

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 18, 2022

1:34 p.m.

**MEMBERS PRESENT**

Senator Roger Holland, Chair  
Senator Mike Shower, Vice Chair  
Senator Shelley Hughes  
Senator Robert Myers (via Teams)  
Senator Jesse Kiehl

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

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."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 39

SHORT TITLE: BALLOT CUSTODY/TAMPERING; VOTER REG; MAIL

SPONSOR(s): SENATOR(s) SHOWER

01/25/21	(S)	PREFILE RELEASED 1/15/21
01/25/21	(S)	READ THE FIRST TIME - REFERRALS
01/25/21	(S)	STA, JUD
01/26/21	(S)	STA AT 3:30 PM BUTROVICH 205
01/26/21	(S)	-- MEETING CANCELED --
01/28/21	(S)	STA AT 3:30 PM BUTROVICH 205
01/28/21	(S)	Heard & Held
01/28/21	(S)	MINUTE(STA)
02/02/21	(S)	STA AT 3:30 PM BUTROVICH 205

02/02/21	(S)	Heard & Held
02/02/21	(S)	MINUTE(STA)
02/09/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/09/21	(S)	Scheduled but Not Heard
02/11/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/11/21	(S)	Heard & Held
02/11/21	(S)	MINUTE(STA)
02/16/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/16/21	(S)	Heard & Held
02/16/21	(S)	MINUTE(STA)
02/18/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/18/21	(S)	-- MEETING CANCELED --
02/25/21	(S)	STA AT 3:30 PM BUTROVICH 205
02/25/21	(S)	Heard & Held
02/25/21	(S)	MINUTE(STA)
03/16/21	(S)	STA AT 3:30 PM BUTROVICH 205
03/16/21	(S)	Heard & Held
03/16/21	(S)	MINUTE(STA)
03/18/21	(S)	STA AT 3:30 PM BUTROVICH 205
03/18/21	(S)	Scheduled but Not Heard
03/30/21	(S)	STA AT 3:30 PM BUTROVICH 205
03/30/21	(S)	Scheduled but Not Heard
04/01/21	(S)	STA AT 3:30 PM BUTROVICH 205
04/01/21	(S)	-- MEETING CANCELED --
04/08/21	(S)	STA AT 3:30 PM BUTROVICH 205
04/08/21	(S)	Scheduled but Not Heard
04/15/21	(S)	STA AT 3:30 PM BUTROVICH 205
04/15/21	(S)	Heard & Held
04/15/21	(S)	MINUTE(STA)
04/20/21	(S)	STA AT 3:30 PM BUTROVICH 205
04/20/21	(S)	-- MEETING CANCELED --
04/21/21	(S)	STA WAIVED PUBLIC HEARING NOTICE, RULE 23
04/22/21	(S)	STA AT 3:30 PM BUTROVICH 205
04/22/21	(S)	Heard & Held
04/22/21	(S)	MINUTE(STA)
04/22/21	(S)	STA AT 6:00 PM BUTROVICH 205
04/22/21	(S)	Heard & Held
04/22/21	(S)	MINUTE(STA)
05/04/21	(S)	STA AT 3:30 PM BUTROVICH 205
05/04/21	(S)	Moved CSSB 39(STA) Out of Committee
05/04/21	(S)	MINUTE(STA)
05/07/21	(S)	STA RPT CS 1DP 1DNP 2NR 1AM NEW TITLE
05/07/21	(S)	DP: SHOWER
05/07/21	(S)	DNP: KAWASAKI
05/07/21	(S)	NR: COSTELLO, REINBOLD
05/07/21	(S)	AM: HOLLAND

05/07/21	(S)	JUD AT 1:30 PM BUTROVICH 205
05/07/21	(S)	Heard & Held
05/07/21	(S)	MINUTE(JUD)
05/08/21	(S)	JUD AT 10:00 AM BUTROVICH 205
05/08/21	(S)	Heard & Held
05/08/21	(S)	MINUTE(JUD)
04/08/22	(S)	JUD AT 1:30 PM BUTROVICH 205
04/08/22	(S)	Heard & Held
04/08/22	(S)	MINUTE(JUD)
04/11/22	(S)	JUD AT 1:30 PM BUTROVICH 205
04/11/22	(S)	Heard & Held
04/11/22	(S)	MINUTE(JUD)
04/13/22	(S)	JUD AT 1:30 PM BUTROVICH 205
04/13/22	(S)	Heard & Held
04/13/22	(S)	MINUTE(JUD)
04/18/22	(S)	JUD AT 1:30 PM BUTROVICH 205

**WITNESS REGISTER**

SCOTT OGAN, Staff  
 Senator Mike Shower  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Answered questions on amendments to SB 39 on behalf of the sponsor.

MICHAELA THOMPSON, Administrative Operations Manager  
 Absentee & Petition Office  
 Division of Elections  
 Anchorage, Alaska

**POSITION STATEMENT:** Answered questions on amendments to SB 39.

THOMAS FLYNN, Assistant Attorney General  
 Labor & State Affairs Section  
 Civil Division  
 Department of Law  
 Anchorage, Alaska

**POSITION STATEMENT:** Answered legal questions on amendments to SB 39.

KACI SCHROEDER, Assistant Attorney General  
 Legal Services Section  
 Criminal Division  
 Department of Law  
 Juneau, Alaska

**POSITION STATEMENT:** Answered legal questions on amendments to SB 39.

NOAH KLEIN, Legal Counsel  
Legislative Legal Services  
Legislative Affairs Agency  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions as the drafter of SB 39.

ED KING, Staff  
Senator Roger Holland  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Explained amendments to SB 39 on behalf of the committee.

NANCY MEADE, General Counsel  
Office of the Administrative Director  
Alaska Court System  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions on amendments to SB 39.

#### **ACTION NARRATIVE**

[1:34:35 PM](#)

**CHAIR ROGER HOLLAND** called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Myers (via Teams), Hughes, Shower, Kiehl, and Chair Holland.

#### **SB 39-BALLOT CUSTODY/TAMPERING; VOTER REG; MAIL**

[1:35:23 PM](#)

CHAIR HOLLAND announced the consideration of 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."

CHAIR HOLLAND noted that this was the sixth hearing; the committee considered six amendments during the previous hearing; and there were additional amendments to consider today. He asked the sponsor if he had any comments on the bill.

[1:36:07 PM](#)

SENATOR SHOWER stated that the bill was challenging, so there were numerous amendments. He characterized the bill as generally aligned with the companion bill. He advised that he was withdrawing Amendment 7.

[1:38:19 PM](#)

SENATOR SHOWER moved to adopt Amendment 8, work order 32-LS0204\D.9.

32-LS0204\D.9  
Klein  
4/13/22

**AMENDMENT 8**

OFFERED IN THE SENATE BY SENATOR SHOWER  
TO: CSSB 39(JUD), Draft Version "D"

Page 2, line 24, following "or":

Insert "**for perjury under**"

Page 2, line 26, following "**perjury**":

Insert "**and witnessed by an election official**"

Page 3, line 16:

Delete "director"

Insert "division"

Page 3, line 20:

Delete "director"

Insert "division"

Page 3, line 23:

Delete "director"

Insert "division"

CHAIR HOLLAND objected for discussion purposes.

[1:38:34 PM](#)

SCOTT OGAN, Staff, Senator Mike Shower, Alaska State Legislature, Juneau, Alaska, explained that Amendment 8 clarifies that a prosecution under AS 11 is a prosecution for perjury. It would also replace "director" with "division" in several instances. He characterized Amendment 8 as a language cleanup amendment.

[1:38:59 PM](#)

SENATOR KIEHL asked whether the reference to an election official included a voter registrar.

MR. OGAN answered yes; an election official refers to staff that works for the Division of Elections.

SENATOR KIEHL pointed out that he was a voter registrar, but he did not work for the Division of Elections. He surmised he would not be able to witness these applications.

[1:39:48 PM](#)

MR. OGAN deferred to the Division of Elections.

[1:40:34 PM](#)

MICHAELA THOMPSON, Administrative Operations Manager, Absentee & Petition Office Division of Elections, Anchorage, Alaska, answered that there is a difference between election officials and election registrars. She explained that typically election officials work on Election Day. Registrars register people to vote. For example, they may try to get people registered to vote at events. However, they are not considered election officials.

[1:41:16 PM](#)

MR. OGAN stated that was the sponsor's intent.

CHAIR HOLLAND clarified that election registrars are not considered election officials.

[1:41:39 PM](#)

SENATOR KIEHL said that gives him pause because this section of the bill relates to registering 30 days before an election. It is not limited to the day of the election registration. He explained that registrars obtain approximately three hours of training to ensure that voter registration adheres to rules. Under Amendment 8, a registrar could not help someone with

registration two weeks from the election. They could only help people up to 30 days from the election. He pointed out that people would have a nebulous 30 days, where presumably a person would need to go in person to the division to register. He related his understanding that voter registration could occur up to 30 days before an election, which is current law, but then only at a polling place or the Division of Elections, which is confusing.

MR. OGAN responded the intent of Amendment 8 was to ensure that an election official could authenticate a voter's registration if it was necessary. He envisioned it could happen if someone registered, but something on the form wasn't checked. An election official could cross-check it.

[1:43:50 PM](#)

SENATOR SHOWER asked whether his concern was related to the 30-day window or something to do with the election official.

SENATOR KIEHL stated his concern was that Amendment 8 would narrow the 30-day window rather than the explanation given when the sponsor and his staff presented the committee substitute (CS). He recalled that voters could register up until and on Election Day. Under Amendment 8, the person can only do so at a voting station; however, the Division of Election registrars are trained volunteers who could assist people in completing a voter registration application.

SENATOR SHOWER stated that was not the intent of Amendment 8. He added that if an official made an honest mistake, such as forgetting to sign an application, he did not think the Department of Law would take action. He did not believe Amendment 8 did what Senator Kiehl described.

[1:45:32 PM](#)

MS. THOMPSON related her understanding that the concern was that Amendment 8 does not include registrars who assist people in registering to vote in the 30-day window prior to an election. She said she was unsure whether that was the question.

[1:46:03 PM](#)

SENATOR KIEHL referred to page 2, line 26, which relates to voter registration applications within 30 days before an election. The affidavit must be signed under penalty of perjury, which is current law. Amendment 8 would say that the affidavit must be signed under penalty of perjury and an election official must witness it. Since it must be witnessed by an election

official, it must be done at an election office or polling place. He expressed concern that Amendment 8 would not allow a registrar to assist during the 30 days prior to an election.

MS. THOMPSON wondered if he was asking for the division's process.

SENATOR SHOWER noted that Amendment 8 combined several changes. He understood Senator Kiehl's point about registrars if they are not included as election officials. He stated the intent was to capture all the officials asked to register voters within the 30 days up to an election. The voter would need to vote a questioned ballot to allow the division to verify their eligibility to vote. He asked the division if Amendment 8 stopped that process.

[1:47:44 PM](#)

MS. THOMPSON was unsure whether registrars fell within the definition of election officials. She acknowledged that the definition might solve the issue.

[1:48:09 PM](#)

At ease

[1:49:57 PM](#)

CHAIR HOLLAND reconvened the meeting.

[1:50:25 PM](#)

THOMAS FLYNN, Assistant Attorney General, Labor & State Affairs Section, Civil Division, Department of Law, Anchorage, Alaska, referred to the definition of "election official" in AS 15.80.010, noted that it excluded registrars. It read:

(7) "election official" means election board members, members of counting or review boards, employees of the division of elections, and absentee voting officials;

MR. FLYNN stated that Amendment 8 would add a witness requirement by an election official, but it would not allow a registrar to be that witness.

