

S B

4 3

TABLE OF CONTENTS

1. CS SB 43 (SA)
SB 43
2. Bill History
3. Summary
4. Sectional Analysis
5. Fiscal Note - Division of Elections
6. Position Paper - Division of Elections
7. Legal Opinions
 - Department of Law:
 - Party Affiliation Appearing on Official Election Ballot
 - Division of Legal Services:
 - Use of Party Names and Filing Deadline for Third Party Candidates
 - Department of Law
8. Statutes: Alaska Election Laws
9. Court Decisions
 - Sigler vs. Div. of Elections (June 1 filing deadline)
 - Finkelstein vs. Div. of Elections (Katz decision)
 - Finkelstein vs. Div. of Elections (Matthews decision)
10. Reference
 - Special Advance Ballots: 1988 elections
 - Division of Elections: Response to questions raised at Senate State Affairs hearing
 - Witnessing Affidavit for Absentee Ballots
 - Old Forms
 - New Forms
 - Review of Absentee Ballots from 1984 General Election
 - Summary of Recounts
 - Newspaper Clippings

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 5, 1989

FURTHER REFERRALS:

Date of Committee Action: _____

The JUDICIARY Committee considered:

CSSB 43(SA)

CS FOR SENATE BILL NO. 43 (State Affairs)

[CONDUCT & ADMINISTRATION OF ELECTIONS]

"An Act relating to conduct and administration of elections by the director of elections."

RECOMMENDATIONS:

- be replaced with HCS CS SB 43 (Jud) the same title
- have attached amendmen:(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

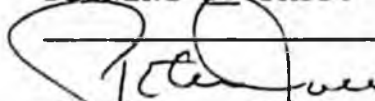
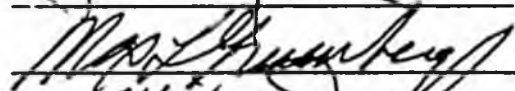
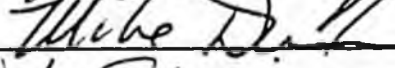
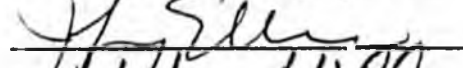
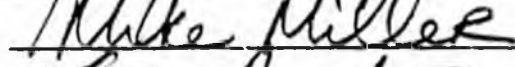
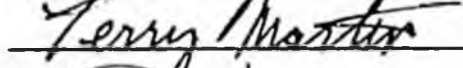
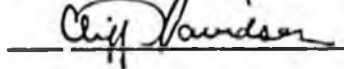
ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) 3/15/89 Div. of Elections
- zero fn/analysis _____

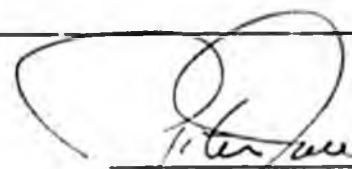
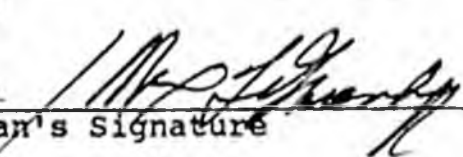
SIGNING DO PASS:

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend



Chairman's Signature

Item 3

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS,
CHAIR

ETHICS COMMITTEE,
CHAIR



ANCHORAGE
P.O. BOX 104836
ANCHORAGE, AK 99510
WI (907) 561-7623
(HI) (907) 338-2425

JUNEAU
P.O. BOX V
STATE CAPITOL
JUNEAU, AK 99811
(907) 465-3712

Senator Pat Pourchot

MEMORANDUM

DATE: March 17, 1989

TO: All Senate Members

FROM: Senator Pat Pourchot *Pat*

SUBJECT: CSSB 43 (Jud) - "An Act relating to conduct and administration of elections by the director of elections."

§ 43 makes a number of technical amendments to current statutes in an attempt to cleanup existing ambiguities and simplify certain procedures. None of the provisions are considered controversial or have raised specific objections.

Sections 6, 13 and 23 through 26 would result in a savings of approximately \$14,000. Cost saving provisions relate to (1) the elimination of the requirement for a separate judicial card, and (2) the elimination of the "+" sign on punch card ballots.

More importantly, there is an undetermined amount of cost savings that would accrue to the extent that the proposed amendments address ambiguities or problems in existing law that result in litigation, election recounts, or the need for a new election. As an example, the Division of Elections estimates the cost of the upcoming District 13 election at \$60-\$65,000.

A summary and sectional analysis of the bill is attached for your review.

Sen. Pat Pourchot
March 14, 1989

SUMMARY

CS SB 43 (SA)

"An Act relating to conduct and administration of elections by the director of elections."

Section 1. Existing statutes require each applicant who registers to vote to provide information on the length of residency in the state and the election district. However, the official absentee voter registration application and absentee ballot application provided by the federal government for overseas and military voters does not specifically request this information. If the required information is not included on the federal form the Division must contact the applicant and request the person to reapply in accordance with existing law.

Section 1 amends the statutes so that the term of residence in Alaska and in the election district need only be provided if requested.

Section 2. Current statute requires that registration forms received through the mail must be postmarked 30 days before the next election. Because mail often lacks a postmark or the postmark is unreadable, the amendment would delete the reference to the postmark and require that the completed voter registration form be received by the director of elections 30 days prior to the next election.

Section 3. Amends statutes relating to incomplete or inaccurate registration forms to conform to language in Section 2.

Section 4. Current law states that a voter who has changed one's name but wishes to vote under the new name must reregister 30 days prior to the next election.

Questions concerning this section of the statute were raised in the 1986 Fischer/Uehling recount. The Supreme Court ordered the ballots counted of those voters who voted under their new name but had not updated their registration records as required by law.

In order to clarify this statute, the proposed amendment allows a voter to vote under one's previous name OR to vote a questioned ballot if the voter wishes to use his/her new name.

Section 5. This new subsection directs the director of elections, whenever possible, to send written notice of any change in a precinct boundary or polling place to each affected registered voter to mitigate any inconvenience caused a voter because of a change in polling place.

Sections 6, and 23 through 26. These sections remove the requirement that judicial retention candidates be printed on a separate nonpartisan judicial ballot.

In territorial days when elections involved closed partisan races, it was necessary to print the judicial retention candidates on separate nonpartisan ballot cards. Because we now include candidates of all parties on the same card - the card is essentially nonpartisan. The Court System has no problem with the proposed amendment.

Based on a review of the 1986 general election, 14 districts would have required the printing of only 2 ballot cards if the judicial candidates had been printed on the same card as other candidates. This would have resulted in a savings of nearly \$15,000 in ballot printing costs.

Section 7. Current law requires that an election official record the date and time an absentee ballot is provided and received. This amendment eliminates the unnecessary requirement to record the time - which serves no useful purpose.

Section 8. This amendment would extend the application period for absentee ballots by requiring that applications be received not later than 4 days prior to the election, rather than post-marked 10 day prior to the elections. (See explanation in Section 2.)

Sections 9 through 12. Statutes governing "absentee voting by mail" require the counting of absentee ballots mailed from within the U.S. if received by the 10th day after the election. If mailed outside the U.S. or from a military APO/FPO address they must be counted if received by the 15th day after the election.

However, under the statutes governing "procedures for recount" absentee ballots received 15 days following an election but before the completion of the recount must be counted - no provision is made for the counting of absentee ballots that are mailed from within the U.S. but are received between the 10th and 15th day following an election.

The proposed amendments would remove this conflict by allowing, in a recount, the counting of absentee ballots received after the statutory deadline but before the completion of the recount.

Section 13. This amendment is "housekeeping" in nature. The section proposes the deletion of references to language "designated by a plus sign" when describing the square box in which the voter punches the ballot. The plus sign serves no purpose. Statutory citations regarding handmarked ballots contain no such descriptive language and no other sections of the election law contain any reference to this "plus sign."

The amendment would eliminate the necessity for printing two versions of the same ballot where there is both punch card voting and handmark voting in the same district and will result in a savings of approximately \$2,000 in ballot printing costs.

Section 14. These amendments would (1) place in statute current requirements for stating residency address and length of residency on declaration of candidacy forms; (2) delete the requirement that candidate not have "filed" a previous declaration (what is intended is that the candidate not have another declaration "on file"); and (3) allow declaration of candidacy forms and conflict of interest forms to be filed on same date (rather than simultaneously) because they are filed at separate locations.

Section 15. Current statutes set the deadline for withdrawal of a candidate's name from the ballot or the replacement of a name on the ballot 40 days prior to the election.

This severely constricts to three weeks the time in which to prepare, print and distribute ballots across the state. In cases where a lawsuit is filed contesting a candidate's eligibility the time frame can be further reduced.

The amendment proposes to change the deadline from 40 to 48 days. This would significantly improve the Division of Elections' ability to meet their statutory deadlines which are dependent on completion of ballot printing.

Section 16. The first amendment would change the period in which a candidate's place on the ballot may be filled by party petition from 45 days to 50 days if the vacancy occurs after June 1 of election year. This is to allow parties a few days leeway to select replacement candidates. The second is an amendment to conform to language in Section 15.

Sections 17 through 19 and Section 22. Amends statutes to conform to language in Section 15.

Section 20. The current filing deadline for the general election for third party candidates is June 1. A recent Superior Court decision has held this deadline unconstitutional. This amendment would change the filing deadline from June 1 to August 1.

Section 21. This amendment would place in statute the current requirement for stating residency address and length of residency on nominating petition and would delete the provision that requires candidate to state that he/she has not filed another nominating petition (see explanation in Section 14).

Item 4



Alaska State Legislature

Senator Mike Szymanski

While in Session:
P.O. Box V
State Capitol Room 11
Juneau, Alaska 99811
(907) 465-4979 / 4979
FAX (907) 465-2652

During Interim:
3111 C Street, Suite 510
Anchorage, Alaska 99503
(907) 561-7617

165 E. Parks Highway
Legislative Information Office
Wasilla, Alaska 99687
(907) 376-MIKE

M E M O R A N D U M

TO: Representative H.A. "Red" Boucher, Chairman
House State Affairs Committee

FROM: *Mike Szymanski*
Senator Mike Szymanski

DATE: March 31, 1989

SUBJ: Committee Substitute for Senate Bill 43, "An Act
Relating to Conduct and Administration of
Elections..."

I would like to request your support and that of the House State Affairs Committee members on introducing the attached amendment to the CS for Senate Bill 43 while the bill is in your committee.

The amendment has a great deal of support from the Division of Elections and their feeling is it would have tremendous benefit to the people of the State of Alaska. Similar legislation was sponsored by House Speaker Sam Cotton several years ago, but was ultimately vetoed by the Governor. The current Administration apparently supports this amendment.

cc: Rep. Eileen MacLean
Rep. Dave Donley
Rep. Curt Menard
Rep. Ann Spohnholz
Rep. Alyce Hanlely
Rep. Jim Zawacki

Lt. Governor McAlpine
Sandi Stout, Division of Elections

Senate District E

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 43 (State Affairs)

Page 1, after line 8:

Insert new bill sections to read:

"* Section 1. AS 15.05.010 is amended to read:

Sec. 15.05.010. VOTER QUALIFICATION. A person may vote at any election who

(1) is a citizen of the United States;

(2) is 18 years of age or older;

(3) [(REPEALED.);

(4)] has been a resident of the state and of the election district in which the person seeks to vote for at least 30 days just before the election; and

(4) [(5) (REPEALED.);

(6)] has registered [BEFORE THE ELECTION AS REQUIRED] under AS 15.07 and is not registered to vote in another jurisdiction.

* Sec. 2. AS 15.07.030(a) is amended to read:

(a) A person who has the qualifications of a voter under AS 15.-05.010(1) - (3) [AS SET OUT IN AS 15.05.010(1) - (4),] or who will have the qualifications at the succeeding primary or general election [,] is entitled to be registered as a voter in the precinct in which the person resides.

* Sec. 3. AS 15.07.040 is amended to read:

Sec. 15.07.040. TIME FOR REGISTRATION. A person who is qualified as a voter under AS 15.05.010(1) - (3) [AS 15.05.010(1) - (4)] is entitled to register at any time throughout the year except that a person under 18 years of age may register at any time within 90 days immediately preceding the person's 18th birthday."

Page 1, line 9:

Delete "Section 1."

Insert "Sec. 4."

Renumber the following bill sections accordingly.

Page 2, after line 7:

Insert a new bill section to read:

"* Sec. 6. AS 15.07.070(d) is amended to read:

(d) Qualified voters may register in person before a registration official at any time throughout the year [, EXCEPT THAT A PERSON REGISTERING WITHIN 30 DAYS PRECEDING AN ELECTION MAY NOT VOTE AT THAT ELECTION]. Upon receipt and approval of the registration forms the director or the election supervisor shall forward to the voter an acknowledgment in the form of a registration card and the voter's name shall immediately be placed on the master register located in the office of the director and on the list register located in the office of the election supervisor. Names of persons registering 30 or more days before an election shall be placed on the official registration list for that election."

Renumber the following bill sections accordingly.

Page 2, line 14:

Delete "(a)"

Page 2, line 15:

Before "(a)"

Insert "Sec. 15.07.090. REREGISTRATION AND AMENDMENT AND TRANSFER OF REGISTRATION."

Page 2, after line 19:

Insert new bill material to read:

"(b) A voter shall reregister if the voter's registration is cancelled for failure to vote in prior elections under [AS PROVIDED IN] AS 15.07.130. [THE REREGISTRATION MAY NOT BE MADE LATER THAN 30 DAYS PRECEDING AN ELECTION.]

(c) The director shall transfer the registration of a voter from one precinct to another within an election district when requested by the voter. [THE REQUEST SHALL BE MADE 30 OR MORE DAYS BEFORE THE ELECTION DAY.] The director shall transfer the registration of a voter from one election district to another when requested by the voter. The voter must reside in the new election district for at least 30 days in order to vote.

(d) A person who claims to be a registered voter and is eligible to vote under AS 15.05.010, but for whom no evidence of registration in the precinct can be found, shall be registered [GRANTED THE RIGHT!

to vote. If the registration occurs after the 30th day before the election, the voter shall be treated as [IN THE SAME MANNER AS THAT OF] a questioned voter and the ballot shall be treated as [IN THE SAME MANNER. THE BALLOT SHALL BE CONSIDERED TO BE] a "questioned ballot" and shall be so designated. The director [OR THE DIRECTOR'S REPRESENTATIVE] shall determine whether the voter is registered in the election district before counting the ballot. A voter who has failed to obtain a transfer as provided in (c) of this section shall vote a "questioned ballot" in the precinct in which the voter resides.

* Sec. 9. AS 15.07.160(a) is amended to read:

(a) Except as provided in AS 15.07.135, a registration official may not refuse to register a person who is qualified to vote under AS 15.05.010(1) - (3) [PROVISIONS OF AS 15.05.010(1) - (4)]."

Renumber the following bill sections accordingly.

Page 3, after line 8:

Insert new bill sections to read:

** Sec. 12. AS 15.15.198(b) is amended to read:

(b) A person whose registration has been cancelled under AS 15.-07.130(b) and who votes a questioned ballot shall have the ballot counted if the person is qualified to vote under AS 15.05.010 and registers to vote

[(1) THE PERSON WAS REGISTERED TO VOTE FOR EITHER OF THE TWO MOST RECENT GENERAL ELECTIONS;

(2) THE PERSON SIGNS UNDER OATH A STATEMENT TO THAT EFFECT;

AND

(3) THE EARLIER REGISTRATION IS VERIFIED BY THE DIRECTOR].

* Sec. 13. AS 15.20.015 is amended to read:

Sec. 15.20.015. MOVING FROM ELECTION DISTRICT JUST BEFORE ELECTION. A person who meets all voter qualifications except under AS 15.05.010(3) [THAT LISTED IN AS 15.05.010(4)] is qualified to vote by absentee ballot in the election district in which the person formerly resided if the person lived in that election district for at least 30 days immediately before changing residence."

Renumber the following bill sections accordingly.

Page 12, after line 9:

Insert a new bill section to read:

"* Sec. 34. AS 29.26.050(a) is amended to read:

(a) A person may vote in a municipal election only if the person

(1) is a United States citizen who is qualified to vote in state elections;

(2) has been a resident of the municipality for 30 days immediately preceding the election;

(3) is registered to vote in state elections or registers to vote on the day of the election; and

(4) is not disqualified under art V of the state constitution."

GUIDE TO MAJOR PROVISIONS

CSSB 43 (State Affairs)

**Prepared by
Division of Elections
March 15, 1989**

Provisions

Sec. 4 Voters Who Change Names Just Before an Election:
Fischer vs. Div. of Elections. Under current law
people who change their names must update
registration 30 days before an election to vote
under new name. Supreme Court overturned it.
Amendment allows them to vote a questioned ballot
conforming to the court's ruling.

COURT RULING - VOTERS WHO CHANGE THEIR NAMES

Provision

Sec. 5 Requires that notice be sent to voters when polling place or precinct boundary is changed.

General Comments

Example: 1986 - 65 Polling Places Changed involving 44,000 voters. Notices would cost \$14.102 for forms and postage.

(Cost offset by other provisions of bill which would reduce ballot preparation costs.

NOTICE OF POLLING PLACE/PRECINCT BOUNDARY CHANGES

Provisions

Sec. 2 Stipulates that effective date of registrations
& 3 sent in by mail is date of receipt rather than
 postmark. Official registers would include only
 registrations received 30 days before election.

Advantages

- A. 30% of mail has no readable postmark.
- B. Receipt date is always clear so creation of precinct registers has specific cut-off and can be generated for distribution on time.
- C. Eliminates cumbersome and costly administrative burden of having to retain and/or microfilm envelope with form.

EFFECTIVE DATE OF REGISTRATION - RECEIVED DATE

Provisions

Sect. 15-19 Conforming amendments to change candidate withdrawal deadlines:

From: 40 Days Prior to Election
To: 48 Days Prior to Election

Allows for replacement of party candidates by party petition if withdrawal is 50 days prior to election.

Advantage

- A. 40 day withdrawal only allows 10 days for all printing of Official Election Pamphlets which must be in the mail 30 days prior to election.
- B. Under current law, on 3 weeks allowed for all ballot proofing, printing, collating, and distribution of ballots to sites.

WITHDRAWAL DEADLINES

Provision

Sec. 20 Filing Deadline for Independent Candidates: Aug. 1
Sigler vs. State of Alaska. Superior court ruled
June 1 filing deadline for independents appearing
on general election ballot was unconstitutional.
Undue burden for candidates not appearing on a
ballot til November.

State now has NO deadline set in law.

Plaintiffs contended that independents were an
alternative when party candidates' campaigns
failed to represent or meet the concerns of
certain constituencies. Favored a filing deadline
AFTER primary. Court leaned that way but did not
specify a ruling to that affect.

Compromise

August 1 is a compromise which postpones deadline til major
campaigns are clearly under way, but prevents losing primary
candidates from then filing petitions for general elections.

COURT RULING - FILING DEADLINE FOR INDEPENDENT CANDIDATES

Provision

Sect. 6, 23 Allows judicial candidates to appear on same
24, 25 & 26 ballot as other candidates as space allows
rather than requiring them to be on a
separate card.

Usually 1/3 to 1/2 of the districts have
sufficient room for judges.

Sect. 13 Eliminates reference to a "+" sign in the box
to the right of a candidate's name on punch
card ballots.

This reference requires printing two versions
of the same district's ballots in districts
where some precincts are computer counted and
some are hand counted.

Advantage

Division could reduce ballot printing costs by
about \$10,000 to \$15,000 per election year.

NOTE: This savings offsets costs in sending out
notices of polling place or precinct boundary
changes. (See Section 5.)

COST REDUCTIONS - BALLOT PRINTING

Provisions

- Sect. 1. Amends provision making length of residency in Alaska and in Election District a mandatory requirement for registration, unless asked.

Rationale

- A. Federal Postcard Applications (FPCA) must be accepted as registration and absentee ballot application under Federal Law. Form does not require statement as to length of residency. 75% of all FPCA's must be rejected under current law because information is not included. (Approx. 3,000 of 4,000 FPCA's received in 1988.

Follow up correspondence to request the information could disenfranchise otherwise qualified voters, as 30 day cut off for registration draws near.

- B. 30 day cut off for registration is criteria for voter eligibility in any specific election. At the time of registration, a voter's residency of 1 day or 40 years is irrelevant as long as he/she is registered by the 30 day cut off prior to election.

NOTE: Amendment supported by Henry Valentino, Executive Director, Voting Assistance Office, Dept. of Defense.

LENGTH OF RESIDENCY REQUIRED FOR REGISTRATION

Provisions

Sect. 7 Personal Representative Voting: Streamlines recordkeeping by eliminating the requirement that the actual time of day be recorded for returned personal representative ballots.

Since all polls and absentee sites close at 8:00 PM on election day, any ballot received prior to closing is timely.

Sect. 8 Deadline for Absentee By Mail Applications:
Changes current law:

From: Postmark 10 days prior to election.
To: Received 4th day prior to election.

Would allow processing and final mailing on Saturday before Election Day of any received by 4th day prior regardless of when they were sent.

Sect. 9, 10 Late Absentee Ballots Included in Recounts:
11 & 12 Deadlines for Receipt of Ballots:

Domestic Ballots: 10 Days After Election
Foreign/APO/FPO: 15 Days After Election

Current law allows ballots received after 15th day to be included in recounts.

Leaves window for ballots received between 10th and 15th day. Amendment corrects deficiency.

ABSENTEE VOTING



Provisions

Sect. 14

Length of Residency: Adds length of residency in state and in district as required information on candidacy filing forms.

Current law says "candidate will meet residency requirement", but does not specify WHEN.

Will help Division verify eligibility of the candidate.

Oath Regarding Filing More than One Office or By 2 Different Means for the Same Office: As worded the current oath precludes withdrawal of one declaration of candidacy or nominating petition to refile for the same seat.

Court has consistently upheld ballot access for candidates who have filed, withdrawn and refiled for the same seat.

Simultaneous Filing of APOC Conflict of Interest Forms: Technical amendment to replace the word "simultaneous" since APOC forms and Declarations/Petitions go to separate agencies.

Amendment refers to filing the separate forms on the "same date".

Sect. 21

Conforming amendments to law on Nominating Petitions.

CANDIDACY FILINGS

A M E N D M E N T #1

OFFERED IN THE HOUSE

BY HANLEY

TO: CSSB 43(State Affairs)

Page 2, after line 19:

Insert a new bill section to read:

"* Sec. 5. AS 15.07.100 is amended by adding a new subsection to read:

(e) An amendment to the registration of a registration official shall be made by a different registration official or by mail under AS 15.07.050."

Renumber the following bill sections accordingly.

A M E N D M E N T # 2

OFFERED IN THE HOUSE

BY HANLEY

TO: CSSB 43(State Affairs)

Page 1, after line 8:

Insert a new bill section to read:

** Section 1. AS 15.07.050 is amended to read:

Sec. 15.07.050. REGISTRATION IN PERSON OR BY MAIL. Registration and a change in registration may be made in person before a registration official or by mail under AS 15.07.070(b)."

Page 1, line 9:

Delete "Section 1"

Insert "Sec. 2"

Renumber the following bill sections accordingly.

Page 2, after line 19:

Insert a new bill section to read:

** Sec. 6. AS 15.07.090 is amended by adding a new subsection to read:

(e) A reregistration, amendment, or transfer of voter registration shall be made under AS 15.07.070."

Renumber the following bill sections accordingly.

FINKELSTEIN DAVID S

YOUR NAME (if registered to vote under that name)

3725 MT VIEW DR

CITY **ANCH** STATE **AK** ZIP **99508**

MAILING ADDRESS **SAME**

PCA OFFICE USE ONLY

VOTE NUMBER **1967123**

New Registration Change of Address

Change of Affiliation Change of Name

SOCIAL SECURITY NUMBER **526138461**

DATE OF BIRTH **MO 1 DAY 10 YEAR 56**

PLACE OF BIRTH **Phoenix AZ**

DATE OF NATURALIZATION **MO DAY YEAR**

HOW LONG HAVE YOU LIVED IN ALASKA? **8** YEARS MONTHS

HOW LONG HAVE YOU LIVED IN THIS ELECTION DISTRICT? (At Current Address)

YEARS MONTHS DAYS **1**

SEX **M** MALE FEMALE

OPTIONAL

Do you need special assistance in voting? **JUN 21 1987**

Bilingual Services

OATH I swear that the foregoing facts are true I also swear that I am a citizen of the United States I will be 18 years of age or older within 90 days of registration I further swear that I have not been convicted of a felony involving moral turpitude, or having been so convicted, have been unconditionally discharged from incarceration, probation and/or parole I am not registered to vote in any other state, or having been so registered, have taken necessary steps to cancel that registration I understand that making a false statement on this registration is a criminal offense

Party Affiliation (Check one)

Democrat _____

Liberarian _____

Republican _____

Non-Partisan _____

Other (Specify) _____

SIGNATURE OF VOTER **David Finkelshtein**

TWO WITNESSES (OVER 18 YEARS OF AGE) A QUALIFIED OFFICIAL MUST SIGN

WITNESS

OFFICIAL **David Finkelshtein**

WITNESS

DATE **6/1/87**

OFFICIAL TITLE **Registrar**

LOCATION

VOTER # 1267123

VOTER'S NAME David S. Finkelstein SSN OR ID _____

NEW RESIDENCE ADDRESS 1611 Atkinson Dr.
Quincy

NEW MAILING ADDRESS SAA

2 days

DATE 6-30-87

INITIALS DF

Amendments #3, #4, #5 and #6 - Gruenberg

Representative Gruenberg raised a question in the previous hearing regarding AS 15.25.030 (b) which currently requires a party candidate to file a declaration of candidacy and conflict of interest statement simultaneously.

The Senate SA CS would require the documents to be filed on the same date due to a conflict in location. A document is considered filed when it is received. The candidate cannot be certified until both forms are received.

However, it is impossible for a person living in a remote area to ensure that the forms are "filed" on the same day because of the idiosyncrasies of postal delivery and the inability to verify date of mailing as one-third of all first class mail lacks a readable postmark.

As I understand it, in *Silides v. Thomas* the court held that given the lack of clarity inherent in this section and the impossibility of compliance for a person living outside Anchorage (or Juneau, as it now has an APOC office), substantial compliance with the filing requirements of this section would suffice if the filings were received near the June deadline.

The administrative practice of the Division of Elections has been to accept conflict of interest statements from candidates and then forward the statements to APOC. Likewise, APOC will accept declaration of candidacy forms from candidates and forward them on to the Division of Elections. Additionally, APOC has adopted regulations to permit the Division of Elections to accept conflict of interest statements on behalf of APOC. (APOC also exempts incumbents from having to file their conflict of interest statement.)

Amendment #3 amends statutes relating to declaration of candidacy to provide that the conflict of interest statement be filed with the Director of Elections.

Amendment #4 places in statute the APOC regulation exempting incumbents from having to refile their conflict of interest statement - if it is current.

Amendment #5 contains conforming language for third party candidates.

Amendment #6 is a conforming amendment to APOC statutes.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 43 (State Affairs)

Page 7, line 20:

Delete "on the same date"

Insert "simultaneoulsy"



Page 7, line 20, after "file":

Insert "wi'h the director"

Page 7, after line 22:

Insert a new bill section to read:

"* Sec. 15. AS 15.25.030 is amended by adding a new subsection
to read:

(c) An incumbent public official who has a current
statement of income sources and business interests on file
with the Alaska Public Offices Commission is not required to
file a statement of income sources and business interests
with the declaration of candidacy under (b) of this
section."

Renumber the following bill sections accordingly.



Page 11, after line 7:

Insert a new bill section to read:

"* Sec. 23. AS 15.25.180 is amended by adding new subsections to read:

(b) A person filing a nominating petition under this section shall also file a statement of income sources and business interests that complies with the requirements of AS 39.50 within 30 days of filing the petition.

(c) An incumbent public official who has a current statement of income sources and business interests on file with the Alaska Public Offices Commission is not required to file a statement of income sources and business interests under (b) of this section."

Renumber the following bill sections accordingly.

