs to aid in estimations of new systems. She had heard in previous committees that a new open-source system would be about half the cost of the current system.

Senator Wilson understood that most fiscal notes were educated guesses as to expected costs. He thought there seemed to be a minimum of \$7 million, and he wanted a further detail on a cost analysis for first-year costs. He thought it seemed that departments were getting lazy with fiscal notes and emphasized the importance of fiscal notes in the committee process.

[10:39:05 AM](#)

Senator Shower did not argue with the director's position on the matter. He affirmed the accuracy of the statement regarding the cost of a new open-source system. He thought the Dominion system had cost \$4 million. He added that it was important that the sponsor was not suggesting a direction to a specific vendor. He acknowledged that there were other less costly options.

Co-Chair Bishop asked Ms. Fenumiai what year the last update to the state's voting machines was completed.

Ms. Fenumiai relayed that the division had procured new voting equipment in 2019 and used the new tabulators and voting tablets in the 2020 election cycle.

Senator Shower thanked the testifiers. He thanked the members. He mentioned Co-Chair Stedman's earlier remarks. He hoped he had highlighted some of the reasons for the changes proposed in the bill, as well as some of the state's vulnerabilities. He wanted to add that the lieutenant governor supported the bill. He mentioned discussions with the lieutenant governor, who agreed that there were problems and vulnerabilities such as with the automatic voter registration.

SB 39 was HEARD and HELD in committee for further consideration.

Co-Chair Bishop discussed the agenda for the afternoon.

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ADJOURNMENT

[10:42:49 AM](#)

The meeting was adjourned at 10:42 a.m.