[1:51:04 PM](#)

SENATOR SHOWER asked whether he could recommend language to broaden the definition.

MR. FLYNN responded that the statutes address absentee witness requirements for absentee ballots. He recalled the statute included an official, a notary, or someone over 18 years of age.

[1:51:58 PM](#)

SENATOR MYERS said he understood Senator Kiehl's point that Amendment 8 produces an odd 30-day time period when it could be difficult for potential voters to register for an election. Still, voters have many opportunities to register to vote. For example, a person could show up on Election Day and vote in person or they could vote early within 15 days of the election. He offered his view that covers a substantial portion of the 30-day window. The bill already states that someone registering on Election Day would need to vote an in-person absentee ballot. He suggested that from a practical standpoint, it was not a big issue.

[1:53:09 PM](#)

SENATOR KIEHL stated that anyone who casts a ballot by registering within 30 days of an election would vote the equivalent of a provisional or questioned ballot. He asked why Amendment 8 would add a witness requirement since the ballot would be sequestered, the division would verify voter registration, and ensure that only one ballot was cast.

[1:53:44 PM](#)

MR. OGAN explained that the sponsor was also working with members in the House on ballot reform. One issue highlighted was ensuring that people could register to vote up to and on Election Day. It seemed appropriate to have an election official check the individual's identification in person since this is a departure from the requirement to register 30 days in advance of an election.

SENATOR SHOWER added that he had held numerous discussions on the bill to address concerns and build consensus.

[1:55:42 PM](#)

SENATOR HUGHES asked whether the election official would merely witness the signature or if they would ensure that the voter had met the 30-day residency requirement.

SENATOR SHOWER answered that voting a questioned ballot was vital to allow the division to review the voter's eligibility.

[1:56:21 PM](#)

SENATOR HUGHES restated her question whether a Division of Election official would check for proof of residency or just witness the signature.

[1:56:43 PM](#)

MR. OGAN referred to page 2, line 25 through page 3, line 14 of Version D, which listed the required documentation voters must provide when registering to vote. He said this is why he strongly advocates having an election official review these documents. He questioned whether a registrar would be as diligent as the Division of Election's staff in reviewing the documents.

[1:57:32 PM](#)

SENATOR HUGHES acknowledged that the election official would not only witness a person's signature but must verify that the person meets the residency requirements. She wondered if a person who lives in a remote area of the state could accomplish this by mail or if applying within 30 days of an election required an in-person application.

MR. OGAN answered that the intent was to require in-person applications for those applying within 30 days of an election.

[1:58:29 PM](#)

SENATOR SHOWER reminded members that Amendment 8 represented a compromise.

[1:58:36 PM](#)

SENATOR KIEHL said the answer to Senator Hughes' question is no. He explained that voter qualifications in AS 15.05.011 (13)(a) require a person to sign an affidavit under penalty of perjury stating that they had established residency at least 30 days before the election, witnessed by an election official. Thus, the election official is merely witnessing the person's signature. AS 15.05.011 (13)(b) requires the person to provide proof, such as a utility bill, bank statement, or other documentation for the division to verify their residency. He remarked that the documentation is appropriate; however, a registrar could witness the signature. He maintained that someone could sign the affidavit and mail it to the Division of Elections. The division must verify that the voter met the residency requirements. He was unsure that Amendment 8 provides any additional benefit.

[1:59:51 PM](#)

CHAIR HOLLAND removed his objection.

1:59:50 PM

SENATOR KIEHL objected.

2:00:01 PMA

A roll call vote was taken. Senators Hughes, Myers, Shower, and Holland voted in favor of Amendment 8, and Senator Kiehl voted against it. Therefore, Amendment 8 was adopted on a 4:1 vote.

CHAIR HOLLAND stated that Amendment 8 was adopted on a vote of 4 yeas and 1 nay.

2:00:35 PM

SENATOR SHOWER moved to adopt Amendment 9, work order LS-0204\D.31.

32-LS0204\D.31  
Klein  
4/13/22

**AMENDMENT 9**

OFFERED IN THE SENATE BY SENATOR SHOWER  
TO: CSSB 39(JUD), Draft Version "D"

Page 7, line 19, following "voting":

Insert ", certificate and envelope review,"

Page 7, line 20:

Delete "polls are opened"

Insert "division begins reviewing voter certificates and envelopes"

Page 15, line 20, following "barcode":

Insert "or online ballot tracking mark under AS 15.20.221"

Page 16, line 27, following "records":

Insert "whether a division security breach"

compromised the voter's election data, whether the voter is an inactive voter,"

Page 17, line 15, following "barcode":

Insert "or online ballot tracking mark under AS 15.20.221"

Page 18, line 8, following "certificate,":

Insert "or"

Page 18, lines 8 - 9:

Delete ", or hunting or fishing license"

Insert "[, OR HUNTING OR FISHING LICENSE]"

Page 19, line 1, following "establish":

Insert "or procure"

Page 19, line 2:

Delete ", available through the division's Internet website,"

Page 19, line 17, following "established":

Insert "or procured"

Page 19, line 24, following "establishing":

Insert "or procuring"

Page 20, line 5, following "record":

Insert ", to the voter through the online ballot tracking system,"

Page 20, line 15, following "electronically":

Insert "through the online ballot tracking system"

[2:00:39 PM](#)

CHAIR HOLLAND objected for discussion purposes.

[2:00:44 PM](#)

MR. OGAN explained that Amendment 9 would allow poll watchers to be present for the certificate and envelope review. Ballots would not be counted until after the polls close on Election Day. He stated that the intent of Amendment 9 was to speed up the vote-counting process since reviewing the certificate and envelope could be done in advance, so it would take little time to feed the ballots into the tabulator.

[2:01:32 PM](#)

At-ease

[2:03:06 PM](#)

CHAIR HOLLAND reconvened the meeting.

[2:03:17 PM](#)

SENATOR SHOWER asked to withdraw Amendment 9 and take it up later in the meeting.

CHAIR HOLLAND stated that Amendment 9 would be rolled to the bottom of the calendar.

[2:03:41 PM](#)

SENATOR SHOWER moved to adopt Amendment 10, work order 32-LS0204\D.10.

32-LS0204\D.10

Klein

4/13/22

### **AMENDMENT 10**

OFFERED IN THE SENATE BY SENATOR SHOWER  
TO: CSSB 39(JUD), Draft Version "D"

Page 8, line 16, following "title.":

Insert "A signed ballot chain-of-custody document must accompany a ballot or group of ballots in the division's possession. An election official shall sign

the document immediately upon receiving or releasing a ballot or group of ballots."

Page 8, following line 20:

Insert a new subsection to read:

"(c) The division may not allow a municipality to use the division's data or equipment for a municipal election unless the municipality enforces a chain-of-custody system that satisfies the standards of the division's chain-of-custody system established under this section."

Page 10, line 8, following "or":

Insert "for perjury under"

Page 19, line 1, following "establish":

Insert "or procure"

Page 19, line 2:

Delete ", available through the division's Internet website,"

Page 19, line 17, following "established":

Insert "or procured"

Page 19, line 24, following "establishing":

Insert "or procuring"

Page 25, following line 2:

Insert a new bill section to read:

**"\* Sec. 51.** AS 15.56.080(a) is amended to read:

(a) A person commits the crime of election official misconduct in the second degree if while an election official, and while the polls are open, the person

(1) opens a ballot received from a voter at an election, unless permitted by ordinance in a local election;

(2) marks a ballot by folding or otherwise so as to be able to recognize it;

(3) otherwise attempts to learn how a voter marked a ballot; [OR]

(4) intentionally fails to sign a ballot chain-of-custody document upon receiving or releasing a ballot or group of ballots; or

(5) allows a person to do one of the acts prescribed by (1) - (4) [(1), (2), OR (3)] of this subsection."

Renumber the following bill sections accordingly.

Page 26, line 17:  
Delete "and"

Page 26, line 18, following "Act,":  
Insert "and AS 15.56.080(a), as amended by sec. 51 of this Act,"

Page 26, lines 18 - 19:  
Delete "secs. 46 - 50"  
Insert "secs. 46 - 51"

Page 26, line 27:  
Delete "Section 58"  
Insert "Section 59"

Page 26, line 28:  
Delete "secs. 59 and 60"  
Insert "secs. 60 and 61"

[2:03:44 PM](#)

CHAIR HOLLAND objected for discussion purposes.

[2:03:55 PM](#)

MR. OGAN explained Amendment 10. He apologized for the multi-faceted amendment combining several things. He referred to page 8, line 16, noting it would add additional ballot chain-of-custody procedures. It would require a signed ballot chain-of-custody document to accompany groups of ballots. Municipalities must conform to chain-of-custody rules to use the Division of Election's equipment and data. It would make it a crime for election officials to intentionally fail to sign a ballot chain-of-custody document. Further, it includes language specifying that the ballot tracking website must be "procured" rather than "established" by the division. Finally, it makes technical and conforming changes.

[2:06:10 PM](#)

SENATOR KIEHL referred to the crime Amendment 10 would create for intentionally failing to sign a chain-of-custody document. He asked whether it would be a crime not to sign the forms if

something appears irregular, such as it appears that someone tampered with the ballots.

[2:06:46 PM](#)

SENATOR SHOWER offered his belief that the Department of Law (DOL) would look at the totality of the circumstances. He did not envision an election official would sign a form if someone had tampered with the ballots since they have protocols they must follow. Amendment 10 would provide DOL the authority to charge the official with a crime.

[2:08:50 PM](#)

KACI SCHROEDER, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law, Juneau, Alaska, described how she interpreted the chain-of-custody protocol. Someone gets a piece of evidence and turns it over to officer 1. Officer 1 states they received it on this date, time, and hands it over to officer 2, who also signs that they received it on this date and time. The officer does not investigate or verify the evidence, but merely signs the form to acknowledge they have custody of the evidence. Therefore, if someone does not sign the chain-of-custody document, the person could be guilty of the crime.

MS. SCHROEDER agreed with Senator Shower that if someone receives damaged ballots and says they look weird, and fails to sign the document, the department will not likely prosecute the person. However, it would meet the strict analysis of the elements of the offense.

[2:10:19 PM](#)

SENATOR HUGHES asked whether the document had space for the person to write on the document that they received it, but something was awry.

MS. SCHROEDER answered yes. She said if a person made a note and signed the form to indicate they had custody of the ballots, the Department of Law would not prosecute. She noted there were a lot of different ways to approach the issue.

[2:11:13 PM](#)

SENATOR KIEHL noted one key thing would be the intent to change the election. He asked whether a crime is committed in law enforcement if an officer failed to sign the chain-of-custody document, and it showed up in the crime lab with a gap.

MS. SCHROEDER answered that they do not prosecute, but a gap becomes an issue since it opens it up for arguments which ultimately a jury will decide whether to accept it as valid evidence.

[2:12:28 PM](#)

SENATOR KIEHL asked whether the department could charge someone who attempts to tamper with the election if Amendment 10 did not pass.

MS. SCHROEDER responded that if someone did not sign the chain-of-custody document with the intent to alter the outcome of the election, it would be necessary to include some language similar to Amendment 10. However, she also thought that there was another crime relating to misconduct if someone intended to alter the outcome of an election.