(6)

* Sec. 30. AS 39.50.020 is amended to read:

Sec. 39.50.020. REPORT OF FINANCIAL AND BUSINESS INTERESTS. (a) A judicial officer, commissioner, chairman or member of a state commission or board specified in AS 39.50.200(b), a person hired or appointed as head or deputy head of, or director of a division within, a department in the executive branch, a person appointed as assistant to the governor, and a municipal officer, shall file a statement giving income sources and business interests, under oath and on penalty of perjury, within 30 days after taking office as a public official. Candidates for state elective office shall file such a statement with the director of elections at the time of filing a declaration of candidacy or within 30 days of the filing of any nominating petition, or within 30 days of becoming a candidate by any other means. Candidates for elective municipal office shall file such a statement at the time of filing a nominating petition, declaration of candidacy, or other required filing for the elective municipal office. Refusal or failure to file within the time prescribed shall require that the candidate's filing fees, if any, and filing for office be refused or that a previously accepted filing fee be voided and the candidate's name removed from the filing records. A statement shall also be filed by public officials no later than April 15 or 15 days after the person files a federal income tax return in each following year, whichever comes first. Persons who, on or after December 11, 1974, were members of boards or commissions not named in AS 39.50.200(b) are not required to file financial statements.

(b) The governor, lieutenant governor, members of the

legislature, [AND CANDIDATES FOR THESE OFFICES,] judicial officers, each commissioner, head or deputy head of, or director of a division within, a department in the executive branch, assistant to the governor or chairman or member of a commission or board required to report under this chapter, shall file the statement with the Alaska Public Offices Commission. Candidates for the office of governor, lieutenant governor, and the legislature shall file the statement under AS 15.-25.030 or 15.25.180. Municipal officers, and candidates for elective municipal office, shall file with the municipal clerk or other municipal official designated to receive their filing for office. All statements required to be filed under this chapter are public records."

Amendment #7 - Pourchot

As a result of changing the filing deadline from June 1 to August 1 for third party candidates, it is necessary to amend AS 15.58.030 (Material to be filed by candidate) to provide that a candidate who files by nominating petition or other means after July 15 has 10 days from the date of filing to file their photograph and statement advocating their candidacy.

A M E N D M E N T

by Brunberg

(8)

OFFERED IN THE HOUSE

TO: CSSB 43 (State Affairs)

Page 12, after line 9:

Insert a new bill section to read:

"* Sec. 27. AS 24.05.085 is amended to read:

Sec. 24.05.085. RESIGNATION. A member resigns by submitting a resignation in writing to the presiding officer of the house to which the member was elected or appointed, with information copies to the governor, the director of elections, and the executive director of the Legislative Affairs Agency for appropriate administrative action. The resignation is effective on the date specified in the resignation or, if no date is specified, 10 days after the date of mailing the resignation [, WHICHEVER IS LATER]. The resignation may be withdrawn, in the same manner as it was submitted, at any time before it becomes effective [DURING THIS PERIOD]."

Senator Pat Pourchot
April 21, 1989

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 43 (State Affairs)

Page 7, line 11:

AS 15.25.030(a) is amended to read:

"(14) that the person is not a candidate for any other office to be voted on at the primary or general election, and that the candidate is not a candidate for this office under any other declaration of candidacy or nominating petition [AND THAT THE CANDIDATE HAS NOT FILED ANOTHER NOMINATING PETITION OR DECLARATION OF CANDIDACY FOR THE OFFICE FOR WHICH THIS DECLARATION IS FILED]."

Page 11, line 4:

AS 15.25.180 is amended to read:

"(14) [15] that the candidate is not a candidate for any other office to be voted on at the primary or general election, and that the candidate is not a candidate for this office under any other declaration of candidacy or nominating petition [AND THAT THE CANDIDATE HAS NOT FILED ANOTHER NOMINATING PETITION OR DECLARATION OF CANDIDACY FOR THE OFFICE FOR WHICH THIS PETITION IS FILED]."

Senator Pat Pourchot
April 24, 1989

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 43 (State Affairs)

Page 12, after line 9:

Insert new bill section to read:

"*Sec. 29. AS 15.58.030(b) is amended to read:

(b) No later than July 15 of a year in which a state general election will be held, an individual who becomes a candidate for the office of United States senator, United States representative, governor, lieutenant governor, state senator, or state representative under AS 15.25.030 may file with the lieutenant governor a photograph and a statement advocating the candidacy. An individual who becomes a candidate for the office of United States senator, United States representative, governor, lieutenant governor, state senator, or state representative under AS 15.25.180 by filing a nominating petition or by any other means may file with the lieutenant governor a photograph and a statement advocating the candidacy by July 15 or within 10 days of becoming a candidate, whichever is later.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 43 (State Affairs)

Page 3, after line 23:

Insert new bill section to read:

** Section 9. AS 15.20.081(d) is amended to read:

(d) Upon receipt of an absentee ballot by mail, the voter, in the presence of a notary public, commissioned officer of the armed forces including the National Guard, district judge or magistrate, United States postal official, registration official, or other person qualified to administer oaths, may proceed to mark the ballot in secret, to place the ballot in the small envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of an official listed in this subsection who shall sign as attesting official and shall date the signature. If none of the officials listed in this subsection is reasonably accessible, an absentee voter shall sign the voter's certificate in the presence of [HAVE THE BALLOT WITNESSED BY] two persons over the age of 18 years, who shall sign as witnesses and attest to the date on which the voter signed the certificate in their presence, and, in addition, the voter shall provide the certification prescribed in AS 09.63.020."

Renumber the following bill sections accordingly.

A M E N D M E N T

To: CSSB 43 (State Affairs)

Offered by Rep. Martin

On Page 7, line 23, add a new subsection to read:

(c) The information provided in compliance with the requirements of AS 15.25.030 on a declaration of candidacy which has been filed with the director may not be amended, altered or otherwise withdrawn for the purpose of refiling another declaration of candidacy or nominating petition by the candidate within 5 days immediately preceding the filing deadline established in AS 15.25.040.

PROBLEM: -

Under current Declaration of Candidacy statutes [AS 15.25.030 (a)] the oath, if taken literally, would mean that no candidate would ever be able to withdraw his/her declaration to resubmit a new one, or to make any change in his/her candidacy declaration.

AS amended by the Senate State Affairs Committee the Declaration of Candidacy statutes state that a person cannot have a declaration of candidacy on file for two different offices at the same time. However, there is nothing in statute that prevents one from having a nominating petition and a declaration of candidacy on file at the same time for the same office. Thus, one could lose the primary but still be a candidate on the general election.

The attached amendment provides that a person can only have one current filing document on record at any given time.

Oath for Candidates

Page 7 Line 11

AS 15.25.030 (a)

(14) ^{be} that the person is not a candidate for any other office to be voted on at the primary or general election, and that the candidate is not a candidate for this office under any other declaration of candidacy or nominating petition [AND THAT THE CANDIDATE HAS NOT FILED ANOTHER NOMINATING PETITION OR DECLARATION OF CANDIDACY FOR THE OFFICE FOR WHICH THIS DECLARATION IS FILED].

Page 11 Line 4 (Conforming For Independent Candidates)

AS 15.25.180

(14) [15] that the candidate is not a candidate for any other office to be voted on at the primary or general election, and that the candidate is not a candidate for this office under any other declaration of candidacy or nominating petition [AND THAT THE CANDIDATE HAS NOT FILED ANOTEHR NOMINATING PETITION OR DECLARATION OF CANDIDACY FOR THE OFFICE FOR WHICH THIS PETITION IS FILED].

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS,
CHAIR

ETHICS COMMITTEE,
CHAIR



ANCHORAGE
P O BOX 104836
ANCHORAGE, AK 99510
(W) (907) 561-7623
(H) (907) 338-2425

JUNEAU
P O BOX V
STATE CAPITOL
JUNEAU, AK 99811
(907) 465-3712

Senator Pat Pourchot

MEMORANDUM

DATE: April 5, 1989

TO: House Judiciary Committee
Representative Peter Goll, Co-Chair
Representative Max Gruenberg, Co-Chair
Representative Mike Davis, Vice-Chair
Representative Cliff Davidson
Representative Johnny Ellis
Representative Terry Martin
Representative Mike Miller

FROM: Senator Pat Pourchot *Pat*

RE: CS SB 43 (State Affairs) - "An Act relating to conduct and administration of elections by the director of elections."

CS SB 43 (SA) makes a number of technical changes to the statutes in an attempt to cleanup existing ambiguities and simplify certain procedures. The Division of Elections supports CS SB 43 (SA) and has stated that passage will aid the Division in effectively and efficiently performing its mandated responsibilities.

As currently written CS SB 43 (SA) would:

- 1) Amend the statutes relating to "required registration information" so that the term of residence in Alaska and in the election district need only be provided if requested. (Section 1)
- 2) Require that the completed voter registration form be received (rather than postmarked) by the director at least 30 days before the next election. (Section 2; conforming amendment in Section 3)
- 3) Allow voters who change their name just prior to an election to vote under their old name or vote a questioned ballot under the new name. (Section 4)
- 4) Provide for written notice of a change in a precinct boundary or polling place to be sent to affected voters prior to the election. (Section 5)

- 5) Remove the requirement that judicial retention candidates be printed on a separate nonpartisan judicial ballot. (Sections 6, and 23 through 26)
- 6) Eliminate the unnecessary requirement to record the time an absentee ballot is provided and received - recording of date is sufficient. (Section 7)
- 7) Extend the application period for absentee ballots by requiring that applications be received not later than 4 days prior to the election (rather than postmarked 10 days prior to election). (Section 8)
- 8) Remove conflict in existing statutes governing counting of absentee ballots. AS 15.20.081 (e) and (h) are in conflict with the section governing the procedure for recounts (AS 15.20.480). The amendments remove the conflict in accordance with provisions established under AS 15.20.480. (Sections 9 through 12)
- 9) Delete unnecessary requirement for "+" signs on computer type ballots. (Section 13)
- 10) Place in statute current requirements for stating residency address and length of residency on declaration of candidacy forms. (Section 14)
- 11) Delete provision that requires candidate to state that he/she has not filed another declaration of candidacy for the office for which this declaration is filed. (Section 14)

Taken literally, the current oath means that no candidate can withdraw his/her declaration, resubmit a new one, or make any changes in his/her candidacy declaration.
- 12) Amend statute to allow declaration of candidacy forms and conflict of interest forms to be filed on same date (rather than simultaneously) because they are filed at separate locations. (Section 14)
- 13) Change deadline for removal of a name from the primary ballot from 40 days to 48 days. (Section 15; Sections 16 through 19 and Section 22 contain conforming amendments.)
- 14) Change period in which a candidate's place on the ballot may be filled by party petition from 45 days to 50 days if vacancy occurs after June 1 of election year. (Section 16)
- 15) Change filing deadline for third party candidates from June 1 to August 1 for the general election - Superior Court has held June 1 deadline to be unconstitutional. (Section 20)

- 16) Place in statute current requirement for stating residency address and length of residency on nominating petition and delete provision that requires candidate to state that he/she has not filed another nominating petition to conform to language in Section 14. (Section 21)

Bill/Resolution History

BILL: SB 43

NAME: CSSB 43(SA)

TITLE: "An Act relating to conduct and administration of elections by the director of elections."

PRIME SPONSOR: POURCHOT

CURRENT STATUS: (H) JUD

STATUS DATE: 04/05/89

	Jrn-Date	Jrn-Page		Action
1	12/30/88		(S)	PREFILE RELEASED
2	01/09/89	21	(S)	READ THE FIRST TIME - REFERRAL(S)
3	01/09/89	21	(S)	STATE AFFAIRS, THEN JUDICIARY
4	02/07/89	340	(S)	STA RPT CS 3DP 1NR NEW TITLE
5	02/07/89	340	(S)	ZERO FISCAL NOTE PUBLISHED
6	03/15/89	791	(S)	ZERO FISCAL NOTE TO CS PUBLISHED
7	03/15/89	791	(S)	JUD RPT 4NR (STA)CS
8	03/15/89	791	(S)	PREVIOUS ZERO FISCAL NOTE TO CS
9	03/17/89	831	(S)	RULES TO CALENDAR
10	03/17/89	837	(S)	READ THE SECOND TIME
11	03/17/89	837	(S)	STA CS ADOPTED UNAN CONSENT
12	03/17/89	838	(S)	ADVANCED TO THIRD READING UNAN CONSENT
13	03/17/89	838	(S)	READ THE THIRD TIME CSSB 43(SA)
14	03/17/89	838	(S)	PASSED Y17 N- X2 A1
15	03/17/89	842	(S)	TRANSMITTED TO (H)
16	03/20/89	677	(H)	READ THE FIRST TIME - REFERRAL(S)
17	03/20/89	677	(H)	STATE AFFAIRS, JUDICIARY
18	04/05/89	866	(H)	STA RPT 4DP 2NR
1	04/05/89	866	(H)	PREV SEN ZERO FN/ANALYSIS (ELECT)3/15/89
2	04/05/89	866	(H)	REFERRED TO JUDICIARY

CS SB 43 (SA)

"An Act relating to conduct and administration of elections by the director of elections."

The amendments contained in CS SB 43 (SA) will affect the following:

1) VOTER REGISTRATION:

Section 1 (required registration information)
Section 2 (procedures for registration)
Section 3 (" " ")
Section 4 (procedures for reregistration and amendment and transfer of registration)

2) PRECINCT BOUNDARIES AND POLLING PLACES

Section 5 (precinct boundaries and polling places modified by director)

3) PREPARATION OF BALLOTS AS IT RELATES TO JUDICIAL RETENTION CANDIDATES

Section 6 (preparation of official ballots)
Section 23 (placing name of supreme court justice on ballot)
Section 24 (placing name of judge on the court of appeals on ballot)
Section 25 (placing name of superior court judge on ballot)
Section 26 (placing name of district judge on ballot)

4) ABSENTEE VOTING

Section 7 (absentee voting by personal representative)
Section 8 (absentee voting by mail)
Section 9 (" " ")
Section 10 (" " ")
Section 11 (procedure for state review)
Section 12 (procedure for recount)

5) PUNCH-CARD BALLOTS

Section 13 (rules for counting punch-card ballots)

6) INFORMATION REQUIRED ON DECLARATION OF CANDIDACY FORMS AND NOMINATING PETITIONS

Section 14 (declaration of candidacy)
Section 21 (requirements for petition)

7) REPLACEMENT OF CANDIDATES

Section 15 (removal of name from primary ballot)

Section 16 (nomination by party petition where
incumbent dies or is disqualified or
incapacitated)

Section 17 (" " " " ")

Section 18 (filling vacancies by party petition)

Section 19 (requirements for party petition)

Section 22 (withdrawal of candidate's name)

8) FILING DEADLINE FOR THIRD PARTY CANDIDATES

Section 20 (date of filing petition)

Sen. Pat Pourchot
April 5, 1989

SUMMARY

CS SB 43 (SA)

"An Act relating to conduct and administration of elections by the director of elections."

Section 1. Existing statutes require each applicant who registers to vote to provide information on the length of residency in the state and the election district. However, the official absentee voter registration application and absentee ballot application provided by the federal government for overseas and military voters does not specifically request this information. If the required information is not included on the federal form the Division must contact the applicant and request the person to reapply in accordance with existing law.

Section 1 amends the statutes so that the term of residence in Alaska and in the election district need only be provided if requested.

Section 2. Current statute requires that registration forms received through the mail must be postmarked 30 days before the next election. Because mail often lacks a postmark or the postmark is unreadable, the amendment would delete the reference to the postmark and require that the completed voter registration form be received by the director of elections 30 days prior to the next election.

The amendment would have no effect on persons living within Alaska since the 30 day cutoff for registration is the controlling element with regard to their eligibility to vote in a specific election. The Division would still retain the option of requesting the information in cases where it was deemed necessary to establish voter eligibility - whether for overseas or instate voters.

Section 3. Amends statutes relating to incomplete or inaccurate registration forms to conform to language in Section 2.

Section 4. Current law states that a voter who has changed one's name but wishes to vote under the new name must reregister 30 days prior to the next election.

Questions concerning this section of the statute were raised in the 1986 Fischer/Uehling recount. The Supreme Court ordered the ballots counted of those voters who voted under their new name but had not updated their registration records as required by law.

In order to clarify this statute, the proposed amendment allows a voter to vote under one's previous name OR to vote a questioned ballot if the voter wishes to use his/her new name.

Statutory citations regarding handmarked ballots contain no such descriptive language and no other sections of the election law contain any reference to this "plus sign."

The amendment would eliminate the necessity for printing two versions of the same ballot where there is both punch card voting and handmark voting in the same district and will result in a savings of approximately \$2,000 in ballot printing costs.

Section 14. These amendments would (1) place in statute current requirements for stating residency address and length of residency on declaration of candidacy forms; (2) delete the requirement that candidate not have "filed" a previous declaration (what is intended is that the candidate not have another declaration "on file"); and (3) allow declaration of candidacy forms and conflict of interest forms to be filed on same date (rather than simultaneously) because they are filed at separate locations.

Section 15. Current statutes set the deadline for withdrawal of a candidate's name from the ballot or the replacement of a name on the ballot 40 days prior to the election.

This severely constricts to three weeks the time in which to prepare, print and distribute ballots across the state. In cases where a lawsuit is filed contesting a candidate's eligibility the time frame can be further reduced.

The amendment proposes to change the deadline from 40 to 48 days. This would significantly improve the Division of Elections' ability to meet their statutory deadlines which are dependent on completion of ballot printing.

Section 16. The first amendment would change the period in which a candidate's place on the ballot may be filled by party petition from 45 days to 50 days if the vacancy occurs after June 1 of election year. This is to allow parties a few days leeway to select replacement candidates. The second is an amendment to conform to language in Section 15.

Sections 17 through 19 and Section 22. Amends statutes to conform to language in Section 15.

Section 20. The current filing deadline for the general election for third party candidates is June 1. A recent Superior Court decision has held this deadline unconstitutional. This amendment would change the filing deadline from June 1 to August 1.

Section 21. This amendment would place in statute the current requirement for stating residency address and length of residency on nominating petition and would delete the provision that requires candidate to state that he/she has not filed another nominating petition (see explanation in Section 14).

Section 5. This new subsection directs the director of elections, whenever possible, to send written notice of any change in a precinct boundary or polling place to each affected registered voter to mitigate any inconvenience caused a voter because of a change in polling place.

Sections 6, and 23 through 26. These sections remove the requirement that judicial retention candidates be printed on a separate nonpartisan judicial ballot.

In territorial days when elections involved closed partisan races, it was necessary to print the judicial retention candidates on separate nonpartisan ballot cards. Because we now include candidates of all parties on the same card - the card is essentially nonpartisan. The Court System has no problem with the proposed amendment.

Based on a review of the 1986 general election, 14 districts would have required the printing of only 2 ballot cards if the judicial candidates had been printed on the same card as other candidates. This would have resulted in a savings of nearly \$15,000 in ballot printing costs.

Section 7. Current law requires that an election official record the date and time an absentee ballot is provided and received. This amendment eliminates the unnecessary requirement to record the time - which serves no useful purpose.

Section 8. This amendment would extend the application period for absentee ballots by requiring that applications be received not later than 4 days prior to the election, rather than post-marked 10 day prior to the elections. (See explanation in Section 2.)

Sections 9 through 12. Statutes governing "absentee voting by mail" require the counting of absentee ballots mailed from within the U.S. if received by the 10th day after the election. If mailed outside the U.S. or from a military APO/FPO address they must be counted if received by the 15th day after the election.

However, under the statutes governing "procedures for recount" absentee ballots received 15 days following an election but before the completion of the recount must be counted - no provision is made for the counting of absentee ballots that are mailed from within the U.S. but are received between the 10th and 15th day following an election.

The proposed amendments would remove this conflict by allowing, in a recount, the counting of absentee ballots received after the statutory deadline but before the completion of the recount.

Section 13. This amendment is "housekeeping" in nature. The section proposes the deletion of references to language "designated by a plus sign" when describing the square box in which the voter punches the ballot. The plus sign serves no purpose.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM

February 9, 1989

SUBJECT: The conduct and administration of elections
by the director of elections
[CSSB 42 (State Affairs)]

TO: Senator Pat Pourchot

FROM: Richard A. Bradley *RB*
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill amends AS 15.07.060(a) (required voter registration information). It moves from paragraph (a)(4) (required information) to paragraph (a)(2) (optional information, "if requested") the requirement that information be provided on the term of residence in the state and in the district. For most voting registration purposes, the length of residence, either in the state or in the district, is irrelevant. See, in this connection, the amendments to secs. 2 - 3 of the bill.

Section 2 of the bill amends AS 15.07.070(c) (procedure for registration). The amendment requires that a voter registering by mail make certain that the registration forms be received (and not postmarked) 30 days before the election. The experience of the division of elections is that 30 percent of registrations received by mail are not postmarked and thus it is impossible in those cases to determine whether the registration is proper.

Section 3 amends AS 15.07.070(f). The section deals with incomplete registrations and achieves the same goal as sec. 2 of the bill.

Section 4 of the bill amends AS 15.07.090(a) to alter the procedure under which a voter whose name is changed (by court order or by marriage) may vote. Existing law requires that the voter notify the division of election 30 days before the election or vote under the old name. Under the amendment, the voter may vote a questioned ballot.

Section 5 of the bill amends AS 15.10.020 by adding a new subsection (b). The section provides that "whenever possible," the director shall send written notice of a change in a precinct boundary or polling place to affected voters.

Section 6 of the bill amends AS 15.15.030(10). The goal of the amendment was to eliminate the requirement that judicial retention election ballots be printed on a separate ballot. In that connection note that art. IV, sec. 6 of the Alaska Constitution requires that the retention ballot be "nonpartisan"; presumably this means that judges may not appear on the ballot used for the election of the political officers of the state.

Note in this connection the conforming amendments later in the bill at secs. 23 - 26 of the bill.

Section 7 of the bill amends AS 15.20.071(d). The law relates to absentee voting by personal representative. It amends out the existing requirement that the election official record the "time" that the absentee ballot is provided and returned; it continues the requirement that the date be recorded when the ballot is provided and adds the requirement that the date when the ballot is returned be recorded.

Section 8 of the bill amends AS 15.20.081(b). It substitutes a requirement that an absentee ballot application be "received by the division not less than four days before the election" in place of the former "postmarked not less than ten days before the election".

Section 9 amends AS 15.20.081(e). The existing provisions of AS 15.20.081(e) establish the policy that an absentee ballot from within the United States not be counted unless it is received by the election supervisor by the close of business on the tenth day after the election. As amended,

the bill establishes the policy that if received after the tenth day but before the completion of a recount, the ballot would be counted. See also the amendment to AS 15.20.480.

Section 10 amends AS 15.20.081(h). The existing provisions of AS 15.20.081(h) establish the policy that an absentee ballot from outside the United States or from a military APO or FPO address not be counted unless it is received by the election supervisor by the close of business on the 15th day after the election. As amended, the bill establishes the policy that if received after the 15th day but before the completion of a recount, the ballot would be counted. See also the amendment to AS 15.20.480.

Section 11 of the bill amends AS 15.20.220(b). The amendment conforms the section to changes made to AS 15.20.081(e) and (h) several years ago regarding the times within which absentee ballots must be received after an election.

Section 12 of the bill amends AS 15.20.480. The section is, I believe, a section that was omitted from an earlier revision of the election recount procedure dates. With the amendment of this section, the general law on the counting of absentee ballots received after an election is now controlled by AS 15.20.081(e) and (h) unless there is a recount. In that case, AS 15.20.480 controls.

Section 13 of the bill amends AS 15.20.730(b). The elimination of the references to "plus signs" is designed to remedy a confusion: The existing law talks about "punches" and "plus signs" and the question has been which controlled.

Section 14 of the bill amends AS 15.25.030. The first amendment, to AS 15.25.030(a)(8) clarifies the intent of the paragraph. Under present law, the candidate is not required to state the length of residency in the state and in the district, but rather only that the candidate "will meet" the residency requirements. This test fails to comply with the requirements of the Alaska Constitution (art. II, sec. 2) that the candidate qualify "immediately preceding his filing for office." The provision as amended points up the qualifications required.

The second amendment, to AS 15.25.030(14), deletes the requirement that the candidate not have "filed" a declaration previously; what is intended is that the candidate not have

another declaration "on file" and, as amended, the section achieves this goal.

The third amendment, to AS 15.25.030(b), conforms the language of the section to the practical reality that a candidate cannot do two separate things "simultaneously."

Section 15 of the bill amends AS 15.25.055. It requires a candidate in the primary election to give notice of a withdrawal from the primary election 48 days before the election. The earlier notice is for the better management of the primary election and the preparation of the ballots.

Section 16 of the bill amends AS 15.25.056(a) (filling vacancy for primary after death, etc., of unopposed incumbent primary candidate). The amendment conforms the section to changes made earlier in section 15 of the bill; unlike the other sections that establish the 48 day threshold, however, this gives the political party two extra days to qualify.

Section 17 of the bill amends AS 15.25.056(c) (filling vacancy for primary after death, etc. of unopposed incumbent primary candidate). The amendment conforms this section to the changes made earlier in bill section 15.

Section 18 of the bill amends AS 15.25.110 (filling a vacancy after party nomination). The amendment conforms this section to the changes made earlier in bill section 15.

Section 19 of the bill amends AS 15.25.120 (filling a vacancy after the primary nomination). The amendment conforms this section to the changes made earlier in bill section 15.

Section 20 of the bill amends AS 15.25.150. Section 20 delays until August 1 the date for filing nominating petitions by "no-party" candidates responsive to the decision of the Superior Court in Anchorage in the Sigler case.

Section 21 of the bill amends AS 15.25.180. The section amends the requirements of "no-party" petitions consistently with the first two amendments to section 14, above.

Section 22 of the bill amends AS 15.25.200 (withdrawal of candidate's name on general election ballot). The amendment conforms this section to the changes made earlier in bill section 15.

Senator Pat Pourchot
Page 5
February 9, 1989

Section 23 of the bill amends AS 15.35.050. It eliminates the requirement that the retention election for supreme court justices be on a judicial ballot; as suggested earlier, there is still a requirement that the ballot be nonpartisan.

Section 24 of the bill amends AS 15.35.059. It eliminates the requirement that the retention election for court of appeals judges be on a judicial ballot; as suggested earlier, there is still a requirement that the ballot be nonpartisan.

Section 25 of the bill amends AS 15.35.090. It eliminates the requirement that the retention election for superior court judges be on a judicial ballot; as suggested earlier, there is still a requirement that the ballot be nonpartisan.

Section 26 of the bill amends AS 15.35.130. It eliminates the requirement that the retention election for district court judges be on a judicial ballot; as suggested earlier, there is still a requirement that the ballot be nonpartisan.

If I may be of further assistance, please advise.

RAB:gc
WKG7/004

FISCAL NOTE

REQUEST:

Revision Date: 2/7/89
Title: An Act relating to the administration of elections by the director.
Sponsor: Pourchot
Requestor: Pourchot

Agency Affected: Office of the Governor
BRU: Elections
Components: I - Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-*	-0-	-0-*	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE	-0-	-0-	-0-*	-0-	-0-*	-0-
---------	-----	-----	------	-----	------	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-*	-0-	-0-*	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-*	-0-	-0-*	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: Linda Edgeworth
Division: Division of Elections

Phone: 465-4611
Date: 2/9/89

Approved by Commissioner: *Linda Edgeworth*
Agency: Division of Elections

Date: 2/9/89

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION OF FISCAL NOTE

CSSB 43 (SA) AM

Division of Elections

The Division of Elections anticipates that this bill would generate a cost savings in one area while and causing an expenditure in another area resulting in a general offset with no increase in funding required.

- A. Costs would be incurred in the notification of voters of polling place or precinct boundary changes. These costs would cover the printing of a computer self-mailer and 1st class postage.

Based on the prior bid awards for printing of similar forms, printing would come to \$0.069 per unit and postage is figured at \$.25 per item.

In 1986, for example 65 polling places were changed impacting 44,070 voters.

At approximately \$.32 per item the cost of mailing these notices would have been \$14,102.

- B. The cost saving provisions relate to the elimination of the requirement for a separate judicial card, and elimination of the "+" sign on punch card ballots. The savings estimated would be about \$115.00 per thousand ballot cards. With that in mind, a review of the cost savings for the 1984 and 1986 elections, for example, would have been:

1984	(14.8)
1986	(18.1)

COMMENTS IN SUPPORT OF
CSSB 43 (SA) AM

Prepared by
The Division of Elections
February 9, 1989

TITLE: "An act relating to conduct and administration of elections by the director of elections; and providing for an effective date.

SPONSOR: The Honorable Pat Pourchot
Alaska State Senator

Senate Bill 43 is primarily a housekeeping bill which outlines technical amendments to the Alaska Election Code to clarify procedures related to the administration of elections. The Division of Elections has reviewed Senate Bill 43 and supports its provisions.

Section 1:

This section clarifies the statutory provisions about the "length of Alaska and district residency" information which is provided by voters at the time they register to vote. Its provisions authorize the Division to continue to request information about length of residence, but does not make failure to provide the information automatic grounds for rejecting the application for registration.

A voter may register to vote at any time. The criteria for voting in a specific election is that they must be properly registered 30 days prior to the election. The 30 day cut off for registration is the controlling element with regard to a voter's eligibility to vote in a specific election.

As a practical matter, under the Uniformed and Overseas Citizens Absentee Voting Act, the federal government prescribes an official post card form which contains both absentee voter registration application and an absentee ballot application. The form used by overseas and military voters does not specifically request length of residency.

Nearly 4,000 Federal Post Card Applications were received this year, and approximately 75% had to be rejected simply because the voter did not include his or her length of residency. Each of these voters had to be written a letter requesting them to complete new forms which included the length of residency information. As we get closer to an election a large group of voters may be disenfranchised

under the current law because there is insufficient time for mail turnaround.

Sections 2 and 3:

These sections are conforming amendments related to the acceptance of registration forms which are submitted by mail. The current statutes provide that the effective date of a registration application sent by mail is the date of the postmark. Experience shows that nearly 30 percent of mail received by the Division has no readable postmark. The amendment provides that the person's registration takes effect on the date the application is received by the Division of Elections. This measure will also allow for an absolute 30 day cutoff for preparation of the precinct registers.

Additionally, voters frequently return by mail registrations and updates in an envelope. Requirement that the postmark date be the date of registration for by mail registrants adds a cumbersome and costly administrative burden to the division because it requires retention of envelopes with the applications, and/or microfilming of both sides of each application form to maintain a permanent record of the postmark, if one is affixed.

Section 4:

The provisions of this section eliminates the current requirement that voters who change their names may vote under their previous name, but must update their registration record 30 days prior to the election in which they seek to vote, in order to vote under their new names. The Supreme Court, in Fischer vs. Division of Elections directed the Director to count the ballots of voters who voted under their new names, but had not updated their registration as required by statute. The amendment conforms to the courts ruling on this issue.

Section 5:

This section provides that voters impacted by polling place or precinct boundary changes be sent notification of the changes prior to the elections whenever possible. This notification should be beneficial in ensuring that voters know where to vote on election day.

Sections 6, 23, 23, 25 and 26:

These sections relate to the current requirement that judicial retention candidates be placed on a separate ballot. Often there is adequate space on other ballot cards

to include the judicial candidates for a specific district. While several districts consistently require printing of a third card during a general election, we anticipate that in any given elections year, 1/3 to 1/2 of the districts in the state could be accommodated with just 2 ballot cards if the requirement for a separate card for judicial candidates were eliminated. Potentially, this amendment could save \$10,000 to \$15,000 in ballot printing costs for general elections.

Section 7:

This section simply eliminates the requirement that a record be kept of the actual time an absentee by personal representative ballot is returned to the election official. The date on which the ballot is returned is sufficient to ensure that the ballot is returned on time, and the requirement that the actual time be recorded is left over from the statutes which at one time required that the personal representative ballot be returned within a specific time period from the date it was issued.

Section 8:

The amendment to this section removes the requirement that applications for absentee ballots be postmarked 10 days prior to the election, but, rather sets a deadline for receipt of the application. This clarification serves to clearly state for the voter, an absolute deadline rather than a flexible one subject to circumstances of mail delivery. It also brings closure to the final mailing of absentee ballots for the Division.

Sections 9, 10, 11 and 12:

These provisions clarify the deadlines for receipt of absentee ballots for inclusion in the count of absentee ballots prior to certification of the election, and clearly provides for the counting of timely voted ballots received after the prescribed deadlines in recounts. The deadline for receipt of absentee ballots mailed from within the United States is 10 days after election day, while overseas ballots, and ballots mailed from APO or FPO addresses may be received up to 15 days after the election. When the statutory deadlines were amended in 1986 as part of House Bill 284, a technical omission to the provision for counting late ballots in recounts only addressed ballots received after the 15 day deadline and left a technical window for ballots received between the 10th and 15th day. This bill corrects this deficiency.

It should be noted that concern has been expressed on a number of occasions that including late ballots in recounts

opens a potential for fraudulent use of the absentee program because almost 1/3 of mailed ballots have been found to have no readable postmark. With more and more voters using the by mail voting program, and greater access to absentee voter lists that indicate whether or not the voter has returned a voted ballot, there is concern that greater opportunity exists to "work" the absentee lists to solicit voters who did not return their ballots to cast them after election day, where races are very close, potentially impacting the outcome of the recount.

Section 13:

This bill deletes reference to a "+" sign which appears in the punch boxes in computer type ballots. The "+" sign serves no real purpose, but does require us to print two versions of the same ballot in districts where some precincts vote punch cards and some precincts vote hand marked ballots.

Sections 14 and 21:

The amendments in this section relate to candidates and their filings of Declarations of Candidacy or Nomination Petitions.

Length of residency is of specific importance in relation to candidacy filings and candidate eligibility to run for office. Therefore, information about length of residency should be made part of the filing requirement.

With regard to the technical amendment to Section (b), the conflict of interest documents are accepted with the Declaration of Candidacy by the Director of Elections, however, they are really supposed to be filed directly with APOC. The word "simultaneously" is not appropriate when the documents are actually filed at two separate locations.

Additionally, a new section would have to be added to address your concerns about candidates who withdraw their filings to refile for another seat, withdraw their declarations to file nominating petitions for the general election, or who amend their registrations and declarations of candidacy at the last moment before the filing deadline. Perhaps the simplest way to address these concerns is to provide specifically for the amendment of filings and stipulate a deadline for such amendments.

The second difficulty with the current statutes is in subsection 14 of AS 15.25.030 which requires that the candidate, under oath, state in substance that "he is not a candidate for any other office to be voted on at the primary or general election, and that he has not filed another declaration of candidacy or

nominating petition for the office for which this declaration is filed." As indicated above, perhaps the second part of the statement should be deleted from the statutes. As you know, it is not uncommon for a candidate to file for office quite early. If the oath is to be taken literally, it would mean that no candidate would ever be able withdraw his or her declaration to resubmit a new one, or to make any change his or her candidacy declaration. This may not be practical.

Sections 15, 16, 17, 18, and 19:

These sections suggest conforming amendments to the deadline for withdrawal of a candidate's name from the ballot, or replacement of a name on the ballot prior to an election. The amendments change the deadline from 40 days to 48 days prior to the election. The Division supports this change. The 40 day deadline severely constricts the actual time frame in which ballots must be typeset, proofread, printed and distributed. For example, for general elections, the existing deadline allows only 10 days for preparing camera ready samples of each finalized ballot for inclusion in the Official Election Pamphlet which, by statute must be mailed to voters 30 days prior to the election.

In addition, by mail absentee voters should be mailed their ballots at least three full weeks before election day, and absentee in person voting starts 15 days before each election. That means that even in primary elections, allowing adequate shipping time for rural absentee sites, and adequate preparation for mass mailing of by mail ballots, the Division has at best, three weeks in which to finalize, typeset, proofread, print, receive and sort, and finally distribute and ship ballots across the State. This tight three week period can be further dwindled in situations where lawsuits are filed contesting a candidate's eligibility which is a common occurrence in major election years.

Section 16 provides a 2 day window for the replacement of a candidate by party petition if the candidate withdraws, dies or becomes incapacitated 50 days prior to the primary elections.

Section 20:

This amendment responds to the Superior Court's decision in Sigler et al. vs. State of Alaska in which the June 1 filing deadline for no-party and independent candidates was found to be unconstitutional. While the State has appealed the

ruling to the Supreme Court, no opinion has been rendered. Therefore, there is no enforceable deadline provided for in law at this time. The amendment seeks to remedy this critical deficiency by setting the filing deadline for these candidates at August 1.

February 9, 1989
Date

Sandra J. Stout
Sandra J. Stout
Director

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE (907) 465-3600

March 2, 1989

Honorable Pat Pourchot, Chair
Senate State Affairs Committee
P.O. Box V
Juneau, AK 99811

Re: SB 43; Party affiliation ap-
pearing on official election
ballot

Dear Senator Pourchot:

Sometime ago I appeared before your committee to testify regarding SB 43, relating to elections procedures. Senator Faiks requested our opinion concerning the legality of a proposed provision that would limit the types of words that could be used to describe a candidate's political affiliation on the official general or primary election ballot. It was suggested that a statute could be enacted prohibiting the words "Democrat" and "Republican" from use on the ballot to describe the party affiliation of a candidate unless the candidate was either seeking the nomination or was nominated by the Democratic or Republican parties of the state.

Based on our research, the provision under consideration by Senator Faiks and your committee would not be lightly regarded by our courts and the state would have to bear a very heavy burden of proving some compelling interest in maintaining the prohibition. While there is no controlling authority on point in Alaska, two prominent cases decided outside the state would probably provide very persuasive authority here.

In Bachrach v. Secretary of the Commonwealth, 415 N.E.2d 832 (Mass. 1981), the Supreme Judicial Court of Massachusetts struck down a statute that prohibited the use of the word "independent" on the ballot to describe the political affiliation of a candidate. The court reasoned that ballot descriptions of political affiliation are a form of protected free speech. If the election code allows candidates to state political affiliation on the ballot, any attempt to regulate the content of that speech becomes repugnant to constitutional principles of freedom of expression and associational rights. 415 N.E.2d at 835.

In another case with facts closer to the proposal under consideration by the committee, the Fifth Circuit Court of Appeals struck down a Mississippi statute that prohibited a politi-

Honorable Pat Pourchot, Chair
Senate State Affairs Committee
Re: SB 43; Party affiliation

March 2, 1989
Page #2

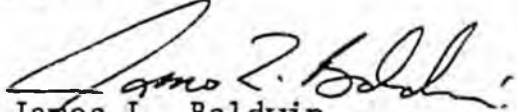
cal party from using any name or part of a name which had been previously registered by another political party. Riddell v. National Democratic Party, 508 F.2d 770 (5th Cir. 1975). In Mississippi, members of the previously registered "Democratic Party of the State of Mississippi" did political battle over the leadership of the party. The "regulars" and "loyalists" split into factions with the "loyalists" forming the Freedom Democratic Party. The federal court determined that the offshoot party needed reference to "Democratic" as a designation to effectively compete with the other organization. The statute was struck down using strict scrutiny. The court concluded that the state failed to show a compelling interest.

Another case bearing on this issue, although not involving ballot language, is Cohen v. California, 403 U.S. 15 (1971). In Cohen, the U.S. Supreme Court reversed a criminal conviction of a person who described the military draft using a scatological term. The court refused to "indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process." 403 U.S. at 26. The Court was suspicious that "governments might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views." Id.

In summary, there are well-recognized legal grounds for successfully attacking a limitation of the use of certain words to describe political affiliation on an official election ballot. We hope this memorandum will serve the purposes of the committee.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
James L. Baldwin
Assistant Attorney General

JLB/pjg

cc: Hon. Jan Faiks
Hon. Rick Uehling
Alaska State Senate
Senate State Affairs Committee
Sandra Stout, Director
Division of Elections
Arthur H. Peterson
Assistant Attorney General
Department of Law

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 3, 1989

SUBJECT: Election issues
TO: Senator Pat Pourchot
FROM: Richard A. Bradley
Legislative Counsel

Jeannie has asked that I comment briefly on two issues.

The first is the use of party names: May the legislature prohibit a candidate or party from using a word in a nominating petition that is also used in the name of an existing political party in the state?

I am aware of the use of the phrase "Moderate Republican" by Ray Metcalfe and, I believe, of the phrase "Bull Moose Republican" by Tuckerman Babcock. Each was a candidate for the legislature.

I believe that the legislature may enact a law that would prohibit a candidate from using unmodified names when the individual is not a candidate of the party. Thus only those who go through the primary could be prohibited from using the phrase "Republican" or "Democratic."

But there may be more difficulty with predicting that the court will prevent candidates from calling themselves "Moderate Republicans" or "Social Democrats." There is an American political party known as, I believe, the Democratic Socialists of America, lead by Michael Harrington; they are too well established to be prevented from the use of the word "Democratic".

Everything that is affected with First Amendment rights is closely scrutinized by the courts and I believe that the answer might well be that the voters can tell real Democrats from hyphenated Democrats.

Senator Pat Pourchot
Page 2
February 3, 1989

But it is a close question and you should note that it has been the law of the state for a number of years that a "limited political party" [AS 15.30.025(b)] may not "assume a name which is so similar to an existing political party as to confuse or mislead the voters at an election." While restrictions on First Amendment freedoms are closely scrutinized, the legislature acts in the public interest when it requires parties to identify themselves fairly and without confusing or misleading the voters.

The second question that you asked that I comment on would be the choice of August 1 for the deadline for "no-party" candidates to file their nominating petitions.

The question arises under the Sigler opinion of the Superior Court, at Anchorage, Case No. 3AN-88-8695-CI. The case arose out of the efforts of Libertarians to qualify for the ballot later than other candidates.

The Superior Court decision ordered the Division of Elections to admit the candidates to the ballot; the decision was issued in early September. While I understand that Tuckerman Babcock did not intervene in this litigation, he benefited from it and used the order of the court for his entry on the ballot.

I understand that the decision has been appealed and thus, the comments may need review on the decision by the Supreme Court.

But the Superior Court stated that the basis for third parties was the failure of the main-line parties to represent all interests. The court noted that this perceived disenchantment arises after the nomination of the main-line candidates. Its authority for this decision is Anderson v. Celebrezze, 460 U.S. 780 (1983), a case involving third party candidates for president. While the court thought the case was on point, it seems to me that the analogies between state legislative races and the presidential races offers little value. And it noted that the Anderson case required third party candidates to qualify earlier than main-line candidates.

Alaska does not require its third-party candidates to qualify earlier but at the same time as main-line candidates.

Senator Pat Pourchot
Page 3
February 3, 1989

The court also cited an Eighth Circuit case, McLain v. Meier, 637 F.2d 1159 (8th Cir., 1980). That case stated that since the third party candidates arise as a reaction to main-line candidates, it was unreasonable to require them to qualify before the primary results were available.

The trial court noted that a more recent case, Rainbow Coalition v. Oklahoma State Election Board, 844 F.2d 740 (10th Cir., 1988) was contra, but it declined to follow the more recent case.

I note that if the trial court decision is followed, an August 1 deadline for third party candidates is too early since it does occur before the primary election.

But I suggest that it is undesirable to rely too heavily on the trial court decision in preparing legislation. I would await the decision by the Supreme Court.

If I may be of further assistance, please advise.

RAB:lmb
L6/161

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

January 30, 1989

Hon. Pat Pourchot
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: SB 43 -- conduct and administration of elections

Dear Senator Pourchot:

At your request, I have reviewed SB 43, relating to the conduct and administration of elections by the director of elections. Generally, the amendments proposed by this bill are beneficial and would greatly assist the division of elections (division) in the performance of its duties. However, the amendment to AS 15.25.056(a) set out in sec. 12 of the bill may need further clarification.

Under existing law, if an incumbent fails to remain in the race, a political party may petition to add another candidate. This right to replace a candidate applies only if the termination of candidacy occurs during a specific period of time. The period ends five days before the withdrawal deadline. This bill would lengthen the period to a date "which is more than 54 days" before the primary election. I interpret this to mean midnight of the 55th day before the primary election day. If that is not your intent, let me know and I will draft a conforming amendment.

Section 11 of the bill would change the withdrawal deadline to the 54th day before the primary election day. The amendments set out in secs. 11 and 12 would shorten the gap to 24 hours. I presume the time gap is intended to allow a political party enough time to convince a qualified candidate who has filed for another incompatible office to withdraw and replace the fallen incumbent by petition. I am unable to offer advice whether allowing more time for such a withdrawal is beneficial or harmful to the electoral process. I have observed that it is common for political decisions concerning candidacy to be left until the final minutes before a deadline expires. It seems to me that the wisdom of allowing a longer period is a policy call that is best left to the legislature.

I also suggest that you consider amending AS 15.20.203

Hon. Pat Pourchot
Alaska State Senate
Re: SB 43, conduct/admin. of elections

January 30, 1989
Page #2

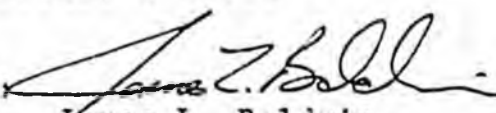
and 15.20.207 to include express authority for a ballot counting procedure that has been used recently for elections where the post-election returns indicate that a recount will be performed by the division. These sections set out the procedures for counting questioned and absentee ballots at the district level. As you know, the candidates in a close race often appear before the district review board and challenge ballots for various reasons. The board then decides whether to count a challenged ballot. Often these challenges encompass legal issues that apply to identifiable pools of ballots. We have advised the director that she may segregate ballot pools relating to a single legal issue through the recount if ballot secrecy can be maintained. However, there is no express authority for this procedure in statute.

Under the procedure used, the ballots will be counted but not commingled with all ballots counted for a race. If the election is contested in court, there is a much higher likelihood that the court will not order a new election if this procedure is used. If the court disagrees with the decision of the director to either count or not count ballots in the pool, the official totals of the candidates can be ordered changed. If the ballots are commingled, then the only remedy left to the court is to use the proportional reduction test to determine if the improperly counted ballots affected the outcome of the election. We believe that the procedure used allows the court to decide the outcome of an election based on the votes cast. I would be pleased to prepare an amendment to this bill to provide express authority for the procedure described above.

I hope that you will find these comments useful.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
James L. Baldwin
Assistant Attorney General

JLB/pjg

cc: Sandra Stout, Director
Division of Elections
Arthur H. Peterson
Assistant Attorney General
Department of Law
Bob Evans, Legislative Liaison
Office of the Governor

ALASKA ELECTION LAWS

Reprinted From the Alaska Statutes, Title 15

As of January 1, 1987

Division of Elections

● State of Alaska



ALASKA ELECTION LAWS

ALASKA STATUTES

Title 15. Elections

Chapter

Section

- 05. Qualification of Voters (§§ 15.05.010 -- 15.05.040)
 - 10. Voter qualification
 - 11. Qualifications of overseas voters
 - 12. Voter qualification for presidential election
 - 14. Procedures in presidential elections
 - 16. Obsolete
 - 20. Rules for determining residence of voter
 - 30. Loss and restoration of voting rights
 - 40. Voter disqualification for unsound mind

- 07. Registration of Voters (§§ 15.07.010 -- 15.07.200)
 - 10. Registration of voters
 - 20. [Repealed]
 - 30. Who may register
 - 40. Time for registration
 - 50. Registration in person or by mail
 - 60. Required registration information
 - 65. [Repealed]
 - 70. Procedure for registration
 - 80. [Repealed]
 - 81. Registration officials
 - 90. Reregistration and amendment and transfer of registration
 - 100. Registration officials
 - 110. Payment for registration
 - 120. Custody of registers
 - 125. Official registration list
 - 130. Elimination of excess names
 - 135. Cancellation of registration of convicted persons
 - 137. Voting information from municipalities
 - 140. General administrative supervision by director
 - 150. Appeals from denial of registration
 - 160. Unlawful action
 - 170. False statements
 - 180. Fees prohibited
 - 190. Violations
 - 200. Registration supervision

- 10. Election Districts and Officials (§§ 15.10.010 -- 15.10.180)
 - 10. Precinct boundaries initially established
 - 20. Precinct boundaries and polling places modified by director
 - 30. Uniform precinct boundaries required for state and local elections

- 40. Restriction on precinct boundary modification
- 50. General duty and standard for precinct boundary modification
- 60. [Repealed]
- 70. Precinct boundary identification
- 80. Dates for designating precinct boundary
- 90. Notice of precinct boundary designation and modification
- 100. Judicial review of precinct boundary
- 105. Administration of elections
- 107. Staff training
- 110. Appointment of election supervisors
- 120. Appointment of election board
- 125. Appointment of election boards
- 130. Appointment of clerks
- 140. Appointment of counters
- 150. Appointment of nominees for judges and clerks
- 160. [Repealed]
- 170. Appointment and privileges of watchers
- 180. Appointment of party representatives for state canvass

13. State Election Campaigns (§§ 15.13.010 -- 15.13.130)

- 10. Applicability
- 11. [Repealed]
- 20. Alaska Public Offices Commission
- 30. Duties of the commission
- 40. Contributions, expenditures and supplying of services to be reported
- 45. Investigations, hearings
- 50. Groups
- 60. Campaign treasurers
- 70. Contributions and expenditures; amount and form of payment
- 80. Statement by contributor
- 90. Identification of communication
- 100. Expenditures before filing
- 110. Filing of reports
- 120. Penalty; limitations on actions
- 122. Legal counsel
- 125. Civil penalty: late filing of required reports
- 130. Definitions

15. General Procedure for Elections (§§ 15.15.010 -- 15.15.480)

- 10. General administrative supervision by director
- 20. Date of general election
- 30. Preparation of official ballot
- 35. Printing of ballots and other material
- 40. Preparation of other election materials
- 50. Distribution of election materials
- 60. Procurement of polling places and other supplies
- 70. Public notice of election required
- 80. Time for opening and closing polls
- 90. Designation of precinct polling place
- 100. Time off for voting
- 110. General duties and oath of election board and clerks
- 120. Filling vacancies in election board

- 130. Majority decision of election board
- 140. Permitted use of unofficial ballots
- 150. Official opening of polls
- 160. Prohibition of political discussion by election board
- 170. Prohibition of political persuasion near election polls
- 180. Keeping of register
- 190. [Repealed]
- 195. Voters on official registration list
- 198. Voters not on official registration list
- 200. [Repealed]
- 210. [Repealed]
- 213. Questioning a voter's ballot
- 215. Disposition of questioned votes
- 220. Administration of oaths
- 225. Voter identification at poll
- 230. Providing ballot to voter
- 240. Assisting voter by judge
- 250. Disposition of improperly marked ballot
- 260. Placing ballot in ballot box by voter
- 270. Prohibiting the leaving of the polling place with ballot
- 280. Prohibiting the exhibition of marked ballots
- 290. Prohibiting the identification of ballots
- 300. Prohibiting the count of exhibited ballots
- 310. Official closing of polls
- 320. Voters in line when polls close
- 330. Commencement of ballot count
- 340. Report, oath and vacancies of counters
- 350. General procedure for ballot count
- 360. Rules for counting hand-marked ballots
- 361. Stickers
- 370. Completion of ballot count
- 380. Payment of election board members
- 390. Certifying election expenses
- 400. Preparation of voter list
- 410. Plural voting
- 420. Duty to review the ballot counting
- 430. Scope of the review of ballot counting
- 440. Dates for opening and closing state ballot counting review
- 450. Certification of state ballot counting review
- 460. Tie votes
- 470. Preservation of election ballots, papers, and materials
- 480. Security of ballots

20. **Special Procedures for Elections (§§ 15.20.010 -- 15.20.800)**

Article 1. Absentee Voting (§§ 15.20.010 - 15.20.220)

- 10. Persons who may vote absentee
- 15. Moving from election district just before election
- 20. Provision for general administrative supervision
- 30. Preparation of ballots, envelopes, and other material

40. Distribution of ballots, envelopes, and other material
 45. Designation of absentee voting officials and stations
 48. Absentee voting in offices of election supervisors
 50. Requirement of full public notice
 60. [Repealed]
 61. Absentee voting in person
 62. [Repealed]
 65. [Repealed]
 70. [Repealed]
 71. Absentee voting by personal representative
 80. [Repealed]
 81. Absentee voting by mail
 82. Absentee voting by mail from outside the U.S.
 90. - 150. [Repealed]
 160. Fee prohibited
 170. Disposition of ballots
 180. Names of absentee voters to be made available
 190. Appointment, duties, and compensation of district counting boards
 200. [Repealed]
 201. Time of district absentee ballot counting review
 203. Procedure for district absentee ballot counting review
 205. Time of district questioned ballot counting review
 207. Procedure for district questioned ballot review
 210. [Repealed]
 211. Counting cross-district and certain write-in votes
 220. [Repealed]
- Article 2. Voting Machines (§§ 15.20.230 - 15.20.420)
[Repealed]
- Article 3. Election Recounts (§§ 15.20.430 - 15.20.530)
430. Authorization of recount application
 440. Form of application
 450. Requirement of deposit
 460. Determination of date of recount
 470. Requirement of notice
 480. Procedure for recount
 490. Certification of results
 500. [Repealed]
 510. Provision for appeal to courts
 520. Provision for appeal to legislature or Congress
 530. Determination of tie votes
- Article 4. Election Contests (§§ 15.20.540 - 15.20.560)
540. Grounds for election contest
 550. Jurisdiction and time for contest
 560. Judgement of court

Article 5. Punch-Card Voting (§§ 15.20.590 -
15.20.740)

- 590. Appointment of officials
- 600. Party representation
- 609. Use of computers
- 610. Alternate site
- 620. Tests and security
- 630. Demonstration
- 640. Processing at polling place
- 650. Delivery of ballots to computer counting center
- 660. Receipt of ballots at computer counting center
- 670. Receipt of ballots by control board
- 680. Counting of ballots by computer
- 685. Hand counting of punch-card ballots
- 690. Alternate computer counting
- 700. Disposition of ballots
- 710. Report of partial results
- 720. Public observation
- 730. Rules for counting punch-card ballots
- 740. Questioned punch-card ballots

Article 6. Voting by Mail (§§ 15.20.800)

- 800. Voting by mail

25. Nomination of Candidates (§§ 15.25.010 -- 15.25.280)

Article 1. Primary Elections (§§ 15.25.010 -
15.25.135)

- 10. Provision for primary election
- 20. Date of primary
- 30. Declaration of candidacy
- 40. Manner and date of filing declaration
- 42. Eligibility of a candidate
- 43. Determination of residency of a candidate
- 45. Withdrawal of candidacy
- 50. Requirement of filing fee
- 55. Removal of name from primary ballot
- 56. Nomination by party petition where incumbent dies or is disqualified or incapacitated
- 60. Preparation and distribution of ballots
- 70. Special provisions on counting ballots
- 80. [Repealed]
- 90. General procedure for conduct of primary election
- 100. Placement of nominees on general election ballot
- 110. Filling vacancies by party petition
- 120. Requirements for party petition
- 130. Selection of nominees for party petition
- 135. [Repealed]

Article 2. Nomination for General Election by
Petition (§§ 15.25.140 -- 15.25.200)

- 140. Provision for no-party candidate nominations
- 150. Date of filing petition
- 160. Required number of signatures for statewide office
- 170. Required number of signatures for district-wide office

- 180. Requirements for petition
- 190. Placement of names on general election ballot
- 200. Withdrawal of candidate's name

Article 3. Presidential Party Primary Election
(§§ 15.25.220 - 15.25.280) [Repealed
1984]

30. National Elections (§§ 15.30.010 -- 15.30.120)

Article 1. President (§§ 15.30.010 -- 15.30.100)

- 10. Provision for selection of electors
- 20. Number and manner of selecting candidates
- 25. Qualifications for limited political parties
- 30. Qualification of electors
- 40. Requirement of party pledge
- 50. Interpretation of votes cast for candidates for President and Vice President
- 60. Notification of electors
- 70. Place and time of meeting
- 80. Filling of vacancies
- 90. Duties of electors
- 100. Compensation of electors

Article 2. United States Congress (§§ 15.30.110 --
15.30.120)

- 110. Provisions for election of United States senators
- 120. Provisions for election of United States representatives

35. State Elections (§§ 15.35.010 -- 15.35.170)

Article 1. Executive (§§ 15.35.010)

- 10. Election of governor and lieutenant governor

Article 2. Legislative (§§ 15.35.020)

- 20. Election of legislature

Article 3. Judiciary (§§ 15.35.030 -- 15.35.170)