SENATOR KIEHL related his understanding that the Division of Elections stopped letting municipalities use state tabulators and voting machines for precincts. Thus, every municipality has incurred the expense of purchasing its election equipment. Amendment 10 would not allow a municipality that conducted its elections under municipal code that did not follow the state's chain-of-custody rules to use the state's data. He took that to include the voter registration rolls. He asked whether that was the correct interpretation.

MR. OGAN answered yes. He stated that the ballot chain of custody is essential and avoids the issue of an unaccounted box of ballots showing up.

[2:15:52 PM](#)

SENATOR MYERS suggested exempting municipalities from the registration data provision. He emphasized that municipalities need the data to conduct an election properly. The division already releases most of the registration data, such as the names, addresses, and political party affiliations to anyone who pays a fee of \$20. He noted they would receive scrubbed data to avoid identity theft issues. He said he favored a conceptual amendment to exempt the registration data.

[2:17:08 PM](#)

SENATOR SHOWER pointed out that the reason for this provision was concern about elections conducted by mail, resulting in mass mailouts of ballots without chain of custody, and a data breach the Division of Elections experienced. He emphasized the need to have municipalities not incorporate policies that are less

restrictive than the ones in SB 39 to ensure that the election systems are secure. He suggested that 5,000 more ballots were mailed out in Juneau than were on the voter rolls.

[2:19:13 PM](#)

SENATOR KIEHL disagreed with Senator Shower's allegation that 5,000 more ballots went to Juneau residents than were on the voter rolls. However, the language in Amendment 10 was not limited to elections by mail, or absentee ballots, but would apply to any and all elections that municipalities run using the state's voter rolls. He offered his view that this language was difficult to interpret. He read a portion of subsection (c) on lines 9-10, which read, "...unless the municipality enforces a chain-of-custody system that satisfies the standards of the division's chain-of-custody system..." He was unsure that this language would allow for a stricter system, but it certainly doesn't allow for local control of elections and use of resources. He argued that by not allowing municipalities access to voter registration data and rolls, it will create hurdles for citizens against the general principle of local control. He stated his objection to Amendment 10.

[2:21:08 PM](#)

CHAIR HOLLAND expressed concern about the multiple issues incorporated in Amendment 10.

[2:21:27 PM](#)

SENATOR HUGHES commented that the combined population in Anchorage and the Mat-Su Borough represents 54 percent of the state's population. Thus, how those elections are conducted really could impact the state. She offered her belief that the local elections should have the same or stricter chain-of-custody standards. However, she said she would not want municipalities to create a duplicate system of registration.

[2:22:49 PM](#)

SENATOR MYERS wondered if the state did not release its voter registration data, whether people would need to register multiple times to vote, at the city, borough, and state level. He noted that SB 39 currently allows smaller municipalities to request that the state run their elections. He expressed concern that it would become a default for these small municipalities.

[2:24:15 PM](#)

MR. OGAN referred to page 1, lines 1-4 of Amendment 10, which establishes chain of custody or a paper trail. He offered his

view that this would create a standard that he hoped municipalities would follow.

MR. OGAN suggested that the committee may wish to break Amendment 10 into separate amendments.

SENATOR SHOWER indicated he had asked the amendments to be grouped together.

[2:25:52 PM](#)

CHAIR HOLLAND removed his objection.

[2:25:59 PM](#)

SENATOR KIEHL objected.

[2:26:02 PM](#)

A roll call vote was taken. Senators Shower and Hughes voted in favor of Amendment 10, and Senators Kiehl, Myers, and Holland voted against it. Therefore, Amendment 10 failed on a 2:3 vote.

CHAIR HOLLAND stated that Amendment 10 failed on a vote of 2 yeas and 3 nays.

[2:26:44 PM](#)

SENATOR KIEHL posed a question to determine whether he would offer Amendment 11. He referred to page 8, lines 27-30, which read:

(b) The director shall by regulation develop a process to, following the closing of the polls, void all unused ballots, spoiled ballots, and unopened packs of ballots without mutilating or destroying the forensic integrity of the unused ballots, spoiled ballots, or unopened packs of ballots.

[2:27:30 PM](#)

At ease

[2:27:42 PM](#)

CHAIR HOLLAND reconvened the meeting.

[2:27:48 PM](#)

SENATOR KIEHL moved to adopt Amendment 11, work order 32-LS0204\D.16.

32-LS0204\D.16  
Ambrose/Klein  
4/11/22

AMENDMENT 11

OFFERED IN THE SENATE BY SENATOR KIEHL  
TO: CSSB 39(JUD), Draft Version "D"

Page 8, lines 19 - 20:

Delete "without mutilating or destroying the forensic integrity of the unused ballots, spoiled ballots, or unopened packs of ballots"

[2:27:54 PM](#)

CHAIR HOLLAND objected for discussion purposes.

[2:28:02 PM](#)

SENATOR KIEHL stated that the question was what location poll workers or election officials would void any unused, spoiled, or unopened packs of ballots. He asked whether poll workers would need to go through all the packs of ballots and void them by destroying or punching through countless sealed packs of 25 ballots or if they should be delivered to the Division of Elections.

[2:28:34 PM](#)

MS. THOMPSON interpreted the language in subsection (b) "following the closing of the polls" to mean that the activity would happen at the polling place by an election official. The election official would then send the voided ballots to the Division of Elections.

SENATOR KIEHL stated his intent to proceed with Amendment 11 since it would indicate that the Division of Elections does not need to maintain forensic integrity when voiding unused, spoiled, or unopened packs of ballots.

SENATOR KIEHL explained that the division must provide more ballots to polling places than it anticipates voters will need so no one shows up and can't vote. Amendment 11 would indicate that at the end of the night, poll workers must stamp or mark unused ballots, spoiled ballots, or unopened packs of ballots. He clarified that the language does not lend itself to poll workers opening and marking the ballots, which would add hours to the process on election night.

[2:30:14 PM](#)

SENATOR SHOWER agreed with Senator Kiehl that Amendment 11 would not require poll workers to open the sealed packs of 25 ballots. He emphasized the necessity of having all the ballots returned to a central location to preserve evidence in case it was needed.

[2:31:16 PM](#)

MS. THOMPSON described the current process. Once the polls close on Election Day, poll workers fill out their accounting form, listing the last ballot stub used. The box containing the unused ballots would be sealed. Any partially used pad would be torn in half and the ballot stub would be put in the ballot stub envelope to return to the division. Any box or boxes of unused ballots and ballot stubs are returned to the division on election night for those in an urban area. For those in a rural setting, the unused ballot stubs and ballots would be placed in a bag and mailed to the division.

[2:32:11 PM](#)

SENATOR SHOWER asked whether the ballots were in sealed packets of 25.

MS. THOMPSON replied that she did not recall if they are sealed in packs of 25, but they come in packs of 25.

SENATOR SHOWER remarked there would not be hundreds of ballots to destroy. He offered his view that Amendment 11 was not necessary.

[2:32:46 PM](#)

SENATOR HUGHES asked how many extra ballots the division allocates to a polling place.

MS. THOMPSON responded that she does not have those figures, but she offered to provide them to the committee. She noted that the election supervisor reviews the number of voters who voted at the specific polling place.

[2:33:28 PM](#)

SENATOR KIEHL asked how long the process takes once the polls close.

SENATOR SHOWER answered that he was unsure. He related that the Division of Elections covers this in regulation. He recalled that poll workers described different processes they used at polling places.

[2:34:29 PM](#)

CHAIR HOLLAND maintained his objection.

[2:34:33 PM](#)

A roll call vote was taken. Senator Kiehl voted in favor of Amendment 11, and Senators Shower, Hughes, Myers, and Holland voted against it. Therefore, Amendment 11 failed on a 1:4 vote.

CHAIR HOLLAND stated that Amendment 11 failed on a vote of 1 ye and 4 nays.

[2:35:15 PM](#)

SENATOR SHOWER moved to adopt Amendment 12, work order 32-LS0204\D.29. He asked Mr. Ogan to identify if more than one issue was combined in this amendment.

32-LS0204\D.29  
Klein  
4/12/22

### AMENDMENT 12

OFFERED IN THE SENATE BY SENATOR SHOWER  
TO: CSSB 39(JUD), Draft Version "D"

Page 13, following line 16:

Insert new bill sections to read:

**\* Sec. 30.** AS 15.20.066(a) is amended to read:

(a) The director shall adopt regulations applicable to the delivery of absentee ballots by electronic transmission in a state election [AND TO THE USE OF ELECTRONIC TRANSMISSION ABSENTEE VOTING IN A STATE ELECTION BY QUALIFIED VOTERS]. The regulations must create a system to verify a voter's identity and

[(1) REQUIRE THE VOTER TO COMPLY WITH THE SAME TIME DEADLINES AS FOR VOTING IN PERSON ON OR BEFORE THE CLOSING HOUR OF THE POLLS;

(2)] ensure the accuracy and, to the greatest degree possible, the security, integrity, and secrecy of the ballot process.

**\* Sec. 31.** AS 15.20.066 is amended by adding a new subsection to read:

(c) A voter may cast a ballot delivered by electronic transmission under AS 15.20.081(d) - (f)."

Renumber the following bill sections accordingly.

Page 14, line 19:  
Delete "shall [MAY NOT] "  
Insert "may not"

Page 18, line 2:  
Delete "or electronic transmission"  
Insert "[OR ELECTRONIC TRANSMISSION] "

Page 26, line 11, following "**Sec. 56.**":  
Insert "AS 15.20.066(b);"

Page 26, line 15:  
Delete "sec. 46"  
Insert "sec. 48"

Page 26, line 16:  
Delete "sec. 47"  
Insert "sec. 49"  
Delete "sec. 48"  
Insert "sec. 50"

Page 26, line 17:  
Delete "sec. 49"  
Insert "sec. 51"

Page 26, line 18:  
Delete "sec. 50"  
Insert "sec. 52"

Page 26, lines 18 - 19:  
Delete "secs. 46 - 50"  
Insert "secs. 48 - 52"

Page 26, line 26:  
Delete "Section 45"  
Insert "Section 47"

Page 26, line 27:  
Delete "Section 58"  
Insert "Section 60"

Page 26, line 28:  
Delete "secs. 59 and 60"  
Insert "secs. 61 and 62"

[2:35:40 PM](#)

CHAIR HOLLAND objected for discussion purposes.

[2:35:46 PM](#)

MR. OGAN explained that Amendment 12 was critical to ensure all received ballots are electronically identified. He explained that it isn't possible to put a watermark on an electronic ballot, but perhaps a QR code would work; however, the sponsor deferred to the division to decide how to implement ballot integrity. He stated that the language on page 1, lines 14-16, Section 31, would allow a voter to cast a ballot delivered by AS 15.20.081(d)-(f). It would require the director to establish a method for verifying the identity of people requesting electronic delivery of their absentee ballots.

[2:37:20 PM](#)

SENATOR SHOWER asked Mr. Ogan to mention any conforming amendments and if the amendment addresses more than one issue. He noted Amendment 12 had one conforming provision.

MR. OGAN agreed.

[2:37:47 PM](#)

SENATOR MYERS referred to page 1, line 9 and asked why the language was removed that requires the voter to comply with the same deadlines as for voting in person on or before the closing hours of the polls.

[2:38:11 PM](#)

MR. OGAN responded that he was unsure that provision was intended.

[2:38:57 PM](#)

At-ease

[2:41:45 PM](#)

CHAIR HOLLAND reconvened the meeting. He explained that no one was online from Legislative Legal Services to answer the question.

CHAIR HOLLAND tabled Amendment 12.

[2:42:12 PM](#)

SENATOR KIEHL moved to adopt Amendment 13, work order 32-LS0204\D.38.

32-LS0204\D.38  
Klein  
4/12/22

AMENDMENT 13

OFFERED IN THE SENATE BY SENATOR KIEHL  
TO: CSSB 39(JUD), Draft Version "D"

Page 13, lines 18 - 26:

Delete all material and insert:

**"Sec. 15.20.068. Application for absentee ballot.**

The division shall provide an absentee ballot application by mail only when an eligible voter expressly requests an application. An application may not be distributed if a part of the application is filled out for the voter. An application must prominently display who sent the application and prominently display "Application only/Not a ballot" on the exterior address side of the envelope."

[2:42:15 PM](#)

CHAIR HOLLAND objected for discussion purposes.

[2:42:27 PM](#)

SENATOR KIEHL explained that Amendment 13 was a cleanup amendment intended to meet the sponsor's intent. It retains three requirements for absentee ballot applications. It must clearly state who is sending the application, that it is an application for a ballot and not a ballot, and it prohibits someone from pre-filling out part or all of the application.

[2:43:25 PM](#)

SENATOR SHOWER stated that would make it easier for voters. He indicated that testifiers thought they received multiple ballots, but they were likely applications for ballots. He said he was okay with clarifying it and tightening up the language.

CHAIR HOLLAND removed his objection; he found no further objection, and Amendment 13 was adopted.

[2:44:27 PM](#)

CHAIR HOLLAND brought Amendment 12 off the table and it was before the committee.

[2:44:40 PM](#)

SENATOR SHOWER deferred to Mr. Ogan.

[2:45:00 PM](#)

MR. OGAN asked why the language on page 1, lines 9-11 of Amendment 12 was deleted.

[2:45:27 PM](#)

NOAH KLEIN, Attorney, Legislature Legal Counsel, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, stated that he drafted SB 39 according to the sponsor's intent. He said it will take a few minutes for him to determine if this was a conforming change.

[2:45:54 PM](#)

CHAIR HOLLAND tabled Amendment 12.

[2:46:39 PM](#)

SENATOR MYERS moved to adopt Amendment 14, work order 32-LS0204\D.36.

32-LS0204\D.36  
Klein  
4/12/22

#### **AMENDMENT 14**

OFFERED IN THE SENATE BY SENATOR MYERS  
TO: CSSB 39(JUD), Draft Version "D"

Page 15, line 23, through page 15, line 30:

Delete all material and insert:

"(m) An absentee ballot application must include an option for a qualified voter to choose to receive absentee ballots by mail for future statewide elections for a period of four years. After the four-year period concludes, the division shall notify the voter that the voter may reapply to receive absentee ballots by mail for another four-year period. If the voter votes in person during the four year period, the division shall stop sending the voter absentee ballots. If a previous absentee ballot sent under this section or other mail sent to the voter by the division is returned as undeliverable, the division shall stop sending the voter absentee ballots. A voter may reapply every four years to receive absentee ballots by mail."

[2:46:46 PM](#)

CHAIR HOLLAND objected for discussion purposes.

[2:46:53 PM](#)

SENATOR MYERS explained that Amendment 14 relates to the provision that allows a voter to sign up for absentee ballots and automatically receive them for subsequent elections. He acknowledged this value to voters. Amendment 14 provides some limits. The automatic absentee ballot applications would be limited to four years to ensure that ballots are not being sent to someone who died. The ongoing absentee status would end if the voter appeared in person to vote during the four-year window or if the election mail is returned as undeliverable.

[2:49:06 PM](#)

SENATOR SHOWER related that he discussed this issue with some members from the other body, and believes this language represents the middle ground. He said he is comfortable that this provides safeguards since the division would not send ongoing ballot applications unless the voter periodically indicates they want to receive them.

[2:49:50 PM](#)

SENATOR KIEHL said he was curious why Amendment 14 used a four-year period because it only represents one cycle in a presidential or gubernatorial election. To be specific, it would not cover the full cycle of a US Senate seat.

SENATOR MYERS acknowledged that it would cover a general and regular primary election for two cycles since they are two-year terms. This could potentially affect municipal elections. If a voter applies for an ongoing absentee ballot application with the Division of Elections, he was unsure how it would affect municipal elections. He offered his view that the time period seemed reasonable since the division cleans up the voter rolls for those who fail to vote in four years.

[2:51:56 PM](#)

SENATOR KIEHL wondered how voters could receive their state ballots if they are hunting or traveling and miss the state elections but still want to show up to vote in person for municipal elections.

SENATOR MYERS said he was unsure how municipal and state elections interact. He suggested that those who wish to vote in

person probably should not sign up to receive ongoing absentee ballot applications.

[2:53:26 PM](#)

SENATOR KIEHL said he noticed that Amendment 14 related only to statewide elections. He asked why someone who voted in person in a municipal election would be prevented from receiving ongoing absentee applications.

[2:54:13 PM](#)

CHAIR HOLLAND asked if the Division of Elections had any comment.

MS. THOMPSON replied that the Division of Elections does not share the ballot application information with municipalities. Municipalities and local elections have their own application process separate from the Division of Elections. The state only conducts local elections for Rural Education Attendance Area Elections (REAAAs).

[2:54:57 PM](#)

SENATOR MYERS related his understanding that the Division of Elections tracks whether someone voted in a municipal election. He asked whether the division tracks whether the person voted in person or absentee.

MS. THOMPSON answered that the Division of Elections receives voter history from municipalities within 60 days after their municipal election certification. She noted that it does track in person or absentee voting.

[2:55:58 PM](#)

MR. OGAN agreed that Amendment 14 would make the process more complex, including creating more work for the division. He stated it begs the question of what this language was trying to prevent. He suggested leaving the statute as is, so long as the person doesn't vote twice. He indicated it was a policy call.

[2:56:44 PM](#)

SENATOR HUGHES stated that she had heard anecdotally that some people will vote absentee, then vote again in person, so Amendment 14 would prevent it.

[2:57:08 PM](#)

SENATOR MYERS stated that part of the intent of the bill was to ensure that someone does not impersonate someone. Suppose someone filled out a ballot application using someone else's

name, which was one concern due to the data breach in 2020. He stated that the intent of Amendment 14 was to prevent someone who obtained hacked data, stole someone's identity, and filled out an absentee application, from receiving ongoing ballot applications. The voter could show up at the polling place to vote.

[2:58:20 PM](#)

SENATOR HUGHES replied that was helpful.

[2:58:23 PM](#)

SENATOR KIEHL asked which ballot would be counted in the scenario Senator Myers described

MS. THOMPSON responded that if the Division of Elections was able to catch both ballots before they were run through a voting machine, neither ballot would count. She stated that if the division reviewed their absentee ballot by mail, and a person had subsequently voted in person, that person would be required to vote a questioned ballot.

[2:59:11 PM](#)

SENATOR KIEHL related his understanding that procedures were in place and municipalities had similar safeguards. The bill would also require a signature verification process. He offered his view that Amendment 14 would add confusion for the voter who believed they had signed up to receive an ongoing application for an absentee ballot. Further, once the person was in travel status they cannot vote in person. Finally, receiving less than a single US election cycle for an ongoing ballot process wouldn't be meaningful. He commented that he did not see the benefit.

CHAIR HOLLAND directed attention to the language on lines 10-11, which indicates that a voter may reapply every four years to received absentee ballots by mail. Suppose someone applies for absentee ballots, votes in person in year two, but plans to be out of the state in years three and four. He asked whether that language would disallow them from requesting an ongoing absentee ballot. He wondered if the committee should consider removing "every four years."

SENATOR MYERS answered that was not the intent. He suggested consulting with Legislative Legal Services to ensure that someone could immediately apply.

[3:02:09 PM](#)

SENATOR SHOWER expressed concern that someone could potentially vote for someone else and there isn't currently a way to ensure that doesn't happen. He viewed ceasing the ongoing ballot application as a check to the system. He asked whether the director would determine if the absentee or in-person vote counts or if the decision was delegated to staff. He stated that as directors change, the policy might also change.

SENATOR SHOWER restated the question. He asked whether the Division of Election director determines if the absentee or in-person vote would count or if it was codified in law.

[3:04:04 PM](#)

MS. THOMPSON responded that the division has a policy on duplicate voting processes and how ballots are processed. She deferred to Mr. Flynn.

MR. FLYNN answered that the process for duplicate ballots is codified by regulation.

[3:04:50 PM](#)

SENATOR SHOWER asked whether it was possible for the director to make the regulatory change.

MR. FLYNN explained that the regulations were done according to the Administrative Procedures Act. He agreed that the director could propose a regulation change. He acknowledged that there are lots of places where the legislature delegated its authority to the Division of Elections and those are codified in regulation.

[3:06:02 PM](#)

SENATOR MYERS moved to adopt Conceptual Amendment 1 to Amendment 14.

**CONCEPTUAL AMENDMENT 1 TO Amendment 14**

Remove the language "every four years" from [lines 10-11 of Amendment 1.

CHAIR HOLLAND pointed out that the language was on lines 10-11. He asked whether he would like to replace it with other language, for example, "at any time."

SENATOR MYERS related his understanding removing the language would default to any time.

[3:07:01 PM](#)

SENATOR MYERS restated his motion to adopt Conceptual Amendment 1 to Amendment 14 to remove the language "every four years" on lines 10-11.

CHAIR HOLLAND found no objection and Conceptual Amendment 1 to Amendment 14 was adopted.

CHAIR HOLLAND stated that Amendment 14, as amended, was before the committee.

[3:07:32 PM](#)

CHAIR HOLLAND removed his objection.

[3:07:40 PM](#)

SENATOR KIEHL objected.

A roll call vote was taken. Senators Shower, Hughes, Myers, and Holland voted in favor of Amendment 14, as amended, and Senator Kiehl voted against it. Therefore, Amendment 14, as amended, was adopted on a 4:1 vote.

CHAIR HOLLAND stated that Amendment 14, as amended, was adopted on a vote of 4 yeas and 1 nay.

[3:08:12 PM](#)

At ease

[3:10:08 PM](#)

CHAIR HOLLAND reconvened the meeting.

[3:10:30 PM](#)

CHAIR HOLLAND stated the committee was not going to revisit Amendment 12.

[3:10:44 PM](#)

MR. KLEIN offered to respond to an earlier question on Amendment 12.

[3:11:12 PM](#)

CHAIR HOLLAND rescinded tabling Amendment 12. He stated that Amendment 12 was before the committee.

[3:11:40 PM](#)

MR. KLEIN explained that Legislative Legal Services drafted Amendment 12 according to the sponsor's intent. He referred to the removal of lines 9-11 and said after the deletion of lines

5-7, subsection (a) no longer referred to the act of voting but referred to delivering a ballot by electronic transmission. He highlighted that paragraph (1) referred to complying with deadlines for voting because there would no longer be electronic absentee voting. Thus, there would no longer be a need to have a timeline but reiterations of the timelines for voting.

[3:12:26 PM](#)

SENATOR KIEHL referred to line 13 of Amendment 12. He asked for the legal impact of including the word "security" in addition to the language "integrity and secrecy" that are already in the statute. He asked if he could differentiate between "security" and "integrity."

[3:12:55 PM](#)

MR. KLEIN answered that the court would look at the common definition of the terms since they are not defined in statute. He said that "security" could relate to the physical security of an object and "integrity" could relate to the process. He remarked that he was unsure how a court would interpret those words.