- 30. Approval or rejection of supreme court justice
- 40. Filing declaration by supreme court justice
- 41. Requirement of filing fee for supreme court candidate
- 50. Placing name of supreme court justice on ballot
- 53. Approval or rejection of a judge of the court of appeals
- 55. Filing declaration by judge of the court of appeals
- 57. Requirement of filing fee for court of appeals
- 59. Placing name of judge of the court of appeals on ballot
- 60. Approval or rejection of superior court judge
- 70. Filing declaration by superior court judge
- 71. Requirement of filing fee for superior court candidate
- 80. Determination of judicial district in which to seek approval
- 90. Placing name of superior court judge on ballot
- 100. Approval or rejection of district judge

- 110. Filing declaration by district judge
- 120. Requirement of filing fee for district court candidate
- 130. Placing name of district judge on ballot
- 140 - 170. [Repealed]

40. Special Elections and Appointments (§§ 15.40.010 -- 15.40.470)

Article 1. United States Senate (§§ 15.40.010 -- 15.40.130)

- 10. Conditions and time of filling vacancy by appointment
- 20. [Repealed]
- 30. Conditions for full, unexpired term appointment
- 40. Conditions for part-term appointment and special election
- 50. Date of special election
- 60. Proclamation of special election
- 70. Term of elected senator
- 80. Selection of nominees in manner provided for general election
- 90. Designation of nominees by petition
- 100. Requirements of petition for no-party candidates
- 110. Requirements of petition by political party
- 120. Selection of political party nominees
- 130. General provisions for conduct of special election

Article 2. United States House of Representatives (§§ 15.40.140 -- 15.40.220)

- 140. Condition and time of calling special election
- 150. Condition for holding special election with primary
- 160. Proclamation
- 170. Term of elected representative
- 180. Date of nominations
- 190. Requirements of petition for no-party candidates
- 200. Requirements of party petition
- 210. Selection of party nominees
- 220. General provisions for conduct of special election

Article 3. Governor and Lieutenant Governor (§§ 15.40.230 -- 15.40.310)

- 230. Condition and time of calling special election
- 240. Conditions for holding special election with primary or general election
- 250. Proclamation of special election
- 260. Term of elected governor and lieutenant governor
- 270. Date of nominations
- 280. Requirements of petition for no-party candidates
- 290. Requirements of party petition
- 300. Selection of party nominees
- 310. General provisions for conduct of special election

Article 4. Legislature (§§ 15.40.320 -- 15.40.470)

- 320. Condition and time for filling vacancy by appointment

- 330. Qualification and confirmation of appointee
- 340. Date of office of appointee
- 350. Procedure upon rejection
- 360. Term of appointed representative
- 370. Conditions for full, unexpired term senate appointment
- 380. Conditions for part-term senate appointment and special election
- 390. Date of special election
- 400. Proclamation of special election
- 410. Term of elected senator
- 420. Selection of nominees in manner provided for general election
- 430. Designation of nominees by petition
- 440. Requirements of petition for no-party candidates
- 450. Requirements of petition by political party
- 460. Selection of political party nominees
- 470. General provision for conduct of special election

45. Initiative, Referendum and Recall (§§ 15.45.010 -- 15.45.720)

Article 1. Initiative (§§ 15.45.010 -- 15.45.245)

- 10. Provision and scope for use of the initiative
- 20. Filing the application
- 30. Form of application
- 40. Form of proposed bill
- 50. Manner of notice
- 60. Designation of sponsors
- 70. Review of application for certification
- 80. Bases of denial of certification
- 90. Preparation of petition
- 100. Statement of warning
- 110. Circulation by sponsor
- 120. Manner of signing and withdrawing name from petition
- 130. Certification of sponsor
- 140. Filing of petition
- 150. Review of petition
- 160. Bases for determining the petition was improperly filed
- 170. Submission of supplementary petition
- 180. Preparation of ballot title and proposition
- 190. Placing proposition on ballot
- 200. Display of proposed law
- 210. Determination of void petition
- 220. Adoption and effective date of proposed law
- 230. Insufficiency of application or petition
- 240. Judicial review
- 245. Delegation by lieutenant governor

Article 2. Referendum (§§ 15.45.250 -- 15.45.465)

- 250. Provision and scope of use of referendum
- 260. Filing application
- 270. Form of application
- 280. Manner of notice
- 290. Designation of sponsors
- 300. Time of review of application for certification

- 310. Bases of denial of certification
- 320. Preparation of petition
- 330. Statement of warning
- 340. Circulation by sponsor
- 350. Manner of signing and withdrawing name from petition
- 360. Certification of sponsor
- 370. Filing of petition
- 380. Review of petition
- 390. Bases for determining the petition was improperly filed
- 400. Submission of supplementary petition
- 410. Preparation of ballot title and proposition
- 420. Placing proposition on ballot
- 430. Display of act being referred
- 440. Rejection of act
- 450. Insufficiency of application or petition
- 460. Judicial review
- 465. Delegation by lieutenant governor

Article 3. Recall (§§ 15.45.470 -- 15.45.720)

- 470. Provision and scope for use of recall
- 480. Filing application
- 490. Time of filing application
- 500. Form of application
- 510. Grounds for recall
- 520. Manner of notice
- 530. Notice of the number of voters
- 540. Review of application
- 550. Bases of denial of certification
- 560. Preparation of petition
- 570. Statement of warning
- 580. Circulation by sponsor
- 590. Manner of signing and withdrawing name from petition
- 600. Certification of sponsor
- 610. Filing of petition
- 620. Review of petition
- 630. Bases for determining the petition was improperly filed
- 640. Submission of supplementary petition
- 650. Calling special election
- 660. Preparation of ballot
- 670. Conduct of special election
- 680. Display of bases for and against recall
- 690. Certification of election results
- 700. Filling vacancy
- 710. Insufficiency of grounds, application, or petition
- 720. Judicial review

50. Constitutional Amendments and Conventions
 (§§ 15.50.010 -- 15.50.110)

Article 1. Constitutional Amendments (§§ 15.50.10 -- 15.50.060)

- 10. Preparation of proposition for constitutional amendment
- 20. Description of ballot title and proposition

- 25. Objection to proposed ballot title and proposition
- 27. Judicial review
- 30. Placing proposition on ballot
- 40. Display of resolution
- 50. Certification of vote
- 60. Effective date

Article 2. Constitutional Conventions
(§§ 15.50.070 -- 15.50.100)

- 70. Placing question of constitutional convention on ballot
- 80. Certification of vote
- 90. Time and manner of selecting delegates
- 100. Certification of constitutional amendment by convention

Article 3. Delegation by Lieutenant Governor
(§§ 15.50.110)

- 110. Delegation by lieutenant governor

55. Election Offenses, Corrupt Practices and Penalties
(§§ 15.55.010 -- 15.55.250) (Repealed)

56. Election Offenses, Corrupt Practices and Penalties
(§§ 15.56.010 -- 15.56.130)

- 10. Campaign misconduct in the first degree
- 20. Campaign misconduct in the second degree
- 30. Unlawful interference with voting in the first degree
- 35. Unlawful interference with voting in the second degree
- 40. Voter misconduct in the first degree
- 50. Voter misconduct in the second degree
- 60. Unlawful interference with an election
- 70. Election official misconduct in the first degree
- 80. Election official misconduct in the second degree
- 90. Improper subscription to petition
- 100. Refusal to allow employees time off
- 110. Effect of certain convictions
- 115. Disposition of cases involving corrupt practice
- 120. Election defined
- 130. Time limitation

57. Election Pamphlet (§§ 15.57.010 -- 15.57.060)
[Repealed]

58. Election Pamphlet (§§ 15.58.010 -- 15.58.090)

- 10. Election pamphlet
- 20. Contents of pamphlet
- 30. Material to be filed by candidate
- 40. Material to be filed by political parties
- 50. Information and recommendations on judicial officers
- 60. Charges for space in pamphlet
- 70. Organization of material
- 80. Distribution
- 90. Delegation by lieutenant governor

- 60. General Provisions (§§ 15.60.010 -- 15.60.020)
 - 10. Definitions
 - 20. Short title
- 62. Miscellaneous Provisions (§§ 15.62.010) [Repealed]
- 65. Rights of Voter and Prohibitions (§§ 15.65.010 -- 15.65.050) [Repealed]

Chapter 05. Qualification of Voters.

Sec. 15.05.010. Voter qualification. A person may vote at any election who (1) is a citizen of the United States; (2) is 18 years of age or older; (3) (repealed); (4) has been a resident of the state and of the election district in which he seeks to vote for at least 30 days just before the election; and (5) (repealed); (6) has registered before the election as required under AS 15.07 and is not registered to vote in another jurisdiction.

(Sec. 1.01 ch 83 SLA 1960; am sec. 1 ch 125 SLA 1962; am sec. 1 ch 80 SLA 1963; am sec. 1 ch 211 SLA 1968; am sec. 1 ch 88 SLA 1969; am sec. 1 ch 15 SLA 1970; am sec. 1 ch 75 SLA 1972; am secs. 1, 38 ch 116 SLA 1972; am secs. 2, 3 ch 197 SLA 1975; am sec. 1 ch 100 SLA 1980)

Sec. 15.05.011. Qualifications of overseas voters.

(a) A person residing outside the United States may register and vote absentee by qualifying under this section. (b) Before registering a person under this section, the director shall determine that the person (1) was domiciled in the state immediately before leaving the United States; (2) meets the qualifications established in AS 15.05.010(1) and (2); (3) has not established a domicile in another state, territory, or possession of the United States since leaving this state; (4) is not registered to vote and has not voted in another state, territory, or possession of the United States since leaving this state; (5) has a valid passport, card of identity and registration, or other identification issued under the authority of the United States Secretary of State, and identification complying with the requirements of this title. (c) Lack of a place of abode in the state or lack of intent to return to the state does not disqualify a person who qualifies under (b) of this section. (d) A person registered under this section may vote in a federal election in this state.

(Sec. 2 ch 100 SLA 1980)

Sec. 15.05.012. Voter qualification for presidential election. A person who is otherwise qualified under AS 15.05.010 but who has not been a resident of the election district in which he seeks to vote for at least 30 days preceding the date of a presidential election is entitled to register and vote for presidential and vice-presidential candidates.

(Sec. 1 ch 69 SLA 1967; am sec. 2 ch 116 SLA 1972)

Sec. 15.05.014. Procedures in presidential elections. In accordance with the Voting Rights Act of 1965 (P.L. 89-110; 79 Stat. 437; 42 U.S.C. 1973 et seq.), as amended, the following procedures apply to elections for the office of President and Vice-President of the United States: (1) registration and absentee voting procedures, except as otherwise provided in this section, shall be identical to the procedures established in this title; (2) registration

of otherwise qualified persons shall be permitted without regard to a durational residency requirement; (3) if any citizen who is otherwise qualified to vote in the state for president and vice-president has begun residence in another state after the 30th day preceding the election and, for that reason, does not satisfy the registration requirements of that state, he shall be allowed to vote for president and vice-president either in person in the precinct in which he resided immediately before his removal, or by absentee ballot as provided in AS 15.20. (Sec. 1 ch 69 SLA 1967; am sec. 3 ch 116 SLA 1972)

Sec. 15.05.016. Fee prohibited. Obsolete.

Sec. 15.05.020. Rules for determining residence of voter. For the purpose of determining residence for voting, the place of residence is governed by the following rules: (1) No person may be considered to have gained a residence solely by reason of his presence nor may he lose it solely by reason of his absence while in the civil or military service of this state or of the United States or of his absence because of marriage to a person engaged in the civil or military service of this state or the United States, while a student at an institution of learning, while in an institution or asylum at public expense, while confined in public prison, while engaged in the navigation of waters of this state, or the United States or of the high seas, while residing upon an Indian or military reservation, or while residing in the Alaska Pioneers' Home. (2) The residence of a person is that place in which his habitation is fixed, and to which, whenever he is absent, he has the intention to return. If a person resides in one place, but does business in another, the former is his place of residence. Temporary construction camps do not constitute a dwelling place. (3) A change of residence is made only by the act of removal joined with the intent to remain in another place. There can only be one residence. (4) A person does not lose his residence if he leaves his home and goes to another country, state or place in this state for temporary purposes only and with the intent of returning. (5) A person does not gain residence in any place to which he comes without the present intention to establish his permanent dwelling at that place. (6) A person loses his residence in this state if he votes in another state's election, either in person or by absentee ballot, and will not be eligible to vote in this state until he again qualifies under AS 15.05.010. (7) Repealed by sec. 38 ch 116 SLA 1972. (8) The term of residence is computed by including the day on which the person's residence begins and excluding the day of election. (9) Repealed by sec. 38 ch 116 SLA 1972. (10) The address of a voter as it appears on his official voter registration card is presumptive evidence of the person's voting residence. If the person has changed his voting residence, this presumption is negated only by the voter executing an affidavit on a form prepared by the director setting out his new voting residence.

(Sec. 1.02 ch 83 SLA 1960; am sec. 2 ch 125 SLA 1962; am secs. 2, 3 ch 136 SLA 1966; am sec. 1 ch 228 SLA 1968; am secs. 4, 38 ch 116 SLA 1972; am secs. 4, 5 ch 197 SLA 1975; am sec. 6 ch 11 SLA 1979; am sec. 3 ch 100 SLA 1980)

Sec. 15.05.030. Loss and restoration of voting rights.

(a) A person convicted of a crime that constitutes a felony involving moral turpitude under state law may not vote in a state or a municipal election from the date of the conviction through the date of the unconditional discharge of the person. Upon the unconditional discharge, the person may register under AS 15.07. (b) The commissioner of corrections shall establish procedures by which a person unconditionally discharged is advised of the voter registration requirements and procedures.

(Sec. 1.03 ch 83 SLA 1960; am sec. 4 ch 100 SLA 1980; am sec. 1 ch 85 SLA 1986)

Sec. 15.05.040. Voter disqualification for unsound mind.

No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed.

(Sec. 1.04 ch 83 SLA 1960)

Chapter 07. Registration of Voters.

Sec. 15.07.010. Registration of voters. The precinct election judges at any election shall allow a person to vote whose name is on the official registration list for that precinct and who is qualified under AS 15.05.010 - 15.05.040. A person whose name is not on the official registration list shall be allowed to vote a questioned ballot.

(Sec. 2 ch 211 SLA 1968; am sec. 5 ch 116 SLA 1972; am sec. 5 ch 100 SLA 1980)

Sec. 15.07.020. Registration as a prerequisite. Repealed by sec. 231 ch 100 SLA 1980.

Sec. 15.07.030. Who may register.

(a) A person who has the qualifications of a voter as set out in AS 15.05.010(1) - (4), or who will have the qualifications at the succeeding primary or general election, is entitled to be registered as a voter in the precinct in which he resides. (b) A person qualified under AS 15.05.011 to vote by absentee ballot in a federal election is entitled to be registered as a voter in the election district in which he resided immediately before departure from the United States.

(Sec. 2 ch 211 SLA 1968; am sec. 19 ch 32 SLA 1971; am sec. 6 ch 100 SLA 1980)

Sec. 15.07.040. Time for registration. A person who is qualified under AS 15.05.010(1) - (4) is entitled to register at any time throughout the year except that a

person under 18 years of age may register at any time within 90 days immediately preceding his 18th birthday.

(Sec. 2 ch 211 SLA 1968; am sec. 20 ch 32 SLA 1971; am sec. 6 ch 116 SLA 1972; am sec. 7 ch 100 SLA 1980)

Sec. 15.07.050. Registration in person or by mail. Registration may be made in person before a registration official or by mail.

(Sec. 2 ch 211 SLA 1968)

Sec. 15.07.060. Required registration information. (a) Each applicant who requests registration or reregistration shall supply the following information under oath: (1) name and sex; (2) address and other necessary information establishing residence if requested; (3) Repealed by sec. 8 ch 100 SLA 1980. (4) term of residence in state and in election district; and whether the applicant has previously been registered to vote in another jurisdiction, and, if so, the jurisdiction and the address of the previous registration; (5) a declaration that the registrant will be 18 years of age or older within 90 days of the date of registration; (6) a declaration that the registrant is a citizen of the United States; (7) date of application; (8) signature or mark. (b) If the applicant has been previously registered to vote in another jurisdiction, he shall surrender to the registration official any voter registration or identification card or credentials from that jurisdiction the applicant may possess. The director shall notify the chief elections officer in that jurisdiction that the applicant has registered to vote in Alaska, request that jurisdiction to cancel the applicant's voter registration there, and return the applicant's voter registration or identification card or credentials, if any, to that jurisdiction. (c) If application for registration is made in person before a registration official, the applicant shall exhibit one form of identification to the official, including but not limited to a driver's license, birth certificate, passport, hunting or fishing license. A registration official who knows the identity of the applicant may waive the identification requirement. (d) If the applicant requests reregistration, the applicant shall supply under oath any former name under which the applicant was registered to vote in the state.

(Sec. 2 ch 211 SLA 1968; am sec. 21 ch 32 SLA 1971; am secs. 6, 7 ch 197 SLA 1975; am sec. 8 ch 100 SLA 1980)

Sec. 15.07.065. Exchange of voter registration information. Repealed by sec. 231 ch 100 SLA 1980.

Sec. 15.07.070. Procedure for registration. (a) The director may adopt regulations under the Administrative Procedure Act (AS 44.62) relating to the registration of voters consistent with the requirements of this section. (b) To register by mail the director or the area election supervisor shall furnish, upon request, and at no cost to

the voter, forms prepared by the director on which the registration information required under AS 15.07.060 shall be inserted by the voter, or by a person on behalf of the voter if the voter is physically incapacitated. The forms shall be executed before a notary public, a commissioned officer of the armed forces including the National Guard, a district judge or magistrate, a United States postal official, or other person qualified to administer oaths. If none of the officials listed in this subsection is reasonably accessible, the person shall have the forms witnessed by two persons over the age of 18 years, and, in addition, shall provide the certification required by AS 09.63.020. The director may require proof of identification of the applicant as required by regulations adopted by the director under the Administrative Procedure Act (AS 44.62). Upon receipt and approval of the completed registration forms the director or the election supervisor shall forward to the voter an acknowledgment in the form of a registration card, and the voter's name shall immediately be placed on the master register located in the office of the director and on the district register located in the office of the election supervisor. If the registration is denied, the voter shall immediately be informed in writing by certified or registered letter that registration was denied and the reason for denial. (c) The names of persons submitting completed registration forms by mail which are postmarked at least 30 days before the next election shall be placed on the official registration list for that election. The name of a person submitting a completed registration form by mail which was not postmarked before the 30-day requirement shall not be placed on the official registration list for the next election but shall be placed on the master register after that election. (d) Qualified voters may register in person before a registration official at any time throughout the year, except that no person registering within 30 days preceding an election may vote at that election. Upon receipt and approval of the registration forms the director or the election supervisor shall forward to the voter an acknowledgment in the form of a registration card and his name shall immediately be placed on the master register located in the office of the director and on the district register located in the office of the election supervisor. Names of persons registering 30 or more days before an election shall be placed on the official registration list for that election. (e) Repealed, sec. 38 ch 116 SLA 1972. (f) Incomplete or inaccurate registration forms may not be accepted and shall be reexecuted. The date of registration shall be the date of reexecution before a registration official or the postmark date if the application for registration is by mail.

(Sec. 2 ch 211 SLA 1968; am sec. 8 ch 71 SLA 1972; am secs. 7, 38 ch 116 SLA 1972; am sec. 9 ch 100 SLA 1980; am sec. 62 ch 6 SLA 1984)

Sec. 15.07.080. Registration officials to serve during the 1968 primary and general election. Repealed by sec. 38 ch 116 SLA 1972.

Sec. 15.07.081. Registration officials. The director shall appoint one or more registration officials to serve in each precinct polling place in all elections during the hours the polling places are open. An election clerk or election judge, appointed under AS 15.10, may also serve as a registration official. If more than one registration official is appointed to serve in a polling place, each political party shall be represented.

(Sec. 1 ch 197 SLA 1975; am sec. 10 ch 100 SLA 1980)

Sec. 15.07.090. Reregistration and amendment and transfer of registration. (a) A voter whose name is changed by marriage or court order may vote under the previous name, but if the voter desires to use the new name, he or she shall notify the director not later than 30 days preceding an election so that the registration may be amended to reflect the change. (b) A voter shall reregister if his registration is cancelled for failure to vote in prior elections as provided in AS 15.07.130. The reregistration may not be made later than 30 days preceding an election. (c) The director shall transfer the registration of a voter from one precinct to another within an election district when requested by the voter. The request shall be made 30 or more days before the election day. The director shall transfer the registration of a voter from one election district to another when requested by the voter. The voter must reside in his new election district for at least 30 days in order to vote. (d) A person who claims to be a registered voter, but for whom no evidence of registration in the precinct can be found, shall be granted the right to vote in the same manner as that of a questioned voter and the ballot shall be treated in the same manner. The ballot shall be considered to be a "questioned ballot" and shall be so designated. The director or the director's representative shall determine whether the voter is registered in the election district before counting the ballot. A voter who has failed to obtain a transfer as provided in (c) of this section shall vote a "questioned ballot" in the precinct in which the voter resides.

(Sec. 2 ch 211 SLA 1968; am secs. 8, 9 ch 116 SLA 1972; am secs. 1, 2 ch 38 SLA 1974; am secs. 9 - 11 ch 197 SLA 1975; am secs. 11, 12 ch 100 SLA 1980; am sec. 32 ch 59 SLA 1982)

Sec. 15.07.100. Registration officials. (a) The director shall appoint one or more registration officials in each precinct. When more than one registration official is appointed to serve in a precinct, each political party shall be represented. However, any precinct containing more than 250 voters must have at least two registration officials, one from each political party. The registration official shall be a qualified state voter and shall take an oath to honestly, faithfully and promptly perform the duties of his office. (b) Training for registration officials shall be provided by the director. On the completion of training, the director may require that officials demonstrate their competence by a test or other method. (c) A registration

official serves at the pleasure of the director. Each registration official shall be periodically evaluated by the director based on the completeness of the registration forms, timely filing of registration forms, and the voter registration activity attributed to the registration official. (d) A registration official shall transmit completed voter registration forms to the election supervisor within five days following completion by the voter.

(Sec. 2 ch 211 SLA 1968; am sec. 13 ch 100 SLA 1980)

Sec. 15.07.110. Payment for registration. The director shall pay each registration official serving between elections a sum set by regulation adopted by the director which may not exceed \$1 for each registration or change of registration personally made by the registration official. The director may not pay a registration official for voter registration forms postmarked later than five days following completion by the voter.

(Sec. 2 ch 211 SLA 1968; am sec. 3 ch 38 SLA 1974; am sec. 14 ch 100 SLA 1980)

Sec. 15.07.120. Custody of registers. A master register shall at all times remain in the custody of the director. The area election supervisor shall likewise maintain a register of all voters within the precincts of the area election district he supervises.

(Sec. 2 ch 211 SLA 1968; am sec. 15 ch 100 SLA 1980)

Sec. 15.07.125. Official registration list. The director shall prepare an official registration list for each election consisting of all names appearing on the master register 30 days before the election. A list of persons eligible to vote in each precinct at that election shall be prepared from the official registration list.

(Sec. 16 ch 100 SLA 1980)

Sec. 15.07.130. Elimination of excess names. (a) At the close of each calendar year the area election supervisor shall examine the register. (b) When a registered voter has not reregistered or has not indicated in writing a desire to remain registered as provided in this subsection within the preceding two years or has not voted in a local, regional school board, primary, special or general election at least once in two consecutive calendar years, the voter shall be advised by mail sent to his last known address that his registration will be cancelled unless he indicates within 90 days on forms furnished by the director his desire to remain registered. (c) The director shall obtain from the office of vital statistics a certified list of all residents over 18 years of age who have died or who have been presumptively declared dead. The director shall cancel the registration of all deceased voters.

(Sec. 2 ch 211 SLA 1968; am sec. 22 ch 32 SLA 1971; am sec. 4 ch 38 SLA 1974; am secs. 17, 18 ch 100 SLA 1980)

Sec. 15.07.135. Cancellation of registration of convicted persons. The director shall make reasonable efforts to obtain the names of persons convicted of a felony involving moral turpitude. The director shall cancel the registration of a person convicted of a felony involving moral turpitude. Upon presenting proof that the person is unconditionally discharged from custody, the person may register. The director shall make reasonable efforts to verify the unconditional discharge of persons applying for registration under this section.

(Sec. 19 ch 100 SLA 1980; 15.07.130(d); am sec. 2 ch 85 SLA 1986)

Sec. 15.07.137. Voting information from municipalities. Within 60 days after each election held in a municipality, the municipal clerk shall certify and send to the director the official registration list containing the names, residence addresses, and voter numbers of all persons voting in each precinct in that election. The names of the persons who voted in the municipal election shall be indicated on the official registration list sent to the director by the municipal clerk.

(Sec. 19 ch 100 SLA 1980; 15.07.130(e))

Sec. 15.07.140. General administrative supervision by director. The director shall provide general administrative supervision over the registration and reregistration of voters. The director shall, no later than 40 days before any election, arrange to have the list of registered voters of the precinct publicly displayed. The director shall instruct registration officials to post the list of registered voters in a number of locations calculated to obtain maximum recognition. Upon request by the mayor or manager of a municipality the director shall furnish registration information for all precincts all or part of which are within the boundaries of the local government unit.

(Sec. 2 ch 211 SLA 1968; am sec. 10 ch 116 SLA 1972; am sec. 20 ch 100 SLA 1980)

Sec. 15.07.150. Appeals from denial of registration. When a person is refused registration by a registration official, the official shall at the time of the refusal give to the registration applicant, in writing, the reason or reasons for the refusal. The person shall have the right to an immediate appeal to the area election supervisor, which appeal may be taken informally, and either verbally or in writing. When a voter is refused registration by an area election supervisor the action shall be reviewed by the superior court of the judicial district; the area election supervisor shall file a petition with the superior court for a judicial determination. If the petition is filed within

45 days before the date of a statewide election, the petition shall be given precedence over other matters pending before the court.

(Sec. 2 ch 211 SLA 1968)

Sec. 15.07.160. Unlawful action. (a) Except as provided in AS 15.07.135, it is unlawful for a registration official to refuse to register a person who is qualified to vote under provisions of AS 15.05.010(1) - (4). (b) It is unlawful for a person knowingly lacking the qualifications of a voter to register under AS 15.07.030 to vote. (c) Repealed, sec. 231 ch 100 SLA 1980.

(Sec. 2 ch 211 SLA 1968; am sec. 23 ch 32 SLA 1971; am sec. 231 ch 100 SLA 1980; am secs. 3, 4 ch 85 SLA 1986)

Sec. 15.07.170. False statements. No applicant for registration or reregistration may make a material statement which is false, knowing it to be false.

(Sec. 2 ch 211 SLA 1968; am sec. 1 ch 31 SLA 1969)

Sec. 15.07.180. Fees prohibited. No registration official may accept a fee from an applicant applying for registration.

(Sec. 2 ch 211 SLA 1968)

Sec. 15.07.190. Violations. A person who violates AS 15.07.170 or 15.07.180 is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$1,000, or by both.

(Sec. 2 ch 211 SLA 1968; am sec. 2 ch 31 SLA 1969)

Sec. 15.07.200. Registration supervision. The registration program is under the supervision of the director in accordance with AS 15.10.105.

(Sec. 2 ch 211 SLA 1968; am sec. 11 ch 116 SLA 1972; am sec. 21 ch 100 SLA 1980; am sec. 33 ch 59 SLA 1982)

Chapter 10. Election Districts and Officials.

Sec. 15.10.010. Precinct boundaries initially established. The state is divided into the election precincts as established for the general election of October, 1958, or as subsequently amended as prescribed by law, and shall remain so divided until the precinct boundaries are modified, or the precinct is abolished or a precinct is established as required by the provisions of this title.

(Sec. 2.01 ch 83 SLA 1960)

Sec. 15.10.020. Precinct boundaries and polling places modified by director. The director shall have the exclusive power to modify the boundary of a precinct and to establish

or abolish a precinct and polling place in the state by regulations adopted under the Administrative Procedure Act (AS 44.62).

(Sec. 2.02 ch 83 SLA 1960; am sec. 22 ch 100 SLA 1980)

Sec. 15.10.030. Uniform precinct boundaries required for state and local elections. The precinct boundaries established by the director shall be the boundaries for both state and local elections. The director by regulation pursuant to the provisions of the Administrative Procedure Act (AS 44.62) may authorize the combining, consolidation, or altering of precinct boundaries for local elections.

(Sec. 2.03 ch 83 SLA 1960; am sec. 4 ch 136 SLA 1966; am sec. 23 ch 100 SLA 1980)

Sec. 15.10.040. Restriction on precinct boundary modification. No precinct may include territory lying within more than one election district. Whenever practicable, precinct boundaries shall conform to municipal boundaries.

(Sec. 2.04 ch 83 SLA 1960; am sec. 12 ch 197 SLA 1975)

Sec. 15.10.050. General duty and standard for precinct boundary modification. The director shall modify the boundary of a precinct, and shall establish or abolish a precinct if the action serves the convenience of the voters and assures the efficient administration of election laws.

(Sec. 2.05 ch 83 SLA 1960; am sec. 24 ch 100 SLA 1980)

Sec. 15.10.060. Specific duty and standard for precinct boundary modification. Repealed by sec. 38 ch 116 SLA 1972.

Sec. 15.10.070. Precinct boundary identification. Each precinct shall be given an appropriate name or number and be clearly defined so the boundaries can be readily determined.

(Sec. 2.07 ch 83 SLA 1960)

Sec. 15.10.080. Dates for designating precinct boundary. The director shall designate boundaries of an election precinct which has been established or modified, not later than 40 days before an election.

(Sec. 2.08 ch 83 SLA 1960; am sec. 3 ch 125 SLA 1962; am sec. 25 ch 100 SLA 1980)

Sec. 15.10.090. Notice of precinct boundary designation and modification. The director shall give full public notice when precinct boundaries are designated and when the boundaries of a precinct are modified or when a precinct is established or abolished. Public notice shall include, but is not limited to, the publication on three different days

in a daily newspaper of general circulation, if such a newspaper is published in the election district where the precinct is located, by posting written notice in three conspicuous places in the designated precinct, and by notification to appropriate municipal clerks.

(Sec. 2.09 ch 83 SLA 1960; am sec. 26 ch 100 SLA 1980)

Sec. 15.10.100. Judicial review of precinct boundary. Any person aggrieved by a determination of precinct boundaries by the director may bring a civil action to have the determination reviewed in the superior court. If the action receives final determination within 40 days before the election, the director shall not make the required modification in precinct boundaries until immediately after the election.

(Sec. 2.10 ch 83 SLA 1960; am sec. 21 ch 69 SLA 1970; am sec. 27 ch 100 SLA 1980)

Sec. 15.10.105. Administration of elections.

(a) The lieutenant governor shall control and supervise the division of elections. The lieutenant governor shall appoint a director of elections. The director shall act for him in the supervision of central and regional election offices, the employment and training of election personnel, and the administration of all state elections as well as those municipal elections which the state is required to conduct. The director serves at the pleasure of the lieutenant governor. (b) It is essential that the nonpartisan nature, integrity, credibility and impartiality of the administration of elections be maintained. The director of elections and the full-time members of his staff may not join, support or otherwise participate in a partisan political organization, faction or activity, including but not limited to the making of political contributions. The director of elections and the full-time members of his staff may not hold or campaign for elective office, be an officer of a political party or member or officer of a political committee, permit their name to be used, or make any contributions, in support of or in opposition to a candidate or a ballot proposition or question, participate in any way in a national, state or local election campaign or lobby, employ or assist a lobbyist. However, this subsection does not restrict the director of elections or the full-time members of his staff from expressing private opinion, registering as to party, or voting.

(Sec. 13 ch 197 SLA 1975; am sec. 28 ch 100 SLA 1980)

Sec. 15. 107. Staff training. The director shall, before each primary election in even-numbered years, provide for a comprehensive training program for election officials, both the full-time members of the staff of the division of elections and those who are appointed as election board judges, clerks and counters under AS 15.10.120 15.10.150 and other temporary election employees.

(Sec. 13 ch 197 SLA 1975; am sec. 29 ch 100 SLA 1980)

Sec. 15.10.110. Appointment of election supervisors. The director shall appoint election supervisors, including one in each of the municipalities of Juneau, Anchorage, Fairbanks and Nome, to assist in the administration of elections in the election districts designated by the director. The director may appoint as an election supervisor a person who is a qualified voter in the area over which he has jurisdiction and who does not hold an office in a political party. An election supervisor is entitled to receive compensation in an amount that is comparable to that received for similar state employment as determined by the director.

(Sec. 2.11 ch 83 SLA 1960; am sec. 4 ch 125 SLA 1962; am sec. 5 ch 26 SLA 1966; am sec. 5 ch 136 SLA 1966; am sec. 22 ch 69 SLA 1970; am sec. 12 ch 116 SLA 1972; am sec. 5 ch 38 SLA 1974; am sec. 30 ch 100 SLA 1980)

Sec. 15.10.120. Appointment of election board. The election supervisors shall appoint within their district an election board, composed of three judges, for each precinct. The judges shall, to the extent possible, be appointed from among the qualified voters of each of the precincts for which they are appointed. One judge shall be designated chairman and be primarily responsible for the administration of the election in the precinct. If no clerks are appointed for the precinct, the other two judges shall perform the duties of clerks of the election. No more than two judges may be of the same political party. When appointments to the election board have been accepted, the election supervisor shall notify the director of the name and full local mailing address of the designated chairman and other judges of the election board in each precinct. Election boards in local government unit elections shall be appointed by the appropriate local government unit for all local elections.

(Sec. 2.12 ch 83 SLA 1960; am sec. 6 ch 136 SLA 1966; am sec. 2 ch 228 SLA 1968; am sec. 31 ch 100 SLA 1980)

Sec. 15.10.125. Appointment of additional election boards. In each precinct having 200 or more voters additional election boards may be appointed.

(Sec. 3 ch 228 SLA 1968; am sec. 13 ch 116 SLA 1972)

Sec. 15.10.130. Appointment of clerks. The election supervisor may appoint one clerk to assist the election board in conducting the election in precincts whenever necessary. The election supervisor may appoint one additional clerk to serve in such precincts as he determines necessary to administer the elections in an efficient and economical manner. Clerks shall be appointed from among qualified voters in precincts in which they reside. If only one clerk is appointed he may not be of the same political

party as the governor. If two clerks are appointed they may not be of the same political party.

(Sec. 2.13 ch 83 SLA 1960; am sec. 7 ch 136 SLA 1966; am sec. 4 ch 228 SLA 1968)

Sec. 15.10.140. Appointment of counters. The chairman of the election board may appoint a team of counters to assist with the counting of the ballots in each precinct where the election supervisor considers it necessary. The appointments may be made from among the qualified voters in the precincts in which they reside, and may be made at any time before the completion of the precinct count. There shall be four counters on each counting team, no more than two of whom may be of the same political party.

(Sec. 2.14 ch 83 SLA 1960; am sec. 3 ch 80 SLA 1963; am sec. 5 ch 228 SLA 1968; am sec. 14 ch 116 SLA 1972; am sec. 32 ch 100 SLA 1980)

Sec. 15.10.150. Appointment of nominees for judges and clerks. Whenever the appointment of election judges or clerks is required, the party district committee of the political party of which the governor is a member may present in writing to the election supervisor on or before April 15 in each regular election year, or at least 60 days before a special election, the names of two party nominees for judges, and one for clerk, in any or all election precincts, and the election supervisor shall appoint two of the party nominees to the respective precinct election boards. The party district committee of the political party which received the second largest number of statewide votes in the preceding gubernatorial election may present in writing to the election supervisor on or before April 15 in each regular election year, or at least 60 days before a special election the name of one party nominee for judge and one for clerk for any or all election precincts and the election supervisor shall appoint one of the party nominees to the respective precinct election boards. The election supervisor may appoint additional nominees if he determines that additional judges or clerks are needed. If any party district committee fails to present the names prescribed by this section by April 15 of a regular election year or before the 60th day preceding a special election, the election supervisor may appoint any qualified person not otherwise disqualified under AS 15.10.120.

(Sec. 2.15 ch 83 SLA 1960; am sec. 8 ch 136 SLA 1966; am sec. 6 ch 228 SLA 1968; am sec. 15 ch 116 SLA 1972; am sec. 14 ch 197 SLA 1975; am sec. 33 ch 100 SLA 1980)

Sec. 15.10.160. Date and notice of appointment of election board. Repealed by sec. 9 ch 136 SLA 1966.

Sec. 15.10.170. Appointment and privileges of watchers. The precinct party committee, where an organized precinct committee exists, or the district party committee where no organized precinct committee exists, or the state party

chairman where neither precinct nor district committee exists, may appoint one or more persons as watchers in each precinct and counting center for any election. Each candidate not representing a political party may appoint one or more watchers for each precinct or counting center in his respective district or the state for any election. Any organization or organized group that sponsors or opposes an initiative, referendum or recall may have one or more persons as watchers at the polls and counting centers after first obtaining authorization from the director. No state party chairman, no precinct party committee, no district committee or candidate not representing a political party or organization or organized group may have more than one watcher on duty at a time in any precinct or counting center. The watcher may be present at a position inside the place of voting or counting which affords a full view of all action of the election board and other counters taken from the time the polls are opened until the ballots are finally counted and the results certified by the election board or the data processing review board. The election board or the data processing review board may require each watcher to present written proof showing that he is the watcher appointed by the precinct party committee, the district party committee, the organization or organized group or the candidate he represents which is signed by the chairman of the precinct party committee, the district party committee, the state party chairman, the organization or organized group or the candidate representing no party.

(Sec. 2.17 ch 83 SLA 1960; am sec. 4 ch 80 SLA 1963; am sec. 10 ch 136 SLA 1966; am sec. 23 ch 69 SLA 1970; am sec. 15 ch 197 SLA 1975; am sec. 34 ch 100 SLA 1980)

Sec. 15.10.180. Appointment of party representatives for state ballot counting review. The director shall appoint two persons from each political party to participate in the state ballot counting review. Each person who is appointed and serves is entitled to compensation as provided in AS 15.15.380. Each political party may present to the director a list of three or more names from which the director shall select the persons to represent the party. The list of names may be submitted in writing at least 30 days before the date of the election. The persons to represent the party on the state ballot counting review board may be selected by the state party central committee or in any other manner prescribed by the bylaws of the party. The list of names shall be certified by the chairman of the state central committee of the party or by the person authorized by the party bylaws to act in the absence of the chairman.

(Sec. 2.18 ch 83 SLA 1960; am sec. 35 ch 100 SLA 1980; am sec. 34 ch 59 SLA 1982)

Chapter 13. State Election Campaigns.

Sec. 15.13.010. Applicability. (a) This chapter applies in every election for governor, lieutenant governor, a

member of the state legislature, a delegate to a constitutional convention, or judge seeking electoral confirmation. It also applies to every candidate for election to a municipal office in a municipality with a population of more than 1,000 inhabitants according to the latest United States census figures or estimates of population certified as correct for administrative purposes by the Department of Community and Regional Affairs. A municipality may exempt its elected municipal officers from the requirements of this chapter if a majority of the voters voting on the question at a regular election, as defined by AS 29.71.800(20), or a special municipality-wide election called for that purpose, vote to exempt its elected municipal officers from the requirements of this chapter. The question of exemption from the requirements of this chapter may be submitted by the governing body by ordinance or by initiative election. Nothing in this chapter prohibits a municipality from regulating by ordinance campaign contributions and expenditures. (b) Except as otherwise provided, this chapter applies to contributions, expenditures and communications made by a candidate, group, municipality or individual for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate.

(Sec. 1 ch 76 SLA 1974; am secs. 1, 2 ch 189 SLA 1975; am sec. 32 ch 74 SLA 1985)

Sec. 15.13.011. Inapplicability to presidential primary.
Repealed, sec. 1 ch 2 SLA 1984.

Sec. 15.13.020. Alaska Public Offices Commission. (a) There is created in the Department of Administration the Alaska Public Offices Commission consisting of five members. (b) The governor shall appoint two members of each of the two political parties whose candidate for governor received the highest number of votes in the most recent preceding general election at which a governor was elected. The two appointees from each of these two parties shall be chosen from a list of four names to be submitted by the central committee of each party. (c) The four members selected under (b) of this section shall, by a majority vote, appoint the remaining fifth member of the commission. (d) Upon selection of the commission's fifth member, the commission's four members selected under (b) of this section shall draw lots to determine the length of their terms of office so that one commission member serves one year, one serves two years, one serves three years and one serves four years. However, the terms of no two commission members who are members of the same political party may expire in consecutive years. The term of office of the fifth member, appointed under (c) of this section, expires in the fifth year. Terms of office of the initial appointees to the commission, including the fifth member, shall date from February 1 before their appointment. After the terms of office of the initial appointees to the commission expire, the term of office of a member of the commission is five

years, or until his successor is appointed and qualifies. No commission member may serve more than one term. However, initial appointees to the commission who do not serve a full five-year term and a person appointed to fill the unexpired term of his predecessor may be appointed to a successive full five-year term. (e) No member of the commission, during tenure, may (1) hold or campaign for elective office; (2) be an officer of a political party, political committee or group; (3) permit his name to be used, or make any contributions whatsoever, in support of or in opposition to a candidate or proposition or question that appears on any ballot in the state including but not limited to that of a municipality; however, contributions may be made to a candidate for the office of President of the United States; (4) participate in any way in an election campaign or participate in or contribute to any political party; or (5) lobby, employ or assist a lobbyist. (f) Members of the commission shall receive compensation of \$50 a day while attending commission meetings and shall be entitled to travel expenses and per diem authorized by law for members of other boards and commissions. (g) The members shall elect a chairman. Three members of the commission constitute a quorum. A vacancy does not impair the powers of the remaining members to exercise all of the powers of the commission. (h) A vacancy on the commission shall be filled by the appropriate appointing authority within 30 days of the occurrence of the vacancy. The appointee shall serve for the remaining term of his predecessor. (i) The commission may employ an executive director and other employees it considers necessary. Neither the executive director nor an employee may have a vote. (j) The commission shall establish an office, which may be called a regional office, in each senate district in the state to keep on file for public inspection copies of all reports filed with the commission by candidates for statewide office and by candidates for legislative office in that district; however, where one municipality contains more than one election district, only one commission office shall be established in that municipality. The regional office shall make all forms and pertinent material available to candidates. All reports shall be filed by candidates, groups and individuals directly with the commission's central district office. The commission shall insure that copies of all reports by statewide and legislative candidates in each senate district are forwarded promptly to that district or regional office. (k) The commission shall insure that copies of reports filed by candidates for municipal office are made available for public inspection in the appropriate municipality.

(Sec. 1 ch 76 SLA 1974; am sec. 23 ch 25 SLA 1975; am secs. 3-10 ch 189 SLA 1975; am Executive Order No. 41 sec. 2 (1980))

Sec. 15.13.030. Duties of the commission. The commission shall (1) develop and provide all forms for the reports and statements required to be made under this chapter, AS 24.45 and AS 39.50; (2) prepare and publish a manual setting out

uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter and otherwise assist candidates, groups, and individuals in complying with the requirements of this chapter; (3) receive and hold open for public inspection reports and statements required to be made under this chapter and, upon request, furnish copies at cost to interested persons; (4) compile and maintain a current list of all filed reports and statements; (5) prepare a summary of each report filed under AS 15.13.110 and make copies of this summary available to interested persons at their actual cost; (6) notify, by registered or certified mail, all persons who are delinquent in filing reports and statements required to be made under this chapter; (7) report within 60 days after the election the names of all persons and groups who have failed to comply with any of the provisions of this chapter to the office of the attorney general; (8) examine, investigate and compare all reports, statements and actions required by this chapter, AS 24.45 and AS 39.50 and to report to the attorney general the names of all persons or groups which the commission has substantial reason to believe have violated this chapter, AS 24.45 or AS 39.50; (9) prepare and publish an annual report to the legislature concerning the activities of the commission, the effectiveness of this chapter, its enforcement by the attorney general's office, and recommendations and proposals for change; (10) adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50 and this chapter, subject to the provisions of the Administrative Procedure Act (AS 44.62).

(Sec. 1 ch 76 SLA 1974; am sec. 24 ch 25 SLA 1975; am secs. 11, 12 ch 189 SLA 1975; am secs. 3-5 ch 167 SLA 1976)

Sec.15.13.040. Contributions, expenditures and supplying of services to be reported. (a) Each candidate shall make a full report, upon a form prescribed by the commission, listing the date and amount of all expenditures made by the candidate, the total amount of all contributions, including all funds contributed by the candidate himself, and for all contributions in excess of \$100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor and the date and amount contributed by each contributor. The report shall be filed in accordance with AS 15.13.110 and shall be certified correct by the candidate or campaign treasurer. (b) Each group shall make a full report upon a form prescribed by the commission, listing (1) the name and address of each officer and director; (2) the aggregate amount of all contributions made to it; and, for all contributions in excess of \$100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; and (3) the date and amount of all contributions made by it and all expenditures made, incurred or authorized by it. (c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer. (d) Every individual, person or group making a contribution

or expenditure shall make a full report, upon a form prescribed by the commission, of the following contributions or expenditures: (1) any contribution of cash, goods or services valued at more than \$100 a year to any group or candidate; or (2) any expenditure whatsoever for advertising in newspapers, on radio or on television; or, for the publication, distribution or circulation of brochures, flyers, or other campaign material for any candidate or ballot proposition or question. (e) The report required under (d) of this section shall contain the name, address, principal occupation and employer of the individual filing the report, and an itemized list of expenditures. The report shall be filed with the commission by the contributor no later than 10 days after the contribution or expenditure is made. A copy of the report shall be furnished to the candidate, campaign treasurer or deputy campaign treasurer at the time the contribution is made. (f) During each year in which an election occurs, all businesses, persons, or groups which furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. The records shall be maintained on the forms provided and in the manner required by the commission. The supplier shall file a report of the complete record of each transaction with all candidates or groups to whom he provides services, facilities or supplies in excess of \$250 in the aggregate in accordance with AS 15.13.110. All records shall be available for public inspection.

(Sec. 1 ch 76 SLA 1974; am sec. 13 ch 189 SLA 1975)

Sec. 15.13.045. Investigations, hearings. (a) The commission may issue subpoenas, administer oaths, hold hearings and conduct investigations. (b) In conjunction with (a) of this section, the commission may compel the attendance of witnesses and production of papers, books, records, accounts, documents, and testimony, and may have the deposition of witnesses taken in a manner prescribed by court rule or law for the taking of depositions in civil actions when consistent with the powers and duties assigned to the commission by this chapter. (c) The commission may examine the papers, books, records, accounts and documents of any person subject to this chapter to ascertain the correctness of a report filed with the commission, or in conjunction with an investigation or inspection conducted under (a) of this section. (d) Subpoenas may be issued and shall be served in the manner prescribed by AS 44.62.430 and court rule. The failure, refusal or neglect to obey a subpoena is punishable as contempt in the manner prescribed by law or court rule. The superior court may compel obedience to the commission's subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.

(Sec. 14 ch 189 SLA 1975)

Sec. 15.13.050. Groups. Each group, before making an expenditure on behalf of, or in opposition to, a candidate or a contribution to a candidate, shall register, on forms provided by the commission, with the commission. If the group intends to support or oppose only one candidate, or to contribute to or expend on behalf of, or in opposition to, one candidate 50 per cent or more of its funds, the name of the candidate shall be a part of the name of the group. Promptly upon receiving the registration, the commission shall notify the candidate of the group's organization and intent.

(Sec. 1 ch 76 SLA 1974; am sec. 15 ch 189 SLA 1975)

Sec. 15.13.060. Campaign treasurers.

(a) Each candidate and group shall appoint a campaign treasurer who is responsible for receiving, holding, and disbursing all contributions and expenditures, and for filing all reports and statements required by law. A candidate may be a campaign treasurer. (b) Each group shall file the name and address of its campaign treasurer with the commission at the time it registers with the commission under AS 15.13.050. (c) Each candidate for state office shall file the name and address of the campaign treasurer with the commission, or submit, in writing, the name and address of the campaign treasurer to the director for filing with the commission, no later than 15 days after the date of filing the declaration of candidacy or the nominating petition. Each candidate for municipal office shall file the name and address of the campaign treasurer with the commission no later than seven days after the date of filing the declaration of candidacy or the nominating petition. If the candidate does not designate a campaign treasurer, the candidate is the campaign treasurer. (d) In the case of the death, resignation or removal of a campaign treasurer, the candidate shall appoint a successor as soon as practicable and file his name and address with the commission within 48 hours of the appointment. The candidate is disqualified when he has been found to have been in willful violation of this subsection. (e) A campaign treasurer may appoint as many deputy campaign treasurers as he considers necessary. The candidate shall file the names and addresses of the deputy campaign treasurers with the commission. (f) The candidate is responsible for the performance of his campaign treasurer, and any default or violation by the treasurer also shall be considered a default or violation by the candidate if he knew or had reason to know of the default or violation.

(Sec. 1 ch 76 SLA 1974; am secs. 16 - 19 ch 189 SLA 1975; am sec. 1 ch 133 SLA 1977; am sec. 35 ch 59 SLA 1982)

Sec. 15.13.070. Contributions and expenditures; amount and form of payment. (a) No person or group, including but not limited to all political committees, businesses, corporations, and labor unions, may contribute to or expend

more than \$1,000 a year on behalf of or in opposition to the competing candidates for each elective office. Political parties and their subdivisions are not subject to the limitation prescribed in this subsection, but they are subject to the reporting requirements prescribed by AS 15.13.040(b) and 15.13.110. Nothing in this chapter prohibits (1) a candidate from contributing more than \$1,000 of his own money to his own campaign; or (2) individuals or groups, including but not limited to all political committees, businesses, corporations, and labor unions, from contributing to or expending on behalf of a ballot proposition or question more than \$1,000 a year; however, these contributions and expenditures shall be reported in accordance with AS 15.13.040 and 15.13.110. (b) No contribution over \$100 may be made in cash or by cash payment and it may not be accepted by or on behalf of a candidate. (c) No expenditures over \$100 may be made in cash or by cash payment unless a written receipt is obtained and filed with the commission. (d) No contribution may be made, and no expenditure may be made or incurred, directly or indirectly, anonymously, in a fictitious name, or by one person or group in the name of another, to influence the election of a candidate in an election. A contribution made by a person wishing to remain anonymous, and received by a candidate, campaign treasurer or deputy campaign treasurer, may not be used or expended, but shall be returned to the donor, if his identity is known, and if no donor is found, the contribution escheats to the state if not donated by the candidate to the charity of his choice. (e) Contributions to a candidate or a political committee may be received by, and expenditures of a candidate or political committee may be made by, only the candidate, campaign treasurer, or deputy campaign treasurer. (f) Repealed, sec. 45 ch 85 SLA 1986. ~~Expenditures of a candidate or political committee may be made by any candidate, treasurer, or group unless the source is disclosed as required by the provisions of this chapter whether or not those funds were received prior to May 10, 1974.~~

(Sec. 1 ch 76 SLA 1974; am secs. 20, 21 ch 189 SLA 1975; am sec. 45 ch 85 SLA 1986)

Sec. 15.13.080. Statement by contributor. A person or group contributing to a candidate over \$250 or contributing goods or services to a candidate with a value of more than \$250 to influence the election of a candidate shall furnish the commission a signed statement, on a form made available by the commission. The statement shall itemize the contributions and goods and state that the contributor is not a person or group prohibited by law from contributing and that the contribution consists of funds or property belonging to the contributor and has not been given or furnished by another person or group. The contributor's statement shall be filed with the commission by the contributor no later than 10 days after the contribution is made. A copy of the statement shall be furnished the candidate, campaign treasurer, or deputy campaign treasurer at the time the contribution is made.

(Sec. 1 ch 76 SLA 1974; am sec. 29 ch 189 SLA 1975)

Sec. 15.13.090. Identification of communication. All advertisements, billboards, handbills, paid-for television and radio announcements and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group or individual paying for the advertising. In addition, candidates and groups must identify the name of their campaign chairman.

(Sec. 1 ch 76 SLA 1974; am sec. 22 ch 189 SLA 1975; am sec. 36 ch 100 SLA 1980)

Sec. 15.13.100. Expenditures before filing. No political campaign expenditure may be made or incurred by a person in an election or by a person or group with his knowledge and on his behalf before the date upon which he or she files for nomination for the office which the person seeks, except for personal travel expenses or for opinion surveys or polls. These expenditures shall be charged against the spending limitation that applies to the office for which he subsequently files, and shall be included in the first report required under this chapter after filing for office.

(Sec. 1 ch 76 SLA 1974; am sec. 23 ch 189 SLA 1975)

Sec. 15.13.110. Filing of reports.

(a) Each candidate and group shall make a full report in accordance with AS 15.13.040 during the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report, or, if a first report, all contributions received and expenditures made before three days before the due date of the report. The report shall be filed at the following times: (1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election; (2) one week before the election; (3) ten days after the election; and (4) December 31 of each year for expenditures and contributions received which were not reported that year. (b) Each contribution or expenditure which exceeds \$250 and which is made within one week of the election shall be reported to the commission by date, amount, and contributor or recipient within 24 hours of receipt or expenditure by the candidate or campaign treasurer. (c) The reports of candidates shall be filed with the commission's central office. All reports required by this chapter shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting. (d) Within 30 days after each election, each supplier shall make a full report to the commission in accordance with AS 15.13.040. Within 60 days after each election, the commission shall prepare a summary by candidate or group of the transactions and make the summaries public. (e) A group formed to sponsor an

initiative, a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section.

(Sec. 1 ch 76 SLA 1974; am sec. 24 ch 189 SLA 1975; am sec. 2 ch 133 SLA 1977)

Sec. 15.13.120. Penalty; limitations on actions. (a) A person who violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, is punishable by imprisonment for not more than one year or by a fine of not more than \$5,000. A violation includes but is not limited to any of the following acts or omissions: (1) failing to make a statement or report required to be made under this chapter, or failing to make a statement or report at the time the statement or report is required to be made under this chapter; (2) making a campaign contribution or expenditure which exceeds the limitations of AS 15.13.070(f); (3) making a false statement or report under this chapter; (4) giving or furnishing money to another person or group for the purpose of making a contribution or expenditure anonymously, in a fictitious name, or in the name of another, or contributing in violation of AS 15.13.090; (5) making a communication to support or defeat a candidate without identification of sponsorship, in violation of AS 15.13.090. (6) knowingly accepting a contribution in violation of AS 15.13.070; (b) Repealed, Sec. 6 ch 134 SLA 1982. (c) Promptly after the final date for filing statements and reports, the commission shall notify all persons who have become delinquent in filing them, including contributors who failed to file a statement in accordance with AS 15.13.040, and shall make available a list of these delinquents for public inspection. The commission shall also report to the attorney general the names of all candidates in an election whose campaign treasurers have failed to file the reports required by this chapter. (d) A person who believes a violation of this chapter has occurred may file a complaint with the commission. If the commission determines there is substantial reason to believe that a violation has occurred, it shall expeditiously make an investigation, which may also include an investigation of reports and statements filed by the complainant if he is a candidate, of the matter complained of. When, in the judgment of the commission, after affording due notice and an opportunity for a hearing, a person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of a provision of this chapter, or a regulation or order issued under it, it shall promptly report the information to the attorney general for appropriate action. The commission shall report its determination and recommendation to the person who filed the complaint with the commission within 60 days of receiving the complaint unless circumstances require additional time to make an adequate investigation. The finding of the commission may be appealed to the superior

court. (e) Prosecution for violation of a provision of this chapter may not be commenced after four years have elapsed from the date of the alleged violation. (f) If, after being sworn into office, a person who was a successful candidate or the campaign treasurer or deputy campaign treasurer of a person who was a successful candidate is convicted of a violation of this chapter, proceedings shall be held and appropriate action taken in accordance with (1) art. II, sec. 12 of the state constitution, if the candidate is a candidate for the state legislature; (2) art. II, sec. 20 of the state constitution, if the candidate is a candidate for governor or lieutenant governor; (3) AS 29.20.170, if the candidate is a candidate for the borough assembly; (4) AS 29.20.280, if the candidate is a candidate for borough mayor; (5) AS 29.20.170, if the candidate is a candidate for city council; (6) AS 29.20.280, if the candidate is a candidate for city mayor; (7) the provisions of the call for the constitutional convention, if the candidate is a candidate for constitutional convention delegate; (8) art. IV, sec. 10 of the state constitution, if the candidate is a candidate for judicial retention. (g) Information developed by the commission under (d) of this section shall be considered during a proceeding under (f) of this section. (h) When, after being sworn into office, a successful candidate or the campaign treasurer or deputy campaign treasurer of a person who was a successful candidate is charged with a violation of this chapter, the case shall be promptly tried and accorded a preferred position for purposes of argument and decision, so as to assure a speedy disposition of the matter.