CHAIR HOLLAND remarked that he could understand that integrity would be the validity of the data.

[3:13:46 PM](#)

SENATOR SHOWER stated that the intent was to have it pertain to ballot chain of custody. He acknowledged that there was an integrity portion of the ballot but also security concerns provided by the chain of custody.

[3:14:07 PM](#)

SENATOR KIEHL related his understanding that the point of chain of custody was to defend the integrity of the ballots. He suggested that completely eliminating the opportunity to return a ballot electronically doesn't make it easy for voters to vote. He emphasized that Alaskans were willing to sign an acknowledgement that they were give up some rights to have a secret ballot speaks to how valuable Alaskans find the privilege to vote.

MR. OGAN stated that Section 30 would not eliminate electronic voting. The existing statute read, "(a) The director shall adopt regulations applicable to the delivery of absentee ballots by electronic transmission in a state election. The new language in Amendment 12 adds language requiring the division to adopt regulations that "create a system to verify a voter's

identity..." This means that the division must have a system to verify voter identify for those who vote electronically.

[3:16:05 PM](#)

SENATOR KIEHL related his understanding that page 1, lines 15-16 require the voter to return the absentee ballot by mail or in a drop box, since it falls under the absentee voting in general statutes rather than being returned electronically. He offered his view that is in keeping with page 2, lines 5-6 of Amendment 12, which repeals the waiver of some of the voter's right to a secret ballot. He wondered whether he was misunderstanding the process.

[3:16:27 PM](#)

SENATOR SHOWER replied that voters can receive their ballot electronically, so ballots can be requested electronically. However, the voter must still mail the ballot. He recalled that the best practices suggested eliminating fax voting. He clarified that the ballot would still get printed and mailed in.

[3:17:17 PM](#)

MR. OGAN agreed that Amendment 12 would require a ballot delivered by electronic transmission to be mailed in. He offered his belief that the most significant vulnerability in the election statutes was electronic voting, especially since the division had a data breach. Amendment 12 would add another layer of security even though it would make it more difficult to vote. The Division of Election's director acknowledged that it was plausible for someone to game the system. However, the director did not believe that had occurred. He characterized Amendment 12 as a critical part of voter integrity.

[3:18:59 PM](#)

SENATOR SHOWER suggested that this would strike a balance between being harder to cheat and easier to vote. He related that he held discussions with the sponsor of a bill pertaining to elections in the other body. He offered his view that Amendment 12 was an acceptable compromise. He acknowledged that the trend in elections was to move towards more by mail and absentee ballot voting. The intent was to maintain the chain of custody and ballot tracking to provide a forensic trail in the event of allegations of voter identity theft.

[3:20:13 PM](#)

SENATOR MYERS related a friend's experience voting electronically. The person requested their ballot

electronically, printed it, filled it out, scanned it, and sent it via a fax by email program.

[3:21:11 PM](#)

SENATOR KIEHL stated that scenario highlighted the value Alaskans place on electronic voting. He did not object to eliminating the ability for voters to return a ballot by fax. He related that constituents had called his office to report they requested their ballot but did not receive it and it was Election Day. When these voters cannot make it to the polls or the US Post Office, sending their ballots electronically eliminates the need for a postmark. Since these voters relinquish their rights for a completely secret ballot, it provides more opportunities to verify their identity and ensure they voted only once. He maintained Alaskans see the value of electronic voting, so he does not believe that it should be eliminated.

[3:22:38 PM](#)

SENATOR HUGHES referred to page 14, line 19 of SB 39. Amendment 12 would change "shall" to "may not." The language would read:

An absentee ballot application submitted by electronic transmission under this section may not include a provision that permits a person to register to vote under AS 15.07.070."

SENATOR SHOWER asked for the page and line reference in the bill.

SENATOR HUGHES directed attention to page 14, line 19 of SB 39.

[3:23:40 PM](#)

MR. OGAN characterized it as a means to make it easy to vote.

[3:24:03 PM](#)

SENATOR HUGHES restated that Amendment 12 changes "shall" to "may not."

MR. OGAN agreed. He offered his view that this is a policy call. The legislature can decide if it is a good idea to allow people to register to vote at the same time that they are voting.

[3:24:30 PM](#)

SENATOR SHOWER recalled discussions with the sponsor of the House bill that it would be good to keep these functions separate.

[3:25:03 PM](#)

At ease

[3:26:14 PM](#)

CHAIR HOLLAND reconvened the meeting.

[3:26:19 PM](#)

SENATOR SHOWER withdrew Amendment 12.

[3:26:35 PM](#)

SENATOR KIEHL moved to adopt Amendment 15, work order 32-LS0204\D.42.

32-LS0204\D.42  
Klein  
4/14/22

**AMENDMENT 15**

OFFERED IN THE SENATE BY SENATOR KIEHL  
TO: CSSB 39(JUD), Draft Version "D"

Page 23, lines 11 - 23:  
Delete all material.

Renumber the following bill sections accordingly.

Page 26, line 16:  
Delete "AS 15.56.040(a), as amended by sec. 47 of  
this Act,"  
Delete "sec. 48"  
Insert "sec. 47"

Page 26, line 17:  
Delete "sec. 49"  
Insert "sec. 48"

Page 26, line 18:  
Delete "sec. 50"  
Insert "sec. 49"

Page 26, lines 18 - 19:  
Delete "secs. 46 - 50"  
Insert "secs. 46 - 49"

Page 26, line 27:  
Delete "Section 58"  
Insert "Section 57"

Page 26, line 28:  
Delete "secs. 59 and 60"  
Insert "secs. 58 and 59"

3:26:40 PM

CHAIR HOLLAND objected for discussion purposes.

3:26:43 PM

SENATOR KIEHL referred to page 23 of Version D. The amendment would delete Section 47, which provides that voting or attempting to vote in the name of a person who is cognitively unable to express their vote would constitute the crime of voter misconduct in the first degree.

SENATOR KIEHL stated that he could not find a definition of "cognitively unable." He said he spoke to the Governor's Council on Disabilities and Special Education. The council was concerned about what the language meant and had concerns that it might interfere with legal assistance to a special needs voter. However, the language several lines up reads:

(a) A person commits the crime of voter misconduct in the first degree if the person

(1) votes or attempts to vote in the name of another person or in a name other than the person's own;

SENATOR KIEHL noted that this language would cover what paragraph (5) would cover since voting in another person's name is a crime whether the person was in a coma or cognitively unable. He characterized Amendment 15 as a cleanup amendment.

3:27:58 PM

SENATOR SHOWER stated the intent of Amendment 15 was to address a concern that parents might be filling out ballots for their cognitively disabled children, or for people in a nursing home. He offered his view that helping someone who may not understand was different than voting in the person's name.

3:29:43 PM

SENATOR SHOWER restated his question.

3:31:04 PM

MR. FLYNN responded that he was unaware of a definition for cognitively unable. He offered his view that other paragraphs would capture the conduct. He stated that if someone was voting for someone else it would fall under (a)(1). If someone was voting for someone else and then voted in their own name, it would be covered under (a)(2). Further, the special needs voting statute indicates that a person can help a person who needs assistance but the person cannot make a voting decision for them.

[3:31:54 PM](#)

CHAIR HOLLAND withdrew his objection; he found no further objection, and Amendment 15 was adopted.

[3:32:22 PM](#)

SENATOR KIEHL moved to adopt Amendment 16, work order 32-LS0204\D.22.

32-LS0204\D.22  
Klein  
4/11/22

#### **AMENDMENT 16**

OFFERED IN THE SENATE BY SENATOR KIEHL  
TO: CSSB 39(JUD), Draft Version "D"

Page 19, lines 17 - 22:  
Delete all material.

Reletter the following subsections accordingly.

[3:32:27 PM](#)

CHAIR HOLLAND objected for discussion purposes.

[3:32:31 PM](#)

SENATOR KIEHL explained Amendment 16. He directed attention to page 19, [Sec. 15.20.221.] Ballot tracking system. This would delete language in Section 42, subsection (c) providing that the online ballot tracking system must allow an election official access to names and political affiliations of all people on the voter registration list. He pointed out that since election officials have that access already, they do not need it through this online system. He stated that the ballot tracking system was an excellent addition, but he felt uncomfortable tying it electronically to the master voter list.

[3:34:06 PM](#)

SENATOR SHOWER said he might be okay with this language.

MR. OGAN related his understanding that it was important to have the data to set up the ballot tracking system.

[3:35:25 PM](#)

MR. KLEIN related his understanding that the question was whether subsection (c) needed to be tied to any other section. He answered no. He did not think there was a requirement for subsection (c) in law.

[3:35:52 PM](#)

MS. THOMPSON responded that the Division of Elections would not need to have its registration system directly connected to the ballot tracking system in order to have that happen.

[3:36:19 PM](#)

SENATOR SHOWER stated he was okay with Amendment 16.

MR. OGAN read, "The online system established under (a) of this section must allow an election official access to the names and political affiliations of all persons (1) named on the master register ..." He said he did not see how that was problematic.

CHAIR HOLLAND asked whether he had any input on Amendment 16.

[3:37:58 PM](#)

MR. KLEIN said was unsure whether he heard a specific question on Amendment 16.

[3:38:29 PM](#)

SENATOR SHOWER said based on what Mr. Ogan read, subsection (c)(2) was necessary, but not subsection (c)(1), although he was unsure.

[3:38:47 PM](#)

MR. OGAN stated that he had identified several concerns with the amendment. He said the political affiliations may not be relevant. He read [Sec 15.202.221(c):

(1) named on the master register, including those persons whose voter registrations are inactivated under AS 15.07.130(b); and

(2) whose names must be placed on the official registration list under AS 15.07.070(c) and (d).

MR. OGAN referred to AS 15.07.070(c) which read, "The names of persons submitting completed registration forms by mail that are postmarked at least 30 days before the next election..." and AS 15.07.070(d), which read, "Qualified voters may register in person before a registration official ..." He offered his view that the provisions in this section were housekeeping.

[3:39:31 PM](#)

SENATOR KIEHL said members agreed that paragraphs (c)(1) and (2) relate to the entirety of the existing master roll. He asked why Amendment 16 would link those provisions to the ballot tracking system. He maintained that the Division of Elections had access to all of this information. He submitted that the state would not build its own internal tracking system but would contract to do so.

[3:40:40 PM](#)

SENATOR SHOWER responded that the intent was to ensure that the Division of Elections has what it needs to establish the online ballot tracking and ballot chain-of-custody system. He expressed concern that without subsection (c), paragraphs (1) and (2), especially paragraph 2, whether something would limit the division from creating the system with regulation and policy.

MR. KLEIN answered that he does not know of anything the Division of Elections would not already have in order to create the online system. However, he deferred to the division to as to whether the division has enough to create the online system without accessing the information in subsection (c)(1) and (2). He opined that the division has access to this information.

[3:42:09 PM](#)

MS. THOMPSON said she was unclear about the question.

[3:42:20 PM](#)

SENATOR SHOWER stated that he wanted to be sure it would not harm the division if the committee were to delete paragraphs (c)(1) and (2) on page 19 of Version D.

MS. THOMPSON responded no; that it would not harm the division.

CHAIR HOLLAND removed his objection; he found no further objection, and Amendment 16 was adopted.

[3:43:31 PM](#)

SENATOR KIEHL moved to adopt Amendment 17, work order 32-LS0204\D.23.

32-LS0204\D.23  
Nauman/Klein  
4/11/22

**AMENDMENT 17**

OFFERED IN THE SENATE BY SENATOR KIEHL  
TO: CSSB 39(JUD), Draft Version "D"

Page 20, line 3:  
Delete "two"  
Insert "five"

[3:43:38 PM](#)

CHAIR HOLLAND objected for discussion purposes.

[3:44:10 PM](#)

SENATOR KIEHL explained that Amendment 17 would extend the time to cure a deficient ballot envelope from two to five days after the election. Currently, if the Division of Elections receives a ballot two days after Election Day and it is deficient, perhaps missing a signature or the identifier is missing a number, the voter can cure it. However, the state continues to accept ballots postmarked timely much later than that. Again, the ballot must be postmarked by Election Day, but if the ballot was received timely, it would allow the voter to cure it if a problem existed.

[3:45:15 PM](#)

SENATOR SHOWER expressed concern with absentee and mail-in voting related to the timeline. He related that he modeled SB 39 on Colorado's best practices. He stated the intent was to get the election results sooner. He wondered how this might impact other parts of the bill.

MR. OGAN responded that with the ballot tracking system, the timing will be better, and voters will get notified via a text to their cellphone. He stated that it will make it easier to vote, so he advised members that he thought five days would be fine.

[3:47:09 PM](#)

SENATOR KIEHL directed attention to lines 18 and 19 of Amendment 17. The voter still must submit their cured form by day 14 post-election. Amendment 17 would not impact it or slow down the process.

[3:47:37 PM](#)

SENATOR MYERS related his understanding that the primary election allows 10 or 11 days after the election to receive the absentee ballots, and the general election allows three weeks. He did not think that increasing the timeframe to five days to cure ballots would slow down the process.

[3:48:09 PM](#)

SENATOR SHOWER stated he was okay with Amendment 17.

[3:48:33 PM](#)

CHAIR HOLLAND removed his objection; he found no further objection, and Amendment 17 was adopted.

[3:48:58 PM](#)

SENATOR SHOWER moved to adopt Amendment 18, work order 32-LS0204\D.2.

32-LS0204\D.2  
Klein  
4/12/22

### AMENDMENT 18

OFFERED IN THE SENATE BY SENATOR SHOWER  
TO: CSSB 39(JUD), Draft Version "D"

Page 21, following line 1:

Insert new bill sections to read:

"\* **Sec. 43.** AS 15.20.540 is amended to read:

**Sec. 15.20.540. Grounds for election contest.** A defeated candidate or 10 qualified voters may contest the nomination or election of any person or the approval or rejection of any question or proposition on [UPON] one or more of the following grounds:

(1) malconduct, fraud, or corruption on the part of an election official sufficient to change the result of the election;

(2) when the person certified as elected or nominated is not qualified as required by law;

(3) any corrupt practice as defined by law sufficient to change the results of the election;

(4) when the division changes the location of a precinct polling place within 15 days before an election and

(A) the division does not send written notice of the change to each registered voter in the precinct; and

(B) the location change was sufficient to change the results of the election.

\* **Sec. 44.** AS 15.20.560 is amended to read:

**Sec. 15.20.560. Judgment of court.** The judge shall pronounce judgment on which candidate was elected or nominated and whether the question or proposition was accepted or rejected. The director shall issue a new election certificate to correctly reflect the judgment of the court. If the court decides that the election resulted in a tie vote, the director shall immediately proceed to determine the election by lot as is provided by law. If the court decides that no candidate was duly elected or nominated, the judgment shall be that the contested election be set aside. If the court finds that the division did not send written notice of a polling place change to each registered voter in the precinct and that the polling place location change was sufficient to change the results of the election, the court shall enter a judgment that the contested election be set aside. The provisions of this section and AS 15.20.540 and 15.20.550 are not intended to limit or interfere with the power of the legislature to judge the election and qualifications of its members."

Renumber the following bill sections accordingly.

Page 26, line 15:

Delete "sec. 46"

Insert "sec. 48"

Page 26, line 16:

Delete "sec. 47"

Insert "sec. 49"

Delete "sec. 48"

Insert "sec. 50"

Page 26, line 17:

Delete "sec. 49"

Insert "sec. 51"

Page 26, line 18:  
Delete "sec. 50"  
Insert "sec. 52"

Page 26, lines 18 - 19:  
Delete "secs. 46 - 50"  
Insert "secs. 48 - 52"

Page 26, line 26:  
Delete "Section 45"  
Insert "Section 47"

Page 26, line 27:  
Delete "Section 58"  
Insert "Section 60"

Page 26, line 28:  
Delete "secs. 59 and 60"  
Insert "secs. 61 and 62"

[3:48:59 PM](#)

CHAIR HOLLAND objected for discussion purposes.

[3:49:10 PM](#)

MR. OGAN explained Amendment 18 would require a written notice be sent to voters within 15 days of an election to advise them of any change in the polling place. He said if the Division of Elections failed to do so, and the location change was sufficient to change the results of the election, it could result in a contested election.

MR. OGAN directed attention to subparagraphs (A) and (B). He said a defeated candidate or 10 voters can challenge the outcome of an election if (A) the division changes the location of a precinct polling place within 15 days of an election without written notice to all registered voters in the precinct; and (B) the location change was sufficient to change the outcome of the election.

MR. OGAN said a judge could set aside the results if these conditions were met. Thus, it could result in a contested election.

[3:50:38 PM](#)

SENATOR SHOWER stated that Amendment 18 was in response to a situation in which a former legislator went to court because the

division did not adequately notify voters that their polling place had changed.

[3:51:58 PM](#)

SENATOR KIEHL asked how someone would determine if the location change was sufficient to change the results of an election per AS 15.20.540(4)(B).

MR. OGAN answered that Amendment 18 would provide discretion to the courts to make that determination. He stated that it seemed reasonable to allow people to contest the election if voters are not given sufficient information on their precinct polling place location.

CHAIR HOLLAND understood Senator Kiehl's point on the standard that would be applied.

[3:53:48 PM](#)

SENATOR SHOWER stated that the specific circumstances would need to be considered. Amendment 18 would provide a trigger so the courts could make a determination.

[3:54:53 PM](#)

SENATOR KIEHL related his own experience with polling places. He said voters were confused even when the notice was made far in advance of 15 days prior to an election. He said he didn't have a sense how a judge would make that determination, or the basis for a trial. He was unsure about establishing a trigger to allow judges to make election decisions.

[3:55:54 PM](#)

ED KING, Staff, Senator Roger Holland, Alaska State Legislature, Juneau, Alaska, directed attention to existing law [on page 1, lines 8-9] of Amendment 18, to AS 15.20.540(1), which read "... sufficient to change the result of the election;".

MR. KING pointed out that this language also appears in existing law [on lines 12-13], paragraph (3), which read, "any corrupt practice as defined by law sufficient to change the result of the election;."

MR. KING stated that Amendment 18 would add paragraph (4), which would direct the courts to make the same type of finding when the grounds exist.

[3:56:20 PM](#)

MR. KING referred to [page 1, lines 20-23 to] AS 15.20.560, Judgement of court. He read:

The judge shall pronounce judgment on which candidate was elected or nominated and whether the question or proposition was accepted or rejected.

MR. KING stated that this language would direct the court to make a ruling on those grounds.

[3:56:40 PM](#)

MR. KING suggested that the changes on page 2 of Amendment 18, adding language within AS 15.20.560 may be worthy of further consideration. He deferred to Nancy Meade to speak to that issue.

[3:57:19 PM](#)

NANCY MEADE, General Counsel, Office of the Administrative Director, Alaska Court System, Anchorage, Alaska, agreed with Mr. King that the wording "that the polling place location change was sufficient to change the results of the election" was in existing law without standards about what evidence should be presented or other expansion on that concept. So it may be that if the court can deal with it in other cases, it could deal with it in this case with respect to the new language.

MS. MEADE referred to the language on page 2, [line 4 of Amendment 18], which read, "If the court finds that ..." She wondered if that language was necessary since there are not provisions in AS 15.25.60 for the court's findings under any of the other grounds for election contest. In other words, this section for judgement of court doesn't go through specific findings that the court would make. It simply states, as Mr. King said, that the judge would pronounce judgement. She did not think it would be necessary to add this one provision on page 2, lines 4-8 because it would imply that the findings wouldn't be necessary or would lead to a different result.

[3:59:16 PM](#)

CHAIR HOLLAND moved to adopt Conceptual Amendment 1 to Amendment 18, which read:

**CONCEPTUAL AMENDMENT 1 TO AMENDMENT 18**

OFFERED IN THE SENATE

TO: Amendment 32-LS0204\D.2

Page 1, lines 20 through page 2, lines 10:  
DELETE all material.

4:00:04 PM

SENATOR SHOWER objected for discussion purposes.

CHAIR HOLLAND restated Conceptual Amendment 1 to Amendment 18:

OFFERED IN THE SENATE

TO: Amendment 32-LS0204\D.2

Page 1, lines 20 through page 2, lines 10:  
DELETE all material.

4:00:20 PM

SENATOR SHOWER removed his objection.

CHAIR HOLLAND found no further objection; and Conceptual Amendment 1 to Amendment 18 was adopted.

CHAIR HOLLAND stated that Amendment 18, as amended, was before the committee. He recapped that Section 44 was removed from Amendment 18.

4:00:46 PM

SENATOR KIEHL related his understanding that Amendment 18 would provide a minimum of 15 days' notice. He surmised that members could understand what Mr. King's description of the corrupt practices meant, such as 30 votes were bought and the margin was 30, or 200 ballots were stolen and the margin was 90. However, he was unsure what kind of statistical modeling or computerized statistics of historical voter turnout could be applied that could determine the effects of moving a polling place. He asked whether there was a minimum notice in the statutes regarding moving polling places.

MS. THOMPSON explained that AS 15.10.090, related to notification when a precinct location was changing. That requires the division to provide a written notice to each affected voter whenever possible. The division must also provide notice of the change once by publication in the local newspaper of general circulation or print a written notice in three conspicuous places as close to the precinct as possible, post on the division's website, and providing notification to appropriate municipal clerks, community councils, title groups, Native villages, and Village Regional Corporations in the area.

[4:02:55 PM](#)

CHAIR HOLLAND withdrew his objection.

SENATOR Kiehl objected.

[4:03:12 PM](#)

A roll call vote was taken. Senators Shower, Hughes, Myers, and Holland voted in favor of Amendment 18, as amended, and Senator Kiehl voted against it. Therefore, Amendment 18, as amended, was adopted by a 4:1 vote.

CHAIR HOLLAND that Amendment 18, as amended, was adopted on a vote of 4 yeas and 1 nay.

[4:03:52 PM](#)

At ease

[4:05:52 PM](#)

CHAIR HOLLAND reconvened the meeting.

[4:06:19 PM](#)

At ease.

[4:16:14 PM](#)

CHAIR HOLLAND reconvened the meeting.

[4:16:48 PM](#)

SENATOR KIEHL moved to adopt Amendment 19, work order 32-LS0204\D.24.

32-LS0204\D.24  
Klein  
4/11/22

**AMENDMENT 19**

OFFERED IN THE SENATE BY SENATOR KIEHL  
TO: CSSB 39(JUD), Draft Version "D"

Page 21, lines 3 - 4:

Delete ", other than a general, statewide, or federal election,"

[4:16:47 PM](#)

CHAIR HOLLAND objected for discussion purposes.