(Sec. 1 ch 76 SLA 1974; am sec. 25 ch 189 SLA 1975; am secs. 1, 6 ch 134 SLA 1982; am secs. 33 - 36 ch 74 SLA 1985)

Sec. 15.13.122. Legal counsel. (a) The attorney general is legal counsel for the commission. He shall advise the commission in legal matters arising in the discharge of its duties and represent the commission in actions to which it is a party. If, in the opinion of the commission, the public interest warrants, the commission may request the chief justice of the supreme court to appoint a special prosecutor to represent the commission in a proceeding involving an alleged violation of this chapter and to prosecute that violation. (b) When the public interest warrants, the commission may employ temporary legal counsel from time to time in matters in which the commission is involved.

(Sec. 26 ch 189 SLA 1975)

Sec. 15.13.125. Civil penalty: late filing of required reports. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(1), (3), (4) or 15.13.110(d) is subject to a civil penalty of not more than \$10 a day for each day the delinquency continues as determined by the commission

subject to right of appeal to the superior court. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil penalty of not more than \$50 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. An affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is assessed. However, the imposition of the penalties prescribed in this section or in AS 15.13.120 does not excuse that person from filing reports required by this chapter.

(Sec. 6 ch 167 SLA 1976)

Sec. 15.13.130. Definitions. In this chapter, (1) "candidate" means a person who files for election to the state legislature, for governor, for lieutenant governor, for municipal office, for retention in judicial office, or for constitutional convention delegate, or who campaigns as a write-in candidate for any of these offices; (2) "contribution" means purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods or services for which charge is ordinarily made and which is made for the purpose of influencing the nomination or election of a candidate, and in AS 15.13.010(b) for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party, or compensation of the personal services of another person which are rendered to the candidate or political party; however, "contribution" does not include (A) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or ballot proposition or question, but it does include professional services volunteered by individuals for which they ordinarily would be paid a fee or wage; (B) services provided by an accountant or other person to prepare reports and statements required by this chapter; (C) ordinary hospitality in a home; (3) "expenditure" means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of (A) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate; or (B) use by a political party; or (C) the payment by a person other than a candidate or political party of compensation for the personal services of another person which are rendered to a candidate or political party; (D) influencing the outcome of a ballot proposition or question; however, "expenditure" does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter; (4) "group" means every state and regional executive committee of a political party and, in addition, means any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or

receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one person, or intends to expend more than 50 per cent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with his knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group he files with the commission, on a form provided by the commission, an affidavit that the group is operating without his control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 per cent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate; (5) "individual" means a natural person; (6) Repealed, sec. 88 ch 74 SLA 1985. (7) "person", in addition to the terms set out in AS 01.10.060, includes a labor union.

(Sec. 1 ch 76 SLA 1974; am sec. 28 ch 189 SLA 1975; am sec. 88 ch 74 SLA 1985)

Chapter 15. General Procedure for Elections.

Sec. 15.15.010. General administrative supervision by director. The director shall provide general administrative supervision over the conduct of state elections, and may issue regulations under the Administrative Procedure Act (AS 44.62) necessary for the administration of state elections. (Sec. 3.01 ch 83 SLA 1960; am sec. 5 ch 80 SLA 1963; am sec. 37 ch 100 SLA 1980)

Sec. 15.15.020. Date of general election. The general election is held on the Tuesday after the first Monday in November in every even numbered year.

(Sec. 3.02 ch 83 SLA 1960)

Sec. 15.15.030. Preparation of official ballot. The director shall prepare all official ballots to facilitate fairness, simplicity, and clarity in the voting procedure, to reflect most accurately the intent of the voter, and to expedite the administration of elections. The following directives shall be followed when applicable: (1) The director shall determine the size of the ballot, the type of print, necessary additional instruction notes to voters, and other similar matters of form not provided by law. (2) The director shall number ballots in series to assure simplicity and secrecy and to prevent fraud. (3) The director may contract for the preparation of the ballots on a regional basis if necessary and may contract for the preparation of ballots without obtaining competitive bids. (4) The director may not include on the ballot as a part of a

candidate's name, any honorary or assumed title or prefix but may include in the candidate's name any nickname or familiar form of a proper name of the candidate. (5) The state general election ballot shall be printed on white paper with the names of the candidates and their party designations placed in separate sections under the office designation to which they were nominated. The party affiliation, if any, shall be designated after the name of the candidate. The lieutenant governor and the governor shall be included under the same section. Provision shall be made for voting for write-in and no-party candidates within each section. The squares appearing on the ballots shall measure 1/4 inch on each side. (6) The general election ballot shall be designed with the position of names of the candidates changed in each section as many times as there are candidates in the section in which there are the most names. As nearly as possible, an equal number of ballots shall be printed after each change. In making the changes of position, the name of the candidate at the head of each section shall be taken and placed at the bottom of the section and the column moved up so that the name that before was second is first after the change. After the ballots are printed, they shall be placed in separate stacks, one stack for each change of position. The ballots shall then be gathered by taking one from each stack, the intention being that every other ballot in the accumulated stack of ballots shall have the names of the candidates in a different position. (7) The general election ballot shall be designed with the names of candidates of each political party for the office of President and Vice-President of the United States placed in the same section on the ballot rather than the names of electors of President and Vice-President. (8) The general or special election ballot shall be designed with the title and proposition for any initiative, referendum, or constitutional amendment formulated as prescribed by law and placed on the ballot in the manner prescribed by the director. When placed on the ballot, a state ballot proposition or ballot question shall carry the number which was assigned to the petition for the proposition or question. Provision shall be made for marking the proposition "For" or "Against." (9) The general or special election ballot shall be designed with the question of whether a constitutional convention shall be called placed on the ballot in the following manner: "Shall there be a constitutional convention?" Provision shall be made for marking the question "Yes" or "No." (10) A separate nonpartisan judicial ballot shall be designed for each judicial district in which a justice or judge is seeking to succeed himself. The ballot shall be divided into four parts and each part shall bear a heading indicating the court to which the candidate is seeking approval. Within each part the question of whether the justice or judge shall be approved or rejected shall be set out in substantially the following manner: (A) "Shall be retained as justice of the supreme court for 10 years?"; (B) "Shall be retained as judge of the court of appeals for eight years?"; (C) "Shall be retained as judge of the superior court for six

years?"; or (D) "Shall be retained as judge of the district court for four years?" Provision shall be made for marking each question "Yes" or "No." (11) When the legislature by law authorizes a state debt for capital improvements, the director shall place the question of whether the specific authorization shall be ratified by placing the ballot title and question on the next general election ballot, or on the special election ballot if a special election is held for the purpose of ratifying the state debt for capital improvements before the time of the next general election. Unless specifically provided otherwise in the Act authorizing the debt, the ballot title shall, by the use of a few words in a succinct manner, indicate the general subject of the Act. The question shall, by the use of a few sentences in a succinct manner, give a true and impartial summary of the Act authorizing the state debt. The question of whether state debt shall be contracted shall be assigned a letter of the alphabet on the ballot. Provision shall be made for marking the question substantially as follows: "Bonds Yes" or "Bonds No," followed by an appropriate square. (12) (Repealed) (13) The director may provide for the use of punch-card voting in state elections in any area where data processing equipment is available.

(Sec. 3.03 ch 83 SLA 1960; am secs. 5 - 7 ch 125 SLA 1962; am sec. 6 ch 80 SLA 1963; am sec. 1 ch 72 SLA 1967; am secs. 7, 8 ch 228 SLA 1968; am sec. 1 ch 18 SLA 1969; am sec. 6 ch 38 SLA 1974; am sec. 1 ch 120 SLA 1975; am sec. 21 ch 12 SLA 1980; am sec. 38 ch 100 SLA 1980)

Sec. 15.15.035. Printing of ballots and other material. The director may not be required to do business with a printing company while the company is involved in a labor dispute.

(Sec. 9 ch 228 SLA 1968; am sec. 39 ch 100 SLA 1980)

Sec. 15.15.040. Preparation of other election materials.

(a) The director shall prescribe the form of and prepare tinted sample ballots and all other materials, forms and supplies required for the election. (b) The director shall prepare and issue or make available with each sample ballot for a special election the statement provided for in AS 24.08.037 of the scope of each project included in a proposed general obligation bond issue creating a state debt for capital improvements that is submitted to the electorate for ratification under AS 15.15.030(11). The statement of scope for each project shall be the same statement included in the authorization bill. When a ballot proposition is submitted to the voters at a primary or a special election, a statement the same as that provided for in the election pamphlet under AS 15.58.020(6) shall be made available with each sample ballot.

(Sec. 3.04 ch 83 SLA 1960; am sec. 11 ch 136 SLA 1966; am sec. 16 ch 116 SLA 1972; am sec. 1 ch 70 SLA 1973; am sec. 16 ch 197 SLA 1975; am sec. 40 ch 100 SLA 1980)

Sec. 15.15.050. **Distribution of election materials.** The director shall distribute an adequate supply of sample and official ballots and all other materials, forms and supplies required for the election to the election supervisors for distribution to chairmen of election boards in precincts not less than 25 days before the date for the election.

(Sec. 3.05 ch 83 SLA 1960; am sec. 12 ch 136 SLA 1966; am sec. 17 ch 116 SLA 1972; am sec. 41 ch 100 SLA 1980)

Sec. 15.15.060. **Procurement of polling places and other supplies.** (a) Immediately following the appointment of the election board, the election supervisor in conjunction with the election board chairman shall secure polling places for holding the election, suitable ballot boxes which will assure security and an adequate number of voting booths or screens, national flags, pens, and pencils. Not less than one voting booth or screen shall be furnished for each 100 votes or fractional part of 100 votes cast in the previous election. The election supervisor and the election board chairman may, in an emergency, secure an alternate location for a polling place. (b) The director may issue rules prescribing the type of polling place for holding the election and the requirements regarding ballot boxes, voting booths, screens, national flags, and other supplies to assure administrative economy and to protect the secrecy of the ballot. (c) The director shall pay the cost of necessary election expenses incurred in securing a place for holding the election, a suitable ballot box, and an adequate number of voting booths, screens, national flags, and other supplies. The national flag shall be displayed over or near the entrance of each polling place. (d) When the director determines that there is an area in the state where a voter may be confused as to his correct precinct polling place, the director shall provide each polling place in that area with maps and materials which indicate election district boundaries, precinct boundaries, and polling places.

(Sec. 3.06 ch 83 SLA 1960; am sec. 13 ch 136 SLA 1966; am sec. 42 ch 100 SLA 1980)

Sec. 15.15.070. **Public notice of election required.** (a) The director shall give and is authorized to contract to give full public notice of the election. He may select a manner reasonably calculated to give actual knowledge of the election to the voters. (b) The notice shall be given by publication at least twice in one or more newspapers of general circulation in each of the four major election districts. The printed notice shall specifically include but is not limited to the date of election, the hours between which the polling places will be open, the offices to which candidates are to be nominated or elected, and the subject of the propositions and questions which are to be voted on. (c) Public notice shall also be given by posting notices in two or more conspicuous places in each election precinct. The posted notice shall specifically include but is not limited to the date of election, the location of the polling place, the hours between which the

polling places will be open, the offices to which candidates are to be nominated or elected, and the subject of the propositions and questions which are to be voted on. (d) First publication or posting is to be made not less than 10 days before the election. (e) The director may have a precinct map of a densely populated precinct published in a newspaper of general circulation if need for the map is established. (f) Additional notice shall be given of all bond issues, initiatives, referendums and propositions by use of newspapers, television, radio, printed posters, maps, and similar means of communication considered necessary. The director may not be required to post or publish notices except those provided for in this section. (g) The director shall pay the cost of election expenses incurred in giving notice of an election.

(Sec. 3.07 ch 83 SLA 1960; am sec. 8 ch 125 SLA 1962; am sec. 10 ch 228 SLA 1968; am secs. 43 - 46 ch 100 SLA 1980; am sec. 5 ch 85 SLA 1986)

Sec. 15.15.080. Time for opening and closing polls. (a) Except as provided in (b) of this section, on the day of any election, each election board shall open the polls for voting at seven o'clock in the morning, shall close the polls for voting at eight o'clock in the evening, and shall keep the polls open during the time between these hours. The election board members shall report to the polling place at 6:30 in the morning of an election day. (b) On the day of any election that is not a general election, a primary election, a special election, or a federal election held under this title, the director shall require each election board to open the polls for voting at eight o'clock in the morning, shall close the polls for voting at eight o'clock in the evening, and shall keep the polls open during the time between these hours. The election board members shall report to the polling place one-half hour before the polls are to open on election day.

(Sec. 3.08 ch 83 SLA 1960; am sec. 11 ch 228 SLA 1968; am sec. 18 ch 116 SLA 1972; am secs. 1, 2 ch 5 SLA 1984)

Sec. 15.15.090. Designation of precinct polling place. The polling place shall be located within the precinct unless the election supervisor and the election board chairman determine that a building located in an adjoining precinct is more suitable or convenient to the voters.

(Sec. 8 ch 38 SLA 1974; am sec. 47 ch 100 SLA 1980)

Sec. 15.15.100. Time off for voting. A qualified voter who does not have sufficient time outside his working hours within which to vote at a state election may, without loss of pay, take off as much working time as will enable him to vote. If any employee has two consecutive hours in which to vote, either between the opening of the polls and the beginning of his regular working shift, or between the end of his regular working shift and the closing of the polls,

he shall be considered to have sufficient time outside his working hours within which to vote.

(Sec. 3.10 ch 83 SLA 1960)

Sec. 15.15.110. General duties and oath of election board and clerks. The election board shall supervise the election in the precinct. Before entering upon the duties of office, each election judge and clerk shall take an oath to honestly, faithfully, and promptly perform the duties of his office. Any appointed judge, whether or not having himself subscribed to the oath, may administer the oath to another judge. The chairman of the election board shall rotate the time at which judges and clerks may be relieved for meals.

(Sec. 3.11 ch 83 SLA 1960; am sec. 19 ch 116 SLA 1972)

Sec. 15.15.120. Filling vacancies in election board. If an appointed judge or clerk fails to appear and subscribe to the oath on election day or becomes incapacitated during the time of the election or the counting of the ballots, the election board members present shall elect, by a majority voice vote, a qualified voter to fill the vacancy. The qualified voter elected to fill the vacancy shall be of the same political party as the person for whom the substitution is made unless, after reasonable effort, the election board members determine that a qualified voter of the same political party is not available.

(Sec. 3.12 ch 83 SLA 1960; am sec. 14 ch 136 SLA 1966; am sec. 48 ch 100 SLA 1980)

Sec. 15.15.130. Majority decision of election board. The decision of the majority of judges determines the action that the election board shall take regarding any question which arises during the course of the election.

(Sec. 3.13 ch 83 SLA 1960)

Sec. 15.15.140. Permitted use of unofficial ballots. (a) If the election board receives an insufficient number of official paper ballots, official punch-card ballots, or official election materials, it shall provide and the voters may use unmarked substitute ballots or other election materials to indicate the intent of the voter. (b) The election board shall certify the facts which prevented the use of the official ballots and materials and shall include the certificate in the election returns to the director. The initial failure to certify to the facts or include the certificate required does not invalidate any ballots. (c) On disclosure that unofficial ballots have been used without the certification required under (b) of this section, the director shall notify the chairman of the election board by telephone or telegram of his failure to certify the ballots properly. (d) The director may accept a certificate made by telegram and count the ballots if the certificate is proper and actually received by the director within 10 days

of the date that the chairman of the election board was notified under (c) of this section.

(Sec. 3.14 ch 83 SLA 1960; am sec. 49 ch 100 SLA 1980)

Sec. 15.15.150. Official opening of polls. On the day and hour of election, the election board shall announce that the polls are open and receive the voters.

(Sec. 31.5 ch 83 SLA 1960)

Sec. 15.15.160. Prohibition of political discussion by election board. During the hours that the polls are open, no judge or clerk may discuss any political party, candidate or issue while on duty.

(Sec. 3.16 ch 83 SLA 1960)

Sec. 15.15.170. Prohibition of political persuasion near election polls. During the hours the polls are open, no person who is in the polling place or within 200 feet of any entrance to the polling place may attempt to persuade a person to vote for or against a candidate, proposition or question. The election judges shall post warning notices at the required distance in the form and manner prescribed by the director.

(Sec. 3.17 ch 83 SLA 1960; am sec. 20 ch 116 SLA 1972; am sec. 50 ch 100 SLA 1980)

Sec. 15.15.180. Keeping of register. The judges shall keep a register or registers in which each voter before receiving his ballot shall sign his name and give both his resident and mailing address. A record shall be kept in the registration book in space provided of the name of persons who offer to vote but who actually do not vote, and a brief statement of explanation. The signing of the register constitutes a declaration by the voter that he is qualified to vote.

(Sec. 3.18 ch 83 SLA 1960; am sec. 15 ch 136 SLA 1966; am sec. 9 ch 38 SLA 1974; am sec. 51 ch 100 SLA 1980)

Sec. 15.15.190. Keeping of duplicate register. Repealed by sec. 231 ch 100 SLA 1980.

Sec. 15.15.195. Voters on official registration list. An election judge in a precinct shall allow a voter on the official registration list to vote in the precinct unless the voter is questioned in accordance with AS 15.15.210.

(Sec. 52 ch 100 SLA 1980)

Sec. 15.15.198. Voters not on official registration list. (a) If a voter's name does not appear on the official registration list in the precinct in which the voter seeks to vote, the election judge shall affirmatively advise the voter that the voter may cast a questioned ballot and the voter shall be allowed to vote a questioned ballot. (b) A person whose registration has been cancelled under AS

15.07.130(b) and who votes a questioned ballot shall have the ballot counted if (1) he was registered to vote for either of the two most recent general elections; (2) he signs under oath a statement to that effect; and (3) the earlier registration is verified by the director.

(Sec. 52 ch 100 SLA 1980; am sec. 6 ch 85 SLA 1986)

Sec. 15.15.200. Questioning of voter of doubtful qualification. Repealed by sec. 38 ch 116 SLA 1972.

Sec. 15.15.210. Questioning of voters of suspect qualification. Every election judge and election clerk shall question, and every watcher and any other person qualified to vote in the precinct may question a person attempting to vote if the questioner has good reason to suspect that the questioned person is not qualified to vote. All questions regarding a person's qualifications to vote shall be made in writing setting out the reason the person has been questioned. A questioned person before voting shall subscribe to an oath or affirmation in a form provided by the director attesting to the fact that in each particular the person meets all the qualifications of a voter, is not disqualified, and has not voted at the same election. The questioned person shall also state the place from which that person came immediately before living in the precinct where offering to vote and the length of time of residence in the former place. After the questioned person has executed the oath or affirmation, the person may vote. If the questioned person refuses to execute the oath or affirmation, the person may not vote.

(Sec. 36 ch 59 SLA 1982)

Sec. 15.15.215. Disposition of questioned votes. (a) A voter who casts a questioned ballot shall vote his ballot in the same manner as prescribed for other voters. After the election judge removes the numbered stub from the ballot, the voter shall insert the ballot into a small envelope and put the small envelope into a larger envelope on which the statement he previously signed is located. These larger envelopes shall be sealed and deposited in the ballot box. When the ballot box is opened, these envelopes shall be segregated, counted, compared to the voting list, and delivered to the official or body supervising the election. The merits of the question shall be determined by this official or body in accordance with the procedure prescribed for questioned votes in AS 15.20.207. (b) Repealed by sec. 231 ch 100 SLA 1980.

(Sec. 1 ch 120 SLA 1968; am sec. 17 ch 197 SLA 1975; am secs. 55, 231 ch 100 SLA 1980)

Sec. 15.15.220. Administration of oaths. Any election judge may administer to a voter any oath that is necessary in the administration of the election.

(Sec. 3.22 ch 83 SLA 1960; am sec. 56 ch 100 SLA 1980)

Sec. 15.15.225. Voter identification at polls. (a) Before being allowed to vote, each voter shall exhibit to an election judge one form of identification, including but not limited to an official voter registration card, driver's license, birth certificate, passport, or hunting or fishing license. (b) An election judge may waive the identification requirement if he knows the identity of the voter. (c) A voter who cannot exhibit a required form of identification shall be allowed to vote a questioned ballot.

(Sec. 57 ch 100 SLA 1980)

Sec. 15.15.230. Providing ballot to voter. When the voter has qualified to vote, the election judge shall give him an official ballot. The voter shall retire to a booth or private place to mark the ballot.

(Sec. 3.23 ch 83 SLA 1960; am sec. 58 ch 100 SLA 1980)

Sec. 15.15.240. Assisting voter by judge. A qualified voter who cannot read, mark the ballot, or sign his name may request an election judge, a person, or not more than two persons of his choice to assist him. If the election judge is requested, he shall assist the voter. If any other person is requested, the person shall state upon oath before the election judge that he will not divulge the vote cast by the person whom he assists.

(Sec. 3.24 ch 83 SLA 1960; am sec. 9 ch 125 SLA 1962; am sec. 59 ch 100 SLA 1980)

Sec. 15.15.250. Disposition of improperly marked ballot. If a voter improperly marks or otherwise damages a ballot, the voter may request and the election board shall provide him with another ballot, with a maximum of three, and the board shall record the number of the improperly marked or damaged ballot and destroy it immediately without examining it.

(Sec. 3.25 ch 83 SLA 1960; am sec. 7 ch 80 SLA 1963)

Sec. 15.15.260. Placing ballot in ballot box by voter. When the voter has marked his ballot, he shall inform the election judge. The director may require that the voter return the ballot to the election judge temporarily so that any stub which may be part of the ballot may be removed by the election judge. Any such requirement shall protect the secrecy of the ballot. In all cases the ballot shall be deposited in the ballot box by the voter himself in the presence of the election judge unless the voter requests the election judge to deposit the ballot on his behalf. Separate ballot boxes may be used for separate ballots.

(Sec. 3.26 ch 83 SLA 1960; am sec. 1 ch 102 SLA 1978; am sec. 60 ch 100 SLA 1980)

Sec. 15.15.270. Prohibiting the leaving of the polling place with ballot. No voter may leave the polling place with the official ballot that he received to mark.

(Sec. 3.27 ch 83 SLA 1960)

Sec. 15.15.280. Prohibiting the exhibition of marked ballots. Subject to AS 15.15.240 no voter may exhibit his ballot to an election official or any other person so as to enable any person to ascertain how the voter marked his ballot.

(Sec. 3.28 ch 83 SLA 1960)

Sec. 15.15.290. Prohibiting the identification of ballots. No election official may, while the polls are open, open any ballot received from a voter, or mark a ballot by folding or otherwise so as to be able to recognize it, or otherwise attempt to learn how a voter marked his ballot, or allow the same to be done by another person.

(Sec. 3.29 ch 83 SLA 1960)

Sec. 15.15.300. Prohibiting the count of exhibited ballots. No election official may allow a ballot to be placed in the ballot box which he knows to have been unlawfully exhibited by the voter. A ballot unlawfully exhibited shall be recorded as a spoiled ballot and destroyed.

(Sec. 3.30 ch 83 SLA 1960; am sec. 61 ch 100 SLA 1980)

Sec. 15.15.310. Official closing of polls. Fifteen minutes before and at the time of closing the polls, the election board shall announce the present time and the time of closing the polls.

(Sec. 3.31 ch 83 SLA 1960)

Sec. 15.15.320. Voters in line when polls close. Every qualified voter present and in line at the time prescribed for closing the polls may vote.

(Sec. 3.32 ch 83 SLA 1960)

Sec. 15.15.330. Commencement of ballot count. When the polls are closed and the last vote has been cast, the election board and clerks or counters shall immediately proceed to open the ballot box and to count the votes cast. In all cases the election board shall cause the count to be continued without adjournment until the count is complete.

(Sec. 3.33 ch 83 SLA 1960; am sec. 14 ch 228 SLA 1968; am sec. 24 ch 116 SLA 1972; am sec. 62 ch 100 SLA 1980)

Sec. 15.15.340. Report, oath and vacancies of counters. Counters shall report to the election board at the polls at the time designated by the election supervisor or the chairman of the election board to assume their duties to assist the election board in counting the vote. Before undertaking the duties of office, each counter shall subscribe to an oath to honestly, faithfully, impartially, and promptly carry out the duties of his position. An election judge may administer the oath. If an appointed counter fails to appear and subscribe to the oath at the

time designated by the election supervisor, the election board shall appoint any qualified voter to fill the vacancy.

(Sec. 3.34 ch 83 SLA 1960; am sec. 15 ch 228 SLA 1968; am sec. 25 ch 116 SLA 1972; am sec. 63 ch 100 SLA 1980)

Sec. 15.15.350. General procedure for ballot count. (a) The director may issue rules prescribing the manner in which the precinct ballot count is accomplished so as to assure accuracy in the count and to expedite the process. The election board shall account for all ballots by completing a ballot statement containing (1) the number of official ballots received; (2) the number of official ballots voted; (3) the number of official ballots spoiled; (4) the number of official ballots unused and destroyed. The board shall count the number of questioned ballots and shall compare that number to the number of questioned voters in the register. Discrepancies shall be noted and the numbers included in the certificate prescribed by AS 15.15.370. The election board shall count the ballots in a manner that allows watchers to see the ballots when opened and read. No person handling the ballot after it has been taken from the ballot box and before it is placed in the envelope for mailing may have a marking device in hand or remove a ballot from the immediate vicinity of the polls. (b) Ballots may not be counted before 8:00 p.m., local time, on the day of the election.

(Sec. 3.35 ch 83 SLA 1960; am sec. 16 ch 228 SLA 1968; am sec. 18 ch 197 SLA 1975; am sec. 64 ch 100 SLA 1980)

Sec. 15.15.360. Rules for counting hand-marked ballots. (a) The election board shall count hand-marked ballots according to the following rules. (1) A voter may mark his ballot only by the use of cross-marks, "X" marks, diagonal, horizontal or vertical marks, solid marks, stars, circles, asterisks, checks, or plus signs that are clearly spaced in the square opposite the name of the candidate the voter desires to designate. (2) A failure to properly mark a ballot as to one or more candidates does not itself invalidate the entire ballot. (3) If a voter marks fewer names than there are persons to be elected to the office, a vote shall be counted for each candidate properly marked. (4) If a voter marks more names than there are persons to be elected to the office, the votes for candidates for that office shall not be counted. (5) The mark specified in (1) of this subsection shall be counted only if it is substantially inside the square provided, or touching the square so as to indicate clearly that the voter intended the particular square to be designated. (6) Improper marks on the ballot shall not be counted and shall not invalidate marks for candidates properly made. (7) An erasure or correction invalidates only that section of the ballot in which it appears. (8) A vote marked for the candidate for President or Vice-President of the United States is considered and counted as a vote for the election of the presidential electors. (9) Write-in votes are not invalidated by writing in the name of a candidate whose name is printed on the ballot unless the election board

determines, on the basis of other evidence that the ballot was so marked for the purpose of identifying the ballot. (10) Stickers bearing a candidate's name may be affixed to the ballot in place of writing in a candidate's name if write-in votes are otherwise permitted. Stickers shall not be issued by members of the election board while serving at the polls. Stickers shall not be offered to voters within 200 feet of the polling place. (11) In order to vote for a write-in candidate, the voter must write in the candidate's name in the space provided or place a sticker in the space and, in addition, mark the square opposite the candidate's name in accordance with (1) of this subsection. (b) The rules set out in this section are mandatory and there shall be no exceptions to them. A ballot may not be counted unless marked in compliance with these rules. (c) The rules set out in this section apply to hand-marked punch-card ballots if punch-card machines are not available in a precinct.