[4:16:56 PM](#)

SENATOR KIEHL explained that Amendment 19 would allow the Division of Elections to conduct an election only by mail if the conditions in Section 43 are met, for general, statewide, and federal elections. He stated that the director could conduct an election by mail in a small community covered by a disaster in AS 15.20.800(a)(1)-(4), and the director would maintain the ability to hold an election by mail other than when the statewide election, party primary, or municipal election is held. The director could still hold a statewide special election by mail. For example, with the passing of US Congressman Young, the division will hold a special statewide primary. Otherwise, the division would maintain the restrictions in the bill.

[4:17:53 PM](#)

SENATOR KIEHL stated that as the bill is currently drafted, the only election that would apply for the director to hold an election by mail would be for a special REAA election.

SENATOR SHOWER said he did not see a problem with stripping this language from the bill.

[4:19:33 PM](#)

MR. OGAN related his understanding that the state would not allow blanket elections by mail for a general, statewide, or federal election absent disaster or disease.

[4:20:23 PM](#)

SENATOR SHOWER stated that the only request from the Division of Elections Director was to retain (A)(i), which read:

(A) in an unorganized community with a population of 750 or less if the director determines that facilitating an organized in-person voting in the community is unreasonable;

(i) an incident described in AS 26.23.900(2)(A)

SENATOR SHOWER suggested that to tighten it down further, the committee could strip out paragraphs (2) and (3).

[4:21:07 PM](#)

At ease

[4:21:50 PM](#)

CHAIR HOLLAND reconvened the meeting and removed his objection; he found no further objection, and Amendment 19 was adopted.

[4:22:19 PM](#)

SENATOR MYERS said he would not offer Amendment 20, work order 32-LS0204\D.37.

[4:22:51 PM](#)

SENATOR SHOWER moved to adopt Amendment 21, work order 32-LS0204\D.11.

32-LS0204\D.11  
Klein  
4/11/22

**AMENDMENT 21**

OFFERED IN THE SENATE BY SENATOR SHOWER  
TO: CSSB 39(JUD), Draft Version "D"

Page 21, lines 8 - 11:  
Delete all material.

Re-number the following paragraphs accordingly.

[4:22:54 PM](#)

CHAIR HOLLAND objected for discussion purposes.

[4:23:00 PM](#)

MR. OGAN explained that Amendment 21 would delete paragraphs (2) and (3) that would allow elections by mail for a second class city with a population of less than 1,000 upon the city's request, and a second class borough with a population of less than 3,000, upon the borough's request. He stated that these communities have clerks and staff and are large enough to handle their elections. This would leave elections by mail in place for communities with a population of 750 or less since they routinely have difficulty finding volunteers for polling places.

[4:23:59 PM](#)

CHAIR HOLLAND removed his objection; he found no further objection, and Amendment 21 was adopted.

[4:24:21 PM](#)

SENATOR SHOWER moved to adopt Amendment 22, work order 32-LS0204\D.4.

AMENDMENT 22

OFFERED IN THE SENATE BY SENATOR SHOWER  
TO: CSSB 39(JUD), Draft  
Version "D"

Page 21, following line 31:  
Insert a new subsection to read:  
"(f) The division shall provide a technical subject matter expert appointed under AS 24.20.060(10) full supervised access to all election data, algorithms, software, and equipment, including precinct tabulators, storage devices, voting machines, and vote tally systems."

Page 25, following line 28:  
Insert a new bill section to read:  
"**\* Sec. 54.** AS 24.20.060 is amended to read:  
**Sec. 24.20.060. Powers.** The legislative council has the power  
(1) to organize and adopt rules for the conduct of its business;  
(2) to hold public hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and production of papers, books, accounts, documents, and testimony, and to have the deposition of witnesses taken in a manner prescribed by court rule or law for taking depositions in civil actions when consistent with the powers and duties assigned to the council by AS 24.20.010 - 24.20.140;  
(3) to call upon all state officials, agencies, and institutions to give full cooperation to the council and its executive director by collecting and furnishing information, conducting studies, and making recommendations;  
(4) in addition to providing the administrative services required for the operation of the legislative branch,  
(A) to provide the technical staff assistance in research, reporting, drafting, and counseling requested by standing, interim, and special committees

and spot research and drafting services for individual members in conformity with law and legislative rules;

(B) to conduct a continuing program for the revision and publication of the acts of the legislature;

(C) to execute a program for the oversight of the administration and construction of laws by state agencies and the courts through regulations, opinions, and rulings;

(D) to operate and maintain the state legislative reference library;

(E) to do all things necessary to carry out legislative directives and law, and the duties set out in the uniform rules of the legislature;

(F) to sue in the name of the legislature during the interim between sessions if authorized by majority vote of the full membership of the council;

(5) to exercise control and direction over all legislative space, supplies, and equipment and permanent legislative help between legislative sessions; the exercise of control over legislative space is subject to AS 36.30.080(c) if the exercise involves the rent or lease of facilities, and to AS 36.30.085 if the exercise involves the acquisition of facilities by lease-purchase or lease-financing agreement;

(6) to produce, publish, distribute, and to contract for the printing of reports, memoranda, and other materials it finds necessary to the accomplishment of its work;

(7) to take appropriate action for the preconvening and post-session work of each legislative session including the employment one week in advance of each session of not more than 10 temporary legislative employees; the continuing employment of the temporary legislative employees is subject to legislative approval when the session convenes;

(8) to establish a legislative internship program on a cooperative basis with the University of Alaska that will provide for the assignment of interns to standing committees of each house of the legislature during regular sessions of the legislature; [AND]

(9) to establish reasonable fees for services and materials provided by the Legislative Affairs Agency to entities outside of the legislative branch of state government and charges for collecting the fees; all fees and charges collected under this paragraph shall be deposited into the general fund; and

(10) contract with technical subject matter experts to conduct full forensic audits of election data, algorithms, software, and equipment, including precinct tabulators, storage devices, voting machines, and vote tally systems."

Renumber the following bill sections accordingly.

Page 26, line 27:

Delete "Section 58"

Insert "Section 59"

Page 26, line 28:

Delete "secs. 59 and 60"

Insert "secs. 60 and 61"

[4:24:24 PM](#)

CHAIR HOLLAND objected for discussion purposes.

SENATOR SHOWER deferred to Mr. Ogan.

[4:24:42 PM](#)

MR. OGAN referred to page 3, line 6 of Amendment 22. He explained that Amendment 22 would expand the Legislative Council's ability to contract with a technical subject matter expert to conduct a full forensic audit of election data and equipment. The division must provide a technical subject matter expert appointed by the legislative council for full supervised access to all election data and systems.

SENATOR KIEHL stated that he had previously observed Legislative Council meetings. He was unsure how qualified members were to pick subject matter experts since the council sometimes makes political decisions. He wondered how to ensure that the subject matter experts share the information with legislators. The typical path has been for consultants to answer to the council's chair, and the information is made available at the chair's discretion.

[4:27:22 PM](#)

SENATOR SHOWER suggested that a technical change might be needed to correct page 3, line 6, which states "experts". The intent was to have a "subject matter expert" but not a group of experts. He said he encountered significant difficulty obtaining information from the agency or the executive branch, so he crafted the language to allow Legislative Council to select a subject matter expert. It would also avoid the issue of

requesting a subject matter expert from legislative leadership and the funding source to do so.

[4:29:24 PM](#)

CHAIR HOLLAND pointed out that the language on page 1, line 3 relates to appointing a subject matter expert to address a matter specifically, and the language on page 3, line 6 will empower the legislative council to contract with subject matter experts.

SENATOR SHOWER stated the intent was to provide a subject matter expert, but he was okay with leaving subject matter experts on page 3, line 6.

[4:30:41 PM](#)

MR. OGAN offered his view that the language in Amendment 22 was fine because Legislative Council could contract with an expert. He suggested that the council contract with a firm that would select one person as the subject matter expert.

[4:31:30 PM](#)

CHAIR HOLLAND removed his objection.

[4:31:35 PM](#)

SENATOR KIEHL objected.

[4:31:44 PM](#)

A roll call vote was taken. Senators Shower, Hughes, Myers, and Holland voted in favor of Amendment 22, and Senator Kiehl voted against it. Therefore, Amendment 22 was adopted on a 4:1 vote.

CHAIR HOLLAND stated that Amendment 22 was adopted on a vote of 4 yeas and 1 nay.

[4:32:44 PM](#)

SENATOR KIEHL moved to adopt Amendment 23, work order 32-LS0204\D.25.

32-LS0204\D.25  
Nauman/Klein  
4/11/22

### AMENDMENT 23

OFFERED IN THE SENATE

BY SENATOR KIEHL

TO: CSSB 39(JUD), Draft Version "D"

Page 22, lines 1 - 13:  
Delete all material.

Renumber the following bill sections accordingly.

Page 26, line 15:  
Delete "sec. 46"  
Insert "sec. 45"

Page 26, line 16:  
Delete "sec. 47"  
Insert "sec. 46"  
Delete "sec. 48"  
Insert "sec. 47"

Page 26, line 17:  
Delete "sec. 49"  
Insert "sec. 48"

Page 26, line 18:  
Delete "sec. 50"  
Insert "sec. 49"

Page 26, lines 18 - 19:  
Delete "secs. 46 - 50"  
Insert "secs. 45 - 49"

Page 26, line 26:  
Delete all material.

Renumber the following bill sections accordingly.

Page 26, line 27:  
Delete "Section 58"  
Insert "Section 57"

Page 26, line 28:  
Delete "secs. 59 and 60"  
Insert "sec. 58"

[4:32:49 PM](#)

CHAIR HOLLAND objected for discussion purposes.

[4:32:56 PM](#)

SENATOR KIEHL explained that Amendment 23 would delete the open-source technology requirements. Although he did not object to

open-source software technology, he had concerns about sole sourcing it. He related his understanding that currently, only one vendor could provide the open-source software, but others were in the process of becoming federally qualified. He said he did not believe it was the sponsor's intent to sole source, but the bill narrows it to one or two vendors. The committee previously discussed the sponsor's view that open-source software would give Alaskans more confidence in the tabulators and the vote count. He disagreed with that viewpoint.

SENATOR KIEHL opined that what gives Alaskans confidence in elections are the guarantees in existing law. Alaskans vote on paper ballots and these ballots are retained and available for a recount. Everyone can watch the recounts. When Alaskans with special needs must use a voting machine, the division retains a voter-verified paper trail, which is available for a public recount. He stated that open-source software doesn't necessarily mean it is the best software. He wondered how Alaskans would gain more confidence in the election results if the voting machines encountered glitches and had been restarted several times on Election Day. He maintained his view that what ultimately protects the integrity of the election is the ability to recount every ballot with everyone watching. No matter what, someone will likely make up a story about any open source or proprietary software vendor if they don't like the election results. Alaskans need the facts and the reality of the paper ballots. Amendment 23 will not stop the Division of Elections from purchasing open-source software if it is the best product, but it deletes the mandate.

[4:35:59 PM](#)

SENATOR SHOWER disagreed. He offered his view that ranked-choice voting will likely exacerbate voter confidence since the machines will tabulate the ranking. He surmised that it would take a forensic audit to extract the data. He characterized it as a significant challenge. He stated that any company, including Dominion, which Alaska currently uses, could allow access to their software, but they have not done so thus far. He acknowledged that many companies have proprietary software. He emphasized that voting machines vendors must be federally qualified.

[4:38:49 PM](#)

MR. OGAN stated that the Election Assistance Commission would certify the voting machines. Currently, there are three potential vendors. He stated that Alaska's current vendor, Dominion, could also decide to provide open-sourced software

technology. He said voters lack confidence in Alaska's voting system, which undermines the cornerstone of government. He characterized Amendment 23 as gutting the bill. He noted that the open-source technology means that the vendor cannot connect to the internet, which would limit hackers from infiltrating the system. He characterized it as a very secure system. While other states do not use open-source technology statewide, Alaska is one of the few states that conduct statewide elections since most states have counties. He reported that many counties had used this technology successfully. He suggested that if people could verify the codes before the election and the day after the election, it would end concern about the tabulators. He highlighted that it takes a court order to obtain data when the machines are proprietary, which requires reasonable doubt. It's not possible to get the evidence without the data.

[4:42:02 PM](#)

SENATOR SHOWER stated that the trend nationwide is to use open-source technology. He offered his view that Alaska could be a model for the nation if it used open-source technology to provide 100 percent transparency in the voting process.

[4:43:41 PM](#)

SENATOR HUGHES noted that a future amendment is coming that addresses Senator Kiehl's concern that only one company could provide open-source software. She said she will oppose Amendment 23.

[4:44:25 PM](#)

SENATOR KIEHL stated that currently, there are no federally-qualified vendors for open-source software technology. He acknowledged that several vendors are in the process of getting qualified. He said he likes open-source software but objects to sole sourcing. He maintained that voters whose candidates lose would blame the new machines, the software, or the vendor who installs them. He maintained that the current election system retains the paper ballots and has a public recount process so people can watch every single vote be counted.

[4:45:54 PM](#)

CHAIR HOLLAND maintained his objection.

[4:45:58 PM](#)

A roll call vote was taken. Senator Kiehl voted in favor of Amendment 23, and Senators Shower, Hughes, Myers, and Holland voted against it. Therefore, Amendment 23 failed on a 1:4 vote.

CHAIR HOLLAND stated that Amendment 23 failed on a vote of 1 ye  
and 4 nays.

[4:46:48 PM](#)

SENATOR SHOWER moved to adopt Amendment 24, work order 32-  
LS0204\D.12.

32-LS0204\D.12  
Klein  
4/12/22

#### AMENDMENT 24

OFFERED IN THE SENATE BY SENATOR SHOWER  
TO: CSSB 39(JUD), Draft Version "D"

Page 22, line 9:

Delete "has open-source software"

Insert "uses only open-source or unmodified  
commercially available software or firmware"

Page 22, lines 10 - 11:

Delete "software technology"

Page 22, line 11, following "software":

Insert "or firmware"

[4:46:50 PM](#)

CHAIR HOLLAND objected for discussion purposes.

[4:46:54 PM](#)

MR. OGAN explained Amendment 24 would change "has open-source  
software technology" to "uses only open-source or unmodified  
commercially available software or firmware." He characterized  
it as a technical amendment. It clarifies that only open-source  
or unmodified commercially-available software or firmware would  
be used. He explained that firmware is specific to an  
application.

[4:47:51 PM](#)

CHAIR HOLLAND asked if any unmodified commercially-available  
software that was not considered open-source software could  
satisfy the requirement.

MR. OGAN answered to the best of his knowledge, yes. He said he believes that commercially-available software is considered open-sourced because anyone can buy it.

[4:48:50 PM](#)

SENATOR KIEHL pointed out that the state purchased software, voting machines, and tally systems. He asked whether the state could use this equipment so long as it does not modify it, even though it is not open-source software.

MR. OGAN stated that the intent was not to use proprietary software because it does not provide transparency. He was unsure whether Dominion would meet this requirement because it is proprietary software, and people cannot purchase it off the shelf.

[4:50:01 PM](#)

SENATOR SHOWER stated his intent was for the division to "use" open-source software rather than just having it. He suggested that he would be comfortable removing the second part of Amendment 24.

[4:50:43 PM](#)

SENATOR HUGHES stated that open-source means it is available to the public. She wondered whether the public could obtain it for free or if they must pay for it. She offered her view that the public cannot purchase Dominion software. Thus, it lacks checks and balances. She suggested that the language in Amendment 24 should say "available to the public." She related her understanding that the sponsor wanted to ensure that the public could double-check the voting by accessing it via purchased open-source software. She wondered if it was only available to the government.

MS. THOMPSON responded that she was unfamiliar with Dominion's sales policies or who could purchase their software.

[4:52:22 PM](#)

SENATOR SHOWER recalled testimony by the Division of Elections' director that it might be possible to purchase Dominion software but noted that it is proprietary software. He surmised that proprietary meant that Dominion would not share its data, but he indicated that he did not receive a solid answer from them.

[4:53:08 PM](#)

SENATOR KIEHL said he was uncomfortable writing out a specific corporation from participating. He related his understanding

that the purpose of Amendment 24 was to allow people to use a laptop with firmware to run the software. He offered his view that this language might need a tweak in future committees.

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At ease

[4:54:25 PM](#)

CHAIR HOLLAND reconvened the meeting.

[4:54:34 PM](#)

SENATOR HUGHES stated the committee had discussed whether certain software was available to the public. She understood Senator Kiehl's concern that the committee was "picking on" Dominion; however, that is the company Alaska currently uses. She read from dominionvoting.com. "Dominion is a private company that provides election technology to government customers..." She said she did not believe that the public has access to Dominion's software. She offered her view that Amendment 24 would need to include language that the open-source or commercially available software or firmware must be available to the public.

[4:55:17 PM](#)

CHAIR HOLLAND stated he would like clarity on whether unmodified commercially available software is the same as open-source software. He offered his view that commercially available software could consist of "black box" equipment that would allow someone to put something in and something comes out, which is different from open-source software that allows a person access to the code and process.

SENATOR SHOWER asked the record to reflect that he had no interest in a specific company. He stated that the intent was to provide transparency via the technology and the voting process.

[4:56:05 PM](#)

SENATOR SHOWER withdrew Amendment 24. He stated his intention to bring it up at a later time.

[4:56:34 PM](#)

SENATOR KIEHL said he would not offer Amendment 25, work order 32-LS0204\D.26. He stated that the state informed municipalities or political subdivisions that it would not allow the use of the state's election equipment. Since then, every municipality in the state has gone to significant expense to duplicate the election equipment.

4:57:41 PM

SENATOR SHOWER moved to adopt Amendment 26, work order 32-LS0204\D.8.

32-LS0204\D.8  
Klein  
4/12/22

**AMENDMENT 26**

OFFERED IN THE SENATE BY SENATOR SHOWER  
TO: CSSB 39(JUD), Draft Version "D"

Page 1, line 1, following "of":

Insert "unlawful interference with voting, voter misconduct,"

Page 23, following line 10:

Insert new bill sections to read:

"\* **Sec. 47.** AS 15.56.035(a) is amended to read:

(a) A person commits the crime of unlawful interference with voting in the second degree if the person

(1) has an official ballot in possession outside of the voting room unless the person is an election official or other person authorized by law or local ordinance, or by the director or chief municipal elections official in a local election;

(2) makes, or knowingly has in possession, a counterfeit of an official election ballot;

(3) knowingly solicits or encourages, directly or indirectly, a registered voter who is no longer qualified to vote under AS 15.05.010, to vote in an election;

(4) as a registration official

(A) knowingly refuses to register a person who is entitled to register under AS 15.07.030; or

(B) accepts a fee from an applicant applying for registration;

(5) violates AS 15.20.081(a) by knowingly supplying or encouraging or assisting another person to supply to a voter an absentee ballot application form with a political party or group affiliation indicated if the voter is not already registered as affiliated with that political party or group;

(6) knowingly designs, marks, or encourages or assists another person to design or mark an absentee ballot application in a manner that suggests choice of one ballot over another as prohibited by AS 15.20.081(a); [OR]

(7) knowingly submits or encourages or assists another person to submit an absentee ballot application to an intermediary who could control or delay the submission of the application to the division of elections or who could gather data from the application form as prohibited by AS 15.20.081(a); or

(8) pays or offers to pay another person to collect a voter's ballot.

\* **Sec. 48.** AS 15.56.035 is amended by adding a new subsection to read:

(d) In this section, "collect" means gaining possession or control of a ballot."

Renumber the following bill sections accordingly.

Page 26, line 15, following "Act,":

Insert "AS 15.56.035(a), as amended by sec. 47 of this Act,"

Page 26, line 16:

Delete "sec. 47"

Insert "sec. 49"

Delete "sec. 48"

Insert "sec. 50"

Page 26, line 17:

Delete "sec. 49"

Insert "sec. 51"

Page 26, line 18:

Delete "sec. 50"

Insert "sec. 52"

Page 26, lines 18 - 19:

Delete "secs. 46 - 50"

Insert "secs. 46, 47, and 49 - 52"

Page 26, line 27:

Delete "Section 58"

Insert "Section 60"

Page 26, line 28:

Delete "secs. 59 and 60"

Insert "secs. 61 and 62"

[4:57:43 PM](#)

CHAIR HOLLAND objected for discussion purposes.

[4:57:54 PM](#)

MR. OGAN explained that Amendment 26 would make it a crime to pay or offer to pay another person to harvest ballots by collecting the voter's ballot.

[4:58:08 PM](#)

SENATOR KIEHL stated that he had heard the term "ballot harvesting" but discovered that it was actually someone collecting ballots. He pointed out that it is allowable to assist homebound voters or special needs voters. In some cases, it involves bringing the ballot to the person, allowing them to vote, and returning their ballot. He related his understanding the Amendment 26 does not criminalize volunteering; however, he wondered if a staff member of an organization or non-profit that helped voters with physical or developmental disabilities would be subject to criminal penalties.

[4:58:59 PM](#)

SENATOR SHOWER stated the intent of Amendment 26 was to avoid people collecting ballots from large numbers of people. He offered his view that Amendment 26 was a compromise. He stated the intent of Amendment 26 was to prevent organizations from paying others to collect ballots. He said he was open to amending the language. However, the intent of Amendment 26 would not prevent a grandson from collecting grandma and grandpa's ballots and delivering them or allowing someone to collect a senior's ballot from the senior center.

[5:00:51 PM](#)

SENATOR KIEHL envisioned people helping special needs voters, seniors, hospital patients, or home-bound voters by delivering ballots on Election Day. He didn't recall ever differentiating between volunteers or paid campaign workers helping voters. He expressed concern that it would criminalize paid staff from helping.

MR. OGAN answered that paid staff might be subject to prosecution. He suggested that non-profits could recruit volunteers. He said one of his friends worked on a gubernatorial campaign that brought in many people from the Lower 48 to

harvest ballots. He expressed concern that these volunteers might selectively destroy ballots based on the voters' political affiliation.

[5:03:32 PM](#)

MR. FLYNN offered his view that while the definition of collect was expansive, it appeared that anyone who was paid to collect ballots could be subject to the crime of unlawful interference with voting in the second degree. He suggested it might apply to poll workers or election staff, so the committee may wish to consider whether or not to criminalize this activity.

[5:04:20 PM](#)

SENATOR SHOWER expressed his willingness to further discuss with the sponsor of the election bill in the House and with the Department of Law. He suggested the language could be tweaked to exclude poll workers or election staff.

[5:05:07 PM](#)

SENATOR HUGHES related her understanding that other states do not allow ballot harvesting. She agreed it was concerning that it might affect the Division of Elections.

[5:05:38 PM](#)

SENATOR SHOWER withdrew Amendment 26.

CHAIR HOLLAND held SB 39 in committee.

[5:06:52 PM](#)

There being no further business to come before the committee, Chair Holland adjourned the Senate Judiciary Standing Committee meeting at 5:06 p.m.