(Sec. 3.36 ch 83 SLA 1960; am secs. 10 - 12 ch 125 SLA 1962; am secs. 8 - 10 ch 80 SLA 1963; am sec. 1 ch 136 SLA 1966; am sec. 24 ch 69 SLA 1970; am sec. 26 ch 116 SLA 1972; am sec. 65 ch 100 SLA 1980)

Sec. 15.15.361 Stickers. The director may adopt regulations under the Administrative Procedure Act (AS 44.62), governing the size, thickness, color and other characteristics of stickers and their use in elections.

(Sec. 66 ch 100 SLA 1980)

Sec. 15.15.370. Completion of ballot count. When the count of ballots is completed, and in no event later than the day after the election, the election board shall make a certificate in duplicate of the results. The certificate includes the number of votes cast for each candidate, for and against each proposition, yes or no on each question, and any additional information prescribed by the director. The election board shall, immediately upon completion of the certificate or as soon thereafter as the local mail service permits, send in one sealed package to the director one copy of the certificate and the register. In addition, all ballots properly cast shall be mailed to the director in a separate, sealed package. Both packages, in addition to an address on the outside, shall clearly indicate the precinct from which they come. Each board shall, immediately upon completion of the certification and as soon thereafter as the local mail service permits, send the duplicate certificate to the respective election supervisor. The director may authorize election boards in precincts in those areas of the state where distance and weather make mail communication unreliable to forward their election results by telephone, telegram or radio. The director may authorize the unofficial totaling of votes on a regional basis by election supervisors, tallying the votes as indicated on duplicate certificates. To assure adequate protection the director shall prescribe the manner in which the ballots,

registers, and all other election records and materials are thereafter preserved, transferred, and destroyed.

(Sec. 3.37 ch 83 SLA 1960; am sec. 11 ch 80 SLA 1963; am sec. 67 ch 100 SLA 1980)

Sec. 15.15.380. Payment of election board members. The director shall pay each election board member for time spent at his election duties, including the receiving of instructions. Election board chairmen and the chairman and members of the absentee ballot, questioned ballot and state ballot counting review boards shall be paid for time spent at their election duties. The director shall set the compensation to be paid under this section by regulation.

(Sec. 3.38 ch 83 SLA 1960; am sec. 17 ch 228 SLA 1968; am sec. 27 ch 116 SLA 1972; am sec. 1 ch 85 SLA 1975; am sec. 1 ch 70 SLA 1978; am sec. 68 ch 100 SLA 1980)

Sec. 15.15.390. Certifying election expenses. The director shall prescribe the manner of certifying, auditing, and paying election expenses, including the cost of giving notice, renting polling places, paying election judges, clerks, and counters, securing a ballot box, postage, and stationery, and obtaining similar election necessities.

(Sec. 3.39 ch 83 SLA 1960; am sec. 69 ch 100 SLA 1980)

Sec. 15.15.400. Preparation of voter list. The director shall prepare both a statewide list and a list by precinct of the names and addresses of all persons who voted in the election and their political party affiliation. Any person may obtain a copy of the list, or a part of the list, or a computer tape containing both residence and mailing addresses of voters, by applying to the director and paying to the state treasury a fee as determined by the director.

(Sec. 3.40 ch 83 SLA 1960; am sec. 70 ch 100 SLA 1980)

Sec. 15.15.410. Plural voting. Upon a determination that a person has voted more than once in the same election, the director shall notify the attorney general.

(Sec. 3.41 ch 83 SLA 1960; am sec. 71 ch 100 SLA 1980)

Sec. 15.15.420. Duty to review the ballot counting. The director shall review the counting of the ballots with the assistance of and in the presence of the appointed representatives from the political parties.

(Sec. 3.42 ch 83 SLA 1960; am sec. 72 ch 100 SLA 1980)

Sec. 15.15.430. Scope of the review of ballot counting. (a) The review of ballot counting by the director shall include only (1) a review and comparison of the tallies of hand-marked ballots in the election poll books with the precinct election certificates to correct any mathematical error in the count of hand-marked ballots, (2) a review of the tallies of write-in votes and a review of election

certificates as provided by law from precincts using punch-card ballots, (3) a review of absentee and questioned ballots as prescribed by law. (b) If the director finds an unexplained error in the tally of hand-marked ballots in any precinct, he may count the ballots from the precinct according to the rules set out in AS 15.15.360. If the director finds the precinct counters have not entered tallies in the precinct tally books but have certified a candidate as having received a fixed number of votes, the director may recount the ballots from that precinct according to the rules set out in AS 15.15.360. The director shall certify in writing to the state ballot counting review board any changes resulting from the count.

(Sec. 3.43 ch 83 SLA 1960; am sec. 12 ch 80 SLA 1963; am sec. 73 ch 100 SLA 1980)

Sec. 15.15.440. Dates for opening and closing state ballot counting review. The state ballot counting review shall begin no later than 11 days after the election and be continued daily until completed. The director may designate the hours each day during which the state ballot counting review board is to conduct its ballot counting review. The director shall close the review when the director is satisfied that no missing precinct certificate of election would, if received, change the result of the election. If no election certificate has been received from a precinct, the director may secure from the election supervisors and may count a certified copy of the duplicate election certificate of the precinct. If no election materials have been received, but election results have been received by telephone, telegram or radio, the director shall count the election results so received. If the director has reason to believe that a missing precinct certificate, if received, would affect the result of the election, the director shall await the receipt of the certificate until the close of business on the 15th day after the date of election. A certificate not actually delivered to the director by the close of business on the 15th day after the election may not be counted at the state ballot counting review.

(Sec. 3.44 ch 84 SLA 1960; am sec. 13 ch 125 SLA 1962; am sec. 13 ch 80 SLA 1963; am sec. 74 ch 100 SLA 1980; am sec. 7 ch 85 SLA 1986)

Sec. 15.15.450. Certification of state ballot counting review. Upon completion of the state ballot counting review the director shall certify the person receiving the largest number of votes for the office for which he was a candidate as elected to that office and shall certify the approval of a justice or judge not rejected by a majority of the voters voting on the question. The director shall issue to the elected candidates and approved justices and judges, a certificate of their election or approval. The director shall also certify the results of a proposition and other question except that the lieutenant governor shall certify the results of an initiative, referendum or constitutional amendment.

(Sec. 3.45 ch 83 SLA 1960; am sec. 75 ch 100 SLA 1980)

Sec. 15.15.460. Tie votes. If two or more candidates tie in having the highest number of votes for the same office for which there is to be elected only one candidate, the director shall so notify the candidates who are tied. The director shall immediately proceed with the recount of votes in the manner provided by AS 15.20.430 - 15.20.530.

(Sec. 3.46 ch 83 SLA 1960; am sec. 76 ch 100 SLA 1980)

Sec. 15.15.470. Preservation of election ballots, papers, and materials. The director shall preserve all precinct election certificates, tallies, and registers for four years after the election. All ballots and stubs may be destroyed 30 days after the certification of the state ballot counting review unless an application for recount has been filed and not completed, or unless their destruction is stayed by an order of the court. The director may permit the inspection of election materials upon call by Congress, the state legislature, or a court of competent jurisdiction.

(Sec. 3.47 ch 83 1960; am sec. 14 ch 125 SLA 1962; am sec. 77 ch 100 SLA 1980)

Sec. 15.15.480. Security of ballots. All official ballots in the possession of election officials, whether voted or not voted, shall be kept in a secure manner until destroyed in accordance with law. The director shall provide for the security of ballots during transportation and storage under regulations adopted under the Administrative Procedure Act (AS 44.62).

(Sec. 78 ch 100 SLA 1980)

Chapter 20 Special Procedures for Elections.

Article 1. Absentee Voting

Sec. 15.20.010. Persons who may vote absentee. At any election a qualified voter may vote an absentee ballot for the district in which he resides and is registered, (1) if he believes that he will be unavoidably absent from his voting precinct on election day, whether inside the state or not, or (2) if he will be unable to be present at the polls because of physical disability. (3) Repealed by sec. 79 ch 100 SLA 1980.

(Sec. 4.01 ch 83 SLA 1960; am sec. 79 ch 100 SLA 1980)

Sec. 15.20.015. Moving from election district just before election. A person who meets all voter qualifications except that listed in AS 15.05.010(4) is qualified to vote by absentee ballot in the election district in which he formerly resided if he lived in that election district for at least 30 days immediately before his change of residence.

(Sec. 2 ch 80 SLA 1963)

Sec. 15.20.020. Provision for general administrative supervision. The director shall provide general administrative supervision over the conduct of absentee voting. The director shall make available instructions to absentee voters regarding the procedure for absentee voting. One set of instructions shall accompany each absentee ballot.

(Sec. 4.02 ch 83 SLA 1960; am sec. 80 ch 100 SLA 1980)

Sec. 15.20.030. Preparation of ballots, envelopes, and other material. The director shall provide ballots for use as absentee ballots in all districts. The director shall provide a small envelope in which the voter shall initially place the marked ballot, and shall provide a larger envelope, with the prescribed voter's certificate on the back, in which the small envelope with ballot enclosed shall be placed. The director shall prescribe the form of and prepare the voter's certificate, envelopes, and other material used in absentee voting. The voter's certificate shall include an oath, for use when required, that the voter is a qualified voter in all respects, a blank for the voter's signature, a certification that the affiant properly executed the marking of the ballot and identified himself, blanks for the attesting official or witnesses, and a place for recording the date the envelope was sealed and witnessed.

(Sec. 4.03 ch 83 SLA 1960; am sec. 14 ch 80 SLA 1963; am sec. 81 ch 100 SLA 1980)

Sec. 15.20.040. Distribution of ballots, envelopes, and other material. The director shall distribute the absentee ballots, envelopes, and other absentee voting material to the election supervisors for redistribution to absentee voting officials and absentee ballot stations established under AS 15.20.045(b) before the date upon which a person may first apply for an absentee ballot in person.

(Sec. 4.04 ch 83 SLA 1960; am sec. 15 ch 80 SLA 1963; am sec. 82 ch 100 SLA 1980)

Sec. 15.20.045. Designation of absentee voting officials and stations. (a) The director or election supervisor may designate persons to act as absentee voting officials under AS 15.20.010 - 15.20.220 in areas where election supervisors do not have offices. Magistrates may, with the approval of the administrative director of the Alaska Court System, be designated under this section. At least 15 days before the election the director shall supply each absentee voting official with appropriate ballots. (b) The director may designate by regulation adopted under the Administrative Procedure Act (AS 44.62) locations at which absentee voting stations will be operated on election day and on other dates and at times to be designated by the director. The director shall supply absentee voting stations with ballots for all election districts in the state and shall designate absentee voting officials to serve at absentee voting stations.

(Sec. 19 ch 197 SLA 1975; am sec. 83 ch 100 SLA 1980) Sec.

15.20.048. Absentee voting in offices of election supervisors. (a) The director shall supply each election supervisor with ballots for all districts in the state to be used for absentee voting in an election. Ballots for absentee voting in person shall be available in the offices of the election supervisors 15 days before the election through the day of the election. (b) The director shall announce publicly that voting may begin in the offices of the election supervisors at a time earlier than the time allowed under (a) of this section if all election supervisors are supplied with ballots under (a) of this section before the 15th day before the election.

(Sec. 84 ch 100 SLA 1980)

Sec. 15.20.050. Requirement of full public notice. The director shall give full public notice of the dates and manner of voting absentee and may select any means of communication permitted to be used in giving notice of the date and time of the general election.

(Sec. 4.05 ch 83 SLA 1960; am sec. 85 ch 100 SLA 1980)

Sec. 15.20.060. Application in person or by a representative. Repealed by sec. 231 ch 100 SLA 1980

Sec. 15.20.061. Absentee voting in person. (a) A qualified voter may apply in person for an absentee ballot to the following election officials at the times specified: (1) to an absentee voting official in the election district in which the voter resides on or after the 15th day before an election up to and including the day before the date of the election; (2) to an election supervisor (A) after a date announced by the director under AS 15.20.048(b); and (B) on or after the 15th day before an election up to and including the date of the election; (3) to an absentee voting official at an absentee voting station designated under AS 15.20.045(b) at any time when the absentee voting station is operating; (4) to an absentee voting official in the precinct in which the voter resides when distances preclude easy access to the polling place on or after the 15th day before an election up to and including election day; (5) to an absentee voting official in the precinct in which no volunteers can be located to serve on the election board on or after the 15th day before an election up to and including election day. (b) On receipt of an application in person for an absentee ballot and exhibition of proof of identification as required in AS 15.15.225, the absentee voting official or election supervisor shall issue the ballot to the applicant. (c) On receipt of an absentee ballot in person, the voter shall proceed to mark the ballot in secret, to place the ballot in the small envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of the election official who shall sign as attesting official and date his signature. The election

official shall then accept the ballot. (d) The election official may not accept a marked ballot that has been exhibited by an absentee voter with intent to influence other voters. If the absentee voter improperly marks or otherwise damages a ballot, the voter may request and the election official shall provide him with another ballot up to a maximum of three. Exhibited, improperly marked, or damaged ballots shall be destroyed. The numbers of all ballots destroyed shall be noted on the ballot statement. (e) Each election official shall keep a record of the names and signatures of voters who cast absentee ballots before him and the dates on which the ballots were cast.

(Sec. 86 ch 100 SLA 1980)

Sec. 15.20.062 - 15.20.070. Applications for ballot. Repealed by sec. 231 ch 100 SLA 1980.

Sec. 15.20.071. Absentee voting by personal representative. (a) A qualified voter who is physically disabled may apply for an absentee ballot through a personal representative to the following election officials at the times specified: (1) to an absentee voting official in the election district in which the voter resides on or after the 15th day before an election up to and including the day of the election; (2) to an election supervisor (A) after a date announced by the director under AS 15.20.048(b); and (B) on or after the 15th day before an election up to and including the date of the election; (3) to an absentee voting official at an absentee voting station designated under AS 15.20.045(b) at a time when the absentee voting station is operating; (4) to the election board chairman or his designee on election day in the precinct in which the voter is entitled to vote except that the voter may not apply to the election board chairman in an area in which absentee voting officials have been designated. (b) Upon receipt of a written application by personal representative, the election official authorized to issue the absentee ballot shall provide the ballot and other absentee voting material to the personal representative if the written application is signed by the applicant and is accompanied by a letter from a licensed physician or a statement signed by two qualified voters stating that the applicant will be unable to go to the polling place because of physical disability. (c) The personal representative shall deliver the absentee ballot to the voter as soon as practicable. Upon receipt of an absentee ballot through a personal representative, the voter shall proceed to mark the ballot in secret, to place the ballot in the small envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the envelope in the presence of the personal representative who shall witness and date the signature of the voter. The voter must mark the ballot and sign the voter's certification not later than election day. The voter shall then return the absentee ballot to the personal representative who shall deliver the ballot to the election official who provided the ballot. The absentee ballot must be returned to the election official not later

than 8:00 p.m. on election day. (d) Each election official shall keep a record of the name and signature of each personal representative requesting an absentee ballot and the name of the person on whose behalf the ballot is requested. The election official shall record the date and time the absentee ballot is provided and the time the ballot is returned to the election official. (e) A candidate for office at that election may not act as a personal representative.

(Sec. 87 ch 100 SLA 1980; am sec. 8 ch 85 SLA 1986)

Sec. 15.20.080. Date for application in person. Repealed by sec. 231 ch 100 SLA 1980.

Sec. 15.20.081. Absentee voting by mail. (a) A qualified voter may apply by mail to the director for an absentee ballot. The application shall include the address to which the absentee ballot is to be returned, the applicant's full Alaska residence address, and the applicant's signature. Persons residing outside the United States and applying to vote absentee in federal elections in accordance with AS 15.05.011 need not include an Alaska residence address in the application. (b) An application for an absentee ballot by mail must be postmarked not less than ten days before the election for which the absentee ballot is sought. The absentee ballot application shall permit the person to register to vote under AS 15.07.070 and to request an absentee ballot for each state election held within that calendar year for which the voter is eligible to vote. (c) After receipt of an application by mail, the director shall send the absentee ballot and other absentee voting material to the applicant by the most expeditious mail service. The material shall be sent as soon as they are ready for distribution. The return envelope sent with the materials shall be addressed to the election supervisor in the district in which the voter is a resident. (d) Upon receipt of an absentee ballot by mail, the voter, in the presence of a notary public, commissioned officer of the armed forces including the National Guard, district judge or magistrate, United States postal official, or other person qualified to administer oaths, may proceed to mark the ballot in secret, to place the ballot in the small envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of an official listed in this subsection who shall sign as attesting official and shall date the signature. If none of the officials listed in this subsection is reasonably accessible, an absentee voter shall have the ballot witnessed by two persons over the age of 18 years and, in addition, shall provide the certification prescribed in AS 09.63.020. (e) An absentee ballot must be marked on or before the date of the election. Except as provided in (h) of this section, a voter who returns the ballot by mail shall use a mail service at least equal to first class and mail the ballot not later than the day of the election to the election supervisor for the election district in which the voter seeks to vote. The

ballot may not be counted unless it is received by the close of business on the 10th day after the election. If the ballot is postmarked, it must be postmarked on or before election day. After the day of the election, no ballots shall be accepted unless received by mail. (f) The director may require a voter casting an absentee ballot by mail to provide proof of identification or other information to aid in the establishment of his identity as prescribed by regulations adopted under the Administrative Procedure Act (AS 44.62). (g) The director shall maintain a record of the name of each voter to whom an absentee ballot is sent by mail. The record must list the date on which the ballot is mailed and the date on which the ballot is received by the election supervisor and the dates on which the ballot was executed and postmarked. (h) An absentee ballot returned by mail from outside the United States or from a military APO or FPO address that has been marked and mailed not later than election day may not be counted unless the ballot is received by the election supervisor not later than the close of business on the 15th day following the election.

(Sec. 87 ch 100 SLA 1980; am sec. 63 ch 6 SLA 1984; am secs. 9 - 11 ch 85 SLA 1986)

Sec. 15.20.082. Absentee voting by mail from outside the United States. (a) The director shall prepare special absentee ballots under this section for use in a state primary election, a state general election, and a state special election when the voter notifies the director in writing that the voter expects to be living, working, or traveling outside the United States at the time of the election. The director shall prepare the ballot so that it may be sent to the absentee voter 60 days before the date of the election. The director shall list on the ballot the different races to be voted on at the particular election on a statewide basis and, if the director prepares the ballot without the names of candidates printed on the ballot, the director shall provide the voter with information described in (c) of this section. (b) A special state absentee ballot prepared for use under (a) of this section shall contain each judicial retention election and ballot proposition or question scheduled to appear on the particular ballot. (c) A special state absentee ballot prepared for the state general election or for a state special election shall, if the names of candidates are not yet certified, permit a voter to cast a ballot for all the candidates of a particular political party that expects to have candidates appear on the ballot; for this purpose, the director shall prepare the ballot with party boxes and a blank line for each office to be voted on in that election. The voter may vote for a candidate for that office by writing in the name of a person and marking the box to the right of that name or the voter may mark one of the party boxes. If the voter puts a mark in a party box for that office, the director shall count the mark as a vote cast for the candidate for that office nominated by that party. If the voter writes in a name for an office, the vote shall be counted as a write-in vote for that office. The director

shall count the ballots under AS 15.15.360. The director shall provide the voter with the names of each candidate appearing on the primary election ballot and the names of any candidates who have qualified by petition to appear on the general election ballot. (d) The director shall prepare the regular absentee ballots as soon as is reasonably possible and shall send the regular absentee ballot to each person receiving a special absentee ballot under this section. The director shall, if the regular absentee ballot is received within the time required by law, count the regular absentee ballot in preference to the special absentee ballot.

(Sec. 12 ch 85 SLA 1986)

Sec. 15.20.090 - 15.20.150. Dates for and procedure on applications; casting votes. Repealed by sec. 231 ch 100 SLA 1980.

Sec. 15.20.160. Fee prohibited. No person may receive a fee from the voter for attesting to any voter's certificate required in voting absentee.

(Sec. 4.16 ch 83 SLA 1960)

Sec. 15.20.170. Disposition of ballots. Each absentee voting official shall transmit the dated envelopes containing the marked ballots by the most expeditious mail service to the election supervisor for his district. Upon receipt of the absentee ballots the election supervisor shall stamp on the envelope the date on which the ballot is received.

(Sec. 4.17 ch 83 SLA 1960; am sec. 18 ch 228 SLA 1968; am sec. 23 ch 197 SLA 1975; am sec. 88 ch 100 SLA 1980)

Sec. 15.20.180. Names of absentee voters to be made available. The election supervisors and election officials shall have available for public inspection the names and addresses of persons who voted absentee.

(Sec. 4.18 ch 83 SLA 1960; am sec. 19 ch 228 SLA 1968; am sec. 24 ch 197 SLA 1975)

Sec. 15.20.190. Appointment, duties, and compensation of district counting boards. (a) Thirty days prior to the date of an election, the election supervisors shall appoint, in the same manner provided for the appointment of election judges prescribed in AS 15.10.150, district absentee ballot counting boards and district questioned ballot counting boards, each composed of four members, two from each political party. The district boards shall assist the election supervisors in counting the absentee and questioned ballots and shall receive the same compensation paid election judges under AS 15.15.380. (b) The election supervisor shall appoint a counting team or teams to aid the district absentee ballot counting board in counting absentee ballots and the district questioned ballot counting board in

counting questioned ballots. There shall be four counters on each counting team, no more than two of whom may be members of the same political party.

(Sec. 4.19 ch 83 SLA 1960; am sec. 20 ch 228 SLA 1968; am sec. 89 ch 100 SLA 1980)

Sec. 15.20.200. Time of district canvass and for counting absentee ballots. Repealed by sec. 231 ch 100 SLA 1980.

Sec. 15.20.201. Time of district absentee ballot counting review. (a) No less than seven days preceding the day of election, the election supervisor, in the presence and with the assistance of the district absentee ballot counting board, shall review all voter certificates of absentee ballots received by that date. The review of absentee ballots shall continue at times designated by the election supervisor until completed. (b) Counting of absentee ballots which have been reviewed shall begin at 8:00 p.m., local time, on the day of the election at places designated by each election supervisor and shall continue until all absentee ballots reviewed and eligible for counting have been counted. The counting teams shall report the count of absentee ballots to the district absentee ballot counting board. An election supervisor or an election official may not remove absentee ballots from the small, inner envelopes before 8:00 p.m., local time, on the day of the election. Counting of the absentee ballots shall continue at times designated by the election supervisor until all absentee ballots are counted. (c) Not later than the 15th day following the day of the election, the district absentee ballot counting board shall certify the absentee ballot review. (d) Absentee ballots received in the office of an election supervisor after the completion of the district absentee ballot counting review shall be forwarded immediately to the director by the most expeditious service.

(Sec. 90 ch 100 SLA 1980; am secs. 13 - 15 ch 85 SLA 1986)

Sec. 15.20.203. Procedure for district absentee ballot counting review. (a) The district absentee ballot counting board shall examine each absentee ballot envelope and shall determine whether the absentee voter is qualified to vote at the election and whether the absentee ballot has been properly cast. (b) An absentee ballot may not be counted if (1) the voter has failed to properly execute the certificate; (2) an official or the witnesses authorized by law to attest the voter's certificate fail to execute the certificate; (3) the ballot is not attested on or before the date of the election; (4) the ballot, if postmarked, is not postmarked on or before the date of the election; or (5) after the day of election, the ballot was delivered by a means other than mail. (c) Any person present at the district absentee ballot counting review may challenge the name of an absentee voter when read from the voter's certificate on the back of the large envelope if he has good reason to suspect that the challenged voter is not qualified

to vote, is disqualified, or has voted at the same election. The person making the challenge shall specify the basis of the challenge in writing. The district absentee ballot counting board by majority vote may refuse to accept and count the absentee ballot of a person properly challenged on grounds listed in (b) of this section. (d) If an absentee ballot is rejected, the election supervisor shall send a copy of the statement of the challenge to the absentee voter. The election supervisor shall place all rejected absentee ballots in a separate envelope with the statements of challenge. The envelope shall be labeled "rejected absentee ballots" and shall be forwarded to the director with the election certificates and other returns. (e) If an absentee ballot is not rejected, the large envelope shall be opened and the small envelope containing the absentee ballot shall be placed in a container and mixed with other small envelopes. (f) The small envelopes shall be drawn from the container, opened, and the absentee ballots counted at the times specified in AS 15.20.201 and according to the rules for determining properly marked ballots in AS 15.15.360. (g) Upon completion of the absentee ballot review, the election supervisor shall prepare an election certificate for execution by the district absentee ballot counting board and shall forward the original certificate and other returns to the director no later than the 16th day following the election.

(Sec. 90 ch 100 SLA 1980; am secs. 16, 17 ch 85 SLA 1986)

Sec. 15.20.205. Time of district questioned ballot counting review. (a) On the second day following the day of the election, the election supervisor or his designee, in the presence and with the assistance of the district questioned ballot counting board, shall review all voter certificates of questioned ballots received by that date. The review of questioned ballots shall continue at times designated by the election supervisor until completed. (b) Counting of questioned ballots which have been reviewed shall begin on the third day following the day of the election and shall continue at times designated by the election supervisor until all questioned ballots reviewed and eligible for counting have been counted. The counting teams shall report the count to the district questioned ballot counting board. (c) The district questioned ballot counting board shall certify the questioned ballot totals as soon as the count is completed but no later than the 10th day following the election. (d) Questioned ballots received after certification of the count shall be forwarded immediately to the director by the most expeditious service.

(Sec. 90 ch 100 SLA 1980; am sec. 18 ch 85 SLA 1986)

Sec. 15.20.207. Procedure for district questioned ballot review. (a) The district questioned ballot counting board shall examine each questioned ballot envelope and shall determine whether the questioned voter is qualified to vote at the election and whether the questioned ballot has been properly cast. (b) A questioned ballot may not be counted if (1) the voter has failed to properly execute the

certificate; or (2) an official or the witnesses authorized by law to attest the voter's certificate fail to execute the certificate. (c) Any person present at the district questioned ballot review may challenge the name of a questioned voter when read from the voter's certificate on the back of the large envelope if he has good reason to suspect that the questioned voter is not qualified to vote, is disqualified, or has voted at the same election. The person making the challenge shall specify the basis of the challenge in writing. The district questioned ballot counting board by majority vote may refuse to accept and count the questioned ballot of a person properly challenged under grounds listed in (b) of this section. (d) If a questioned ballot is rejected, the election supervisor shall send a copy of the statement of the challenge to the questioned voter. The election supervisor shall place all rejected questioned ballots in a separate envelope with statements of challenge. The envelope shall be labeled "rejected questioned ballots" and shall be forwarded to the director with the election certificates and other returns. (e) If a questioned ballot is not rejected, the large envelope shall be opened and the small envelope containing the questioned ballot shall be placed in a container and mixed with other small envelopes containing questioned ballots. (f) The small envelopes shall be drawn from the container, opened, and the questioned ballots counted at the times specified in AS 15.20.205 and according to the rules for determining properly marked ballots in AS 15.15.360. (g) Upon completion of the questioned ballot review, the election supervisor shall prepare an election certificate for execution by the district questioned ballot counting board, and shall forward the original certificate and returns to the director as soon as the count is completed but no later than the ninth day following the election.

(Sec. 90 ch 100 SLA 1980; am sec. 19 ch 85 SLA 1986)

Sec. 15.20.210. Procedure for district canvass. Repealed by sec. 231 ch 100 SLA 1980.

Sec. 15.20.211. Counting cross-district and certain write-in votes. (a) If a qualified voter of the state votes a ballot for an election district other than the election district in which he is registered, the votes he casts for statewide candidates and for statewide ballot propositions and statewide questions shall be counted. If the qualified voter voted for a candidate for the state senate from the senate district in which he is a resident, the vote shall be counted. The votes cast for candidates or ballot propositions or questions not appearing on the ballot of the district in which he is a resident may not be counted. (b) If a voter requested an absentee ballot by mail and the proper absentee ballot was not sent to the voter, the votes cast by the voter on the ballot he received which are for write-in candidates he could have voted for if he had received and voted the proper absentee ballot shall be counted.

(Sec. 91 ch 100 SLA 1980)

Sec. 15.20.220. Procedure for state review. (a) When the director and appointed party representatives have completed the review of ballots cast at the voting precincts, they shall proceed to review the absentee and questioned ballot votes certified by the district counting boards. The review of the absentee and questioned ballot vote certified by the district counting boards shall be accomplished by reviewing the tallies of the recorded vote to check for mathematical error and by comparing the totals with the election certificate of results. (b) The state review board shall review and count absentee and questioned ballots that have been forwarded to the director and that have not been reviewed or counted by a district counting board. Absentee and questioned ballots not received in the office of the director by 4:00 p.m. on the 15th day following the election may not be counted in the review.

(Sec. 37 ch 59 SLA 1982)

Article 2. Voting Machines

Sec. 15.20.230 - 15.20.420. Repealed. Repealed by sec. 231 ch 100 SLA 1980.

Article 3. Election Recounts

Sec. 15.20.430. Authorization of recount application.

(a) A defeated candidate or 10 qualified voters who believe there has been a mistake made by an election official or by the counting board in counting the votes in an election, may file an application within five days after the completion of the state review to the director for a recount of the votes from any particular precinct or any election district and for any particular office, proposition, or question. However, the application may be filed only within three days after the completion of the state review after the general election for a recount of votes cast for the office of governor and lieutenant governor. If there is a tie vote as provided in AS 15.15.460, the director shall initiate the recount and give notice to the interested parties as provided in AS 15.20.470. (b) The date on which the director receives an application rather than the date of mailing or transmission determines whether the application is filed within the time allowed under (a) of this section. If the actual physical delivery by telegram of a copy in substance of the statements made in the application for recount is received in the office of the director at or before 5:00 p.m. Alaska Standard time, on the due date the application will be accepted; providing the original signed application is postmarked at or before 5:00 p.m. Alaska Standard time of the same day.

(Sec. 4.71 ch 83 SLA 1960; am sec. 20 ch 136 SLA 1966; am sec. 93 ch 100 SLA 1980)

Sec. 15.20.440. Form of application. (a) The application shall state in substance the basis of the belief that a mistake has been made, the particular election precinct or election district for which the recount is to be held, the particular office, proposition, or question for which the recount is to be held, and that the person making the application is a candidate or that the 10 persons making the application are qualified voters. The candidate or persons making the application shall designate by full name and mailing address two persons who shall represent the applicant and be present and assist during the recount. Any person may be named representative, including the candidate or any person signing the application. Applications by 10 qualified voters shall also include the designation of one of the number as chair. The candidate or persons making the application shall sign the application and shall print or type their full name and mailing address. (b) Candidates, political parties, or organized groups having a direct interest in a recount and who are seeking to protect their interests during a recount may provide, at their own expense, two or more observers to witness the recount.

(Sec. 4.72 ch 83 SLA 1960; am sec. 18 ch 80 SLA 1963; am sec. 94 ch 100 SLA 1980; am sec. 20 ch 85 SLA 1986)

Sec. 15.20.450. Requirement of deposit. The application shall include a deposit in cash, by certified check, or by bond with a surety approved by the director. The amount of the deposit is \$300 for each precinct, \$750 for each election district, and \$10,000 for the entire state. If the recount includes an office for which candidates received a tie vote, or the difference between the number of votes cast was 20 or less or was less than .5 percent of the total number of votes cast for the two candidates for the contested office, or a question or proposition for which there was a tie vote on the issue, or the difference between the number of votes cast in favor of or opposed to the issue was 20 or less or was less than .5 percent of the total votes cast in favor of or opposed to the issue, the application need not include a deposit and the state shall bear the cost of the recount. If, on the recount, a candidate other than the candidate who received the original election certificate is declared elected, or if the vote on recount is determined to be four percent or more in excess of the vote reported by the state review for the candidate applying for the recount or in favor or opposed to the question or proposition as stated in the application, the entire deposit shall be refunded. If the entire deposit is not refunded, the director shall refund any money remaining after the cost of the recount has been paid from the deposit.

(Sec. 4.73 ch 83 SLA 1960; am sec. 15 ch 125 SLA 1962; am sec. 21 ch 136 SLA 1966; am sec. 1 ch 77 SLA 1976; am sec. 95 ch 100 SLA 1980; am sec. 21 ch 85 SLA 1986)

Sec. 15.20.460. Determination of date of recount. If the director determines that the application is substantially in

the required form, he shall fix the date of the recount to be held within three days after the receipt of an application requesting a recount of the general election votes cast for the office of governor and lieutenant governor and within five days after the receipt of an application requesting a recount for any other office, question, or proposition.

(Sec. 4.74 ch 83 SLA 1960; am sec. 96 ch 100 SLA 1980)

Sec. 15.20.470. Requirement of notice. The director shall give the candidate or designated chairman signing the application, the two or more persons appointed to represent the applicant during the recount, and other directly interested parties, notice of the time and place of the recount by certified mail, by telegraph, or by telephone.

(Sec. 4.75 ch 83 SLA 1960; am sec. 97 ch 100 SLA 1980)

Sec. 15.20.480. Procedure for recount. In conducting the recount, the director shall review all ballots whether the ballots were counted at the precinct or by computer or by the district absentee counting board or the questioned ballot counting board to determine which ballots, or part of ballots, were properly marked and which ballots are to be counted in the recount, and shall check the accuracy of the original count, the precinct certificate and the review. The director shall check the number of ballots and questioned ballots cast in a precinct against the registers and shall check absentee ballots voted against absentee ballots distributed. The director shall count absentee ballots received after close of business on the 15th day following the election and before the completion of the recount. For administrative purposes, the director may join and include two or more applications in a single review and count of votes. The rules in AS 15.15.360 governing the counting of hand-marked ballots and the rules in AS 15.20.730 governing the counting of punch-card ballots shall be followed in the recount. The ballots and other election material shall remain in the custody of the director during the recount and the highest degree of care shall be exercised to protect the ballots against alteration or mutilation. The recount shall be completed within 10 days. The director may employ additional personnel necessary to assist in the recount.

(Sec. 4.76 ch 83 SLA 1960; am sec. 98 ch 100 SLA 1980; am sec. 22 ch 85 SLA 1986)

Sec. 15.20.490. Certification of results. If it is determined by recount that the plurality of votes was cast for a candidate, the director shall issue a certificate of election or nomination to the elected or nominated candidate as determined by the recount. If it is determined by the recount that a proposition or question should be certified as having received the required vote, the director shall so certify except that the lieutenant governor shall so certify

if the proposition or question involves an initiative, a referendum or a constitutional amendment.

(Sec. 4.77 ch 83 SLA 1960; am sec. 99 ch 100 SLA 1980)

Sec. 15.20.500. Authorization for expanding recount.
Repealed by sec. 6 ch 26 SLA 1966.

Sec. 15.20.510. Provision for appeal to courts. A candidate or any person who requested a recount who has reason to believe an error has been made in the recount (1) involving any question or proposition or the validity of any ballot may appeal to the superior court in accordance with applicable court rules governing appeals in civil matters, and (2) involving candidates for the legislature or Congress or the office of governor and lieutenant governor may appeal to the supreme court in accordance with rules as may be promulgated by the court. Appeal shall be filed within five days of the completion of the recount. Upon order of the court, the director shall furnish the record of the recount taken including all ballots, registers, and other election material and papers pertaining to the election contest. The appeal shall be heard by the court sitting without a jury. The inquiry in the appeal shall extend to the questions whether or not the director has properly determined what ballots, parts of ballots, or marks for candidates on ballots are valid, and to which candidate or division on the question or proposition the vote should be attributed. The court shall enter judgment either setting aside, modifying, or affirming the action of the director on recount.

(Sec. 4.79 ch 83 SLA 1960; am sec. 19 ch 80 SLA 1963; am sec. 100 ch 100 SLA 1980)

Sec. 15.20.520. Provision for appeal to legislature or Congress. A candidate or persons who requested a recount, who have reason to believe an error has been made in the recount involving a candidate for the general election for the state legislature or Congress, may appeal to the chamber in which the candidate seeks membership in accordance with applicable rules of the legislature or Congress. Upon request of the legislature or Congress, the director shall furnish the record of the recount taken including all ballots, registers, and other election material and papers pertaining to the election contest.

(Sec. 4.80 ch 83 SLA 1960; am sec. 101 ch 100 SLA 1980)

Sec. 15.20.530. Determination of tie votes.

If after a recount and appeal two or more candidates tie in having the highest number of votes for the same office, the director shall notify the candidates who are tied. The director shall notify the candidates of a reasonably suitable time and place to determine the successful candidate by lot. After the determination has been made by lot, the director shall so certify.

(Sec. 4.81 ch 83 SLA 1960; am sec. 102 ch 100 SLA 1980)

Article 4. Election Contests

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 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.

(Sec. 4.91 ch 83 SLA 1960)

Sec. 15.20.550. Jurisdiction and time for contest. The action may be brought in the superior court within 10 days after the completion of the state review.

(Sec. 4.92 ch 83 SLA 1960; am sec. 103 ch 100 SLA 1980)

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. 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.

(Sec. 4.93 ch 83 SLA 1960; am sec. 104 ch 100 SLA 1980)

Article 5. Punch-Card Voting

Sec. 15.20.590. Appointment of officials.

(a) For every area of the state designated by him for punch-card voting, the director shall appoint a data processing review board which is responsible to him for the evaluation of all computer phases of the election. The board shall consist of at least three members. At least one member shall be a member of the political party whose candidate for governor received the largest number of statewide votes at the preceding general election, one shall be a member of the party whose candidate received the second largest number of votes, and one shall be registered to vote either as an "independent" or "nonpartisan" or shall have declined to state his party affiliation when registering to vote. At least one of the members must be familiar with the election process, and at least two must have some expertise in computer programming and processing. The election supervisor shall name one of the members who has sufficient familiarity with computer programming and operations as presiding officer of the board. (b) For the computer

counting center in his area, each election supervisor shall appoint (1) a receiving board consisting of at least one person from each political party; and (2) a control board consisting of at least one person from each political party. (Sec. 2 ch 120 SLA 1975; am sec. 105 ch 100 SLA 1980)

Sec. 15.20.600. Party representation. In AS 15.20.590 - 15.20.730, wherever there is a provision for a person to represent a political party, he shall be chosen by the appointing official subject to the approval of the district committee of that party. If the party district committee fails to respond within 15 days, the appointing official shall seek approval from the state chairman of the party. If the committee or state chairman makes a reasonable objection, another person shall be appointed.

(Sec. 2 ch 120 SLA 1975; am sec. 106 ch 100 SLA 1980) Sec.

15.20.609. Use of computers. The director shall designate the computers to be used in the counting of ballots. The director may designate more than one computer for use in computer counting centers in addition to alternate computers specified under AS 15.20.610.

(Sec. 107 ch 100 SLA 1980)

Sec. 15.20.610. Alternate site. For each computer counting center, the director shall designate an alternate site, if available, to be used in the event of equipment failure at the main location. If the computer fails and no alternate site is available, the election supervisor shall designate emergency counting teams to hand count punch-card ballots in the manner prescribed by AS 15.20.730.

(Sec. 2 ch 120 SLA 1975; am sec. 108 ch 100 SLA 1980)

Sec. 15.20.620. Tests and security. (a) No later than one week before the election, the computer punch-card vote counting program must be tested in the presence of and to the satisfaction of the data processing review board. Testing shall take place at both the main and alternate computer counting centers. (b) In addition to the test specified in (a) of this section, other tests shall be made to ensure that the system is functioning properly (1) at least one day before the election at a time specified by the data processing review board presiding officer; (2) on the day of the election one hour before the polls close; (3) immediately after the final vote tabulation is complete; (4) approximately one hour before the processing of the questioned and absentee ballots; and (5) immediately after the final vote tabulation of questioned and absentee ballots is complete. (c) As a security precaution, after the computer has been tested as prescribed in (b) (2) and (4) of this section, (1) the vote-counting task shall remain isolated from nonrelated processing tasks; (2) processing not concerned with vote counting shall be limited to tasks which are critical to the computer center and shall be agreed upon in advance by the manager of the computer center

and the director; (3) reasonable computer security controls shall be in effect to assure the integrity of the vote-counting process; and (4) access to the computer counting area shall be controlled by the data processing review board until the vote-counting process is terminated. (d) During the final tabulation by computer, a manual count of different individual races in six precincts chosen at random shall be made, and the results checked against those of the system. (e) If a problem is encountered during any of the testing or tabulating procedures, additional tests may be conducted as considered necessary. (f) At any time during the count, party representatives or members of the data processing review board may request a listing of the program source code which comprises the instructions to be executed by the computer.

(Sec. 2 ch 120 SLA 1975; am secs. 109 - 112 ch 100 SLA 1980)

Sec. 15.20.630. Demonstration. A demonstration of the punch-card process shall be made available to each voter at the polling place before he begins the voting process and each voter shall be informed that the demonstration is available.

(Sec. 2 ch 120 SLA 1975)

Sec. 15.20.640. Processing at polling place. (a) Immediately after the polls have closed, the ballot box shall be opened by election board members in full view of all persons present, and all ballots shall be removed from the ballot envelopes. (b) The ballot cards shall be inspected individually and any ballots which are damaged so that they cannot be read by the computer shall be withdrawn and set aside for hand counting. (c) The ballots containing write-in votes shall be banded together and placed behind the other undamaged ballot cards which have been voted. The envelope containing questioned ballots shall be banded to the computer-ready ballots, and the bundle placed in a special container and sealed, with the seal signed by the election board members. (d) The special container shall be placed in a transport box which shall be locked, sealed, or otherwise secured before delivery to the computer counting center.

(Sec. 2 ch 120 SLA 1975; am secs. 113, 114 ch 100 SLA 1980)

Sec. 15.20.650. Delivery of ballots to computer counting center. The delivery of ballots from the precinct polling place to the designated computer counting center shall be made by a delivery team consisting of two members of the election board, one from each of the two major political parties or by a licensed security officer accompanied by at least one person designated by the election board. The delivery team shall accompany the ballots from the precinct polling place to the receiving board at the computer counting center.

(Sec. 2 ch 120 SLA 1975; am sec. 115 ch 100 SLA 1980)

Sec. 15.20.660. Receipt of ballots at computer counting center. (a) A state trooper shall be on duty at the computer counting center during the processing of ballots. (b) Immediately inside the computer counting center the receiving board shall (1) receive the transport box and examine the seal; if the seal is damaged or otherwise not intact the board shall notify the election supervisor immediately; if the seal is intact the receiving board shall sign a receipt to that effect and acknowledge delivery; (2) check the precinct off on a log sheet, enter the arrival time, initial the entry, and have the delivery team sign the log sheet; and (3) deliver the special container to the control board.

(Sec. 2 ch 120 SLA 1975)

Sec. 15.20.670. Receipt of ballots by control board. The control board shall (1) cut the seal and remove all ballots and envelopes from the special container; (2) insert the proper header and end cards into the ballots; (3) place the ballot bundles and unprocessable ballots envelope in a tray for delivery to the computer room; and (4) give the envelope containing questioned ballots to the election supervisor. (Sec. 2 ch 120 SLA 1975; am secs. 116, 117 ch 100 SLA 1980) **Sec. 15.20.680. Counting of ballots by computer.** (a) All vote-counting processing in the computer room shall be under the supervision of the presiding officer of the data processing review board. The presiding officer shall resolve any problems which arise in the vote counting by consulting with other members of the board. (b) The data processing review board shall initiate the processing of ballots from each precinct by (1) comparing the precinct identification on the header card against that of the envelope to ensure that they are the same; (2) ensuring that any write-in ballots are separate and placed at the rear of other ballots; and (3) giving the ballots to the computer operator. (c) The computer operator shall process the ballots by (1) picking up the ballots of one precinct; removing any ballots which cannot be processed; placing any unprocessable ballots in the envelope; and returning the envelope to the data processing review board member for hand counting; (2) placing the ballots in the computer card reader and activating it; (3) returning the counted ballots with write-in ballots separated to the data processing review board.

(Sec. 2 ch 120 SLA 1975; am sec. 118 ch 100 SLA 1980)

Sec. 15.20.685. Hand counting of punch-card ballots. (a) The election supervisor shall appoint a counting team or teams to assist in the counting of punch-card ballots at the computer counting center on election night. There shall be at least four counters on each counting team, no more than two of whom may be members of the same political party. (b) A counting team or teams shall count all punch-card ballots which cannot be processed through the computer and all write-in votes on ballots which have been processed through

the computer. Each counting team shall make a certificate in duplicate of the results of the count.

(Sec. 119 ch 100 SLA 1980)

Sec. 15.20.690. Alternate computer counting. (a) A computer service technician shall be on standby duty during the entire vote counting process. If equipment failure occurs and the data processing review board determines that repairs cannot be made within a reasonable time and an alternate computer is not available at the same site, the computer room process shall be moved to the alternate site if one is available. If an alternate computer is available at the same site, the data processing review board shall make a test run to ensure that the alternate computer is functioning properly, and ballot counting shall be continued beginning with the precinct determined appropriate by the data processing review board. If an alternate site is not available, ballots shall be counted manually. The data processing review board shall determine the precincts to receive manual counting. (b) If an alternate site is available, all ballots including those previously counted shall be boxed, and a receipt prepared. The ballot programs shall also be sealed. The sealed material shall then be transported to the alternate location accompanied by a state trooper, the election supervisor, and the data processing review board. On arrival at the alternate site, the board shall initiate a test run to ensure that the computer is functioning properly. After checking the seals on all containers, the supervisor and presiding officer shall sign the receipt and open all of the materials. Ballot counting shall be continued, beginning with the precinct determined appropriate by the data processing review board. (c) After processing is completed, all ballots shall be sealed and transported to a designated place of security.

(Sec. 2 ch 120 SLA 1975; am sec. 120 ch 100 SLA 1980)

Sec. 15.20.700. Disposition of ballots. (a) The ballots which have been counted in the computer room shall be sealed by the data processing review board or the designated counting team. The sealed ballots shall then be transported to a designated place of security. The questioned ballots shall be sealed and given to the election supervisor for tallying. (b) Repealed by sec. 121 ch 100 SLA 1980. (c) The ballot image magnetic tape which contains an exact image of each counted ballot shall be retained in a secure manner by the election supervisor until the director determines that it is no longer needed.

(Sec. 2 ch 120 SLA 1975; am sec. 121 ch 100 SLA 1980)

Sec. 15.20.710. Report of partial results. The presiding officer of the data processing review board may authorize activation of the print program to provide partial results, if time permits. This printout shall be released to the presiding officer of the data processing review board who shall file the original with the control board and provide copies for posting and distribution to news media

representatives. In addition, the director may authorize the computerized broadcast of results while vote counting is in progress. This broadcast may be accomplished through on-line terminals and may begin when the vote counting begins.

(Sec. 2 ch 120 SLA 1975; am sec. 122 ch 100 SLA 1980)

Sec. 15.20.720. Public observation. The punch-card counting process shall be available for public viewing by closed circuit television, or by direct observation to the extent that the presiding officer of the data processing review board determines that election officials and computer personnel will not be hindered in the performance of their duties.

(Sec. 2 ch 120 SLA 1975; am sec. 123 ch 100 SLA 1980)

Sec. 15.20.730. Rules for counting punch-card ballots. (a) A vote for a candidate whose name is not printed on the ballot shall be counted only if the name is written in, the square following it is punched, and the number of punches does not exceed the number of offices available. A write-in vote for a candidate whose name is also printed on the ballot may be counted only if the square following the written name is punched, the square following the printed name is not punched, and the number of punches does not exceed the number of offices available. (b) The computer shall be programmed to count ballots as follows: (1) a vote may be counted only if the punch is clearly spaced in the square designated by a plus sign following the name of the candidate the voter desires to select; (2) if there is only one plus-marked square for a team whose names are on separate lines, such as president and vice-president; or governor and lieutenant governor, a punch in the square or elsewhere in the rectangle following the names shall be counted for that team; (3) a failure to properly punch a ballot card as to one or more candidates does not itself invalidate the entire ballot; (4) if a voter punches fewer names than there are persons to be elected to the office, a vote shall be counted for each candidate properly marked; (5) if a voter punches more names than there are persons to be elected to the office, the votes for candidates to that office shall not be counted; (6) improper marks on the ballots shall not be counted and shall not invalidate punches for candidates properly made; (7) an erasure or correction invalidates only that section of the ballot in which it appears; (8) a vote marked for the candidate for President of the United States is considered and counted as a vote for the election of presidential electors. (c) Hand counting of write-in votes and unprocessable punch-card ballots shall be done in accordance with the requirements of this section. If an equipment failure occurs and the data processing review board determines that the ballots are to be counted manually, the ballot counting shall be done in accordance with the requirements of this section.

(Sec. 2 ch 120 SLA 1975; am sec. 124 ch 100 SLA 1980)

Sec. 15.20.740. Questioned punch-card ballots. The procedure for reviewing and counting questioned punch-card ballots is the same procedure established in AS 15.20.205 and 15.20.207 for hand-marked ballots except that questioned punch-card ballots may be processed by the computer from the third through the eighth day following the election. The data processing review board shall supervise the count and shall follow the procedure established in AS 15.20.680 and 15.20.685.

(Sec. 125 ch 100 SLA 1980)

Article 6. Voting by Mail.

Sec. 15.20.800. Voting by mail. (a) The director may conduct an election by mail if it is held at a time other than when the general, party primary, or municipal election is held. (b) If the director conducts an election under (a) of this section by mail, the director shall send a ballot for each election described in (a) of this section to each person whose name appears on the official registration list prepared under AS 15.07.125 for that election. The ballot shall be sent to the address stated on the official registration list unless the voter has notified the director or an election supervisor of a different address to which the ballot should be sent. The director shall send ballots by first class, nonforwardable mail. (c) If the director conducts an election under (a) of this section by mail, the director shall mail ballots under this section on or before the 22nd day before the election. (d) The voter may cast the ballot under AS 15.20.081(d) - (e). (e) The director shall review ballots voted under this section under procedures established for the review of absentee ballots under AS 15.20.201 and 15.20.203.

(Sec. 23 ch 85 SLA 1986)

Chapter 25. Nomination of Candidates.

Article 1. Primary Elections.

Sec. 15.25.010. Provision for primary election. Candidates for the elective state executive and state and national legislative offices shall be nominated in a primary election by direct vote of the people in the manner prescribed by AS 15.25.010 15.25.200.

(Sec. 5.01 ch 83 SLA 1960; am sec. 1 ch 1 SLA 1967; am sec. 1 ch 20 SLA 1980)

Sec. 15.25.020. Date of primary. The primary election is held on the fourth Tuesday in August of every even numbered year.

(Sec. 5.02 ch 83 SLA 1960; am sec. 1 ch 26 SLA 1966; am sec. 2 ch 1 SLA 1967)

Sec. 15.25.030. Declaration of candidacy. (a) A member of a political party who seeks to become a candidate of the

party in the primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgments and shall state in substance: (1) the full name of the candidate; (2) the full mailing address of the candidate; (3) if the candidacy is for the office of state senator or state representative, the election or senate district of which the candidate is a resident; (4) the office for which the candidate seeks nomination; (5) the name of the political party of which he is a candidate for nomination; (6) the full resident address of the candidate; (7) the date of the primary election at which the candidate declares himself to be a candidate; (8) that the candidate will meet the specific residency requirements of the office for which he is a candidate; (9) that the candidate will meet the specific citizenship requirements of the office for which he is a candidate; (10) that the candidate is a qualified voter as required by law; (11) that the candidate will meet the specific age requirements of the office for which he is a candidate; (12) that the candidate requests that his name be placed on the primary election ballot; (13) that the required fee accompanies the declaration; (14) that he is not a candidate for any other office to be voted on at the primary or general election and that he has not filed another declaration of candidacy or nominating petition for the office for which this declaration is filed; (15) the manner in which he wishes his name to appear on the ballot; and (16) that the candidate is registered to vote as a member of the political party whose nomination he seeks. (b) A person filing a declaration of candidacy under this section shall simultaneously file a statement of income sources and business interests which complies with the requirements of AS 39.50.

(Sec. 5.03 ch 83 SLA 1960; am sec. 16 ch 125 SLA 1962; am sec. 1 ch 53 SLA 1966; am sec. 3 ch 1 SLA 1967; am sec. 35 ch 116 SLA 1972; am sec. 3 ch 133 SLA 1977; am sec. 126 ch 100 SLA 1980)

Sec. 15.25.040. Manner and date of filing declaration. (a) The declaration is filed by either (1) the actual physical delivery of the declaration in person or by mail at or before 5:00 p.m., prevailing time, June 1 of the year in which a general election is held for the office, or (2) the actual physical delivery by telegram of a copy in substance of the statements made in paragraphs (1) - (5) of the declaration as required by AS 15.25.030 at or before 5:00 p.m., prevailing time, June 1 of the year in which a general election is held for the office and also the actual physical delivery of the declaration containing paragraphs (1) - (16) as required by AS 15.25.030 by registered mail which is received not more than 15 days after that time. (b) If the postmark is illegible, a dated receipt from the post office where dispatched shall be acceptable as evidence of mailing. If June 1 is a Sunday or holiday, the deadlines for postmarking and receipt of the declaration shall be extended 24 hours in each instance. (c) A candidate for a statewide office or a candidate for a district-wide office shall file

either with the director or an election supervisor. If the candidate files his declaration with an election supervisor, the election supervisor shall immediately forward the declaration to the director. (d) If the declaration filed under (a) of this section is not received within seven calendar days, the candidate shall be notified of nonreceipt. The candidate shall have the opportunity to refile his declaration with proof that his previous declaration has been filed in a timely manner and in accordance with law.

(Sec. 5.04 ch 83 SLA 1960; am sec. 17 ch 125 SLA 1962; am sec. 20 ch 80 SLA 1963; am secs. 3, 4 ch 26 SLA 1966; am sec. 22 ch 136 SLA 1966; am sec. 1 ch 28 SLA 1972; am secs. 11, 12 ch 38 SLA 1974; am sec. 25 ch 197 SLA 1975; am sec. 4 ch 133 SLA 1977; am sec. 127 ch 100 SLA 1980)

Sec. 15.25.042. Eligibility of a candidate. (a) If the director receives a complaint regarding the eligibility of a candidate for a particular office, the director shall determine eligibility under regulations adopted by the director. The director shall determine the eligibility of the candidate within 30 days of the receipt of the complaint. (b) Except as provided in (c) of this section, the director shall determine the eligibility of the candidate by a preponderance of the evidence. (c) If a candidate for the legislature has been registered to vote at any time during the 12 months preceding the filing of the declaration of candidacy in a district other than the district in which the declaration of candidacy has been filed, the director may not determine that a candidate is eligible except under a standard of clear and convincing evidence. (d) A person may not be a resident of two districts at the same time.

(Sec. 24 ch 85 SLA 1986)

Sec. 15.25.043. Determination of residency of a candidate. In determining the residence within an election district of a qualified voter for the purposes of compliance with art. II, sec. 2 of the Alaska Constitution, the director shall apply the rules established in AS 15.05.020 together with the following rules: (1) a person establishes residence within an election district (A) by actual physical presence at a specific location within the district; and (B) by maintaining a habitation at the specific location; (2) a person may maintain a place of residence at a specific location within a district while away from the location for purposes of employment, education, military service, or vacation if the person does not establish residency at another location; and (3) a qualified voter loses residence by voting in another election district or in another state's elections.

(Sec. 24 ch 85 SLA 1986)

Sec. 15.25.045. Withdrawal of candidacy. Notice of withdrawal of candidacy must be in writing over the signature of the candidate.

(Sec. 23 ch 136 SLA 1966)

Sec. 15.25.050. Requirement of filing fee. (a) At the time the declaration is filed, each candidate shall pay a nonrefundable filing fee to the director. The filing fee for candidates for office of governor, lieutenant governor, United States senator, and United States representative is \$100. The filing fee for candidates for office of state senator and state representative is \$30. (b) An indigent person as defined by regulations adopted under the Administrative Procedure Act (AS 44.62) may file a statement of indigency in the form prescribed by regulation in place of the filing fee required by this section.

(Sec. 5.05 ch 83 SLA 1960; am sec. 128 ch 100 SLA 1980; am sec. 25 ch 85 SLA 1986)

Sec. 15.25.055. Removal of name from primary ballot. A candidate's name will appear on the primary election ballot unless notice of his withdrawal from the primary is received by the director at least 40 days before the date of the primary election.

(Sec. 24 ch 136 SLA 1966; am sec. 25 ch 69 SLA 1970; am sec. 129 ch 100 SLA 1980)

Sec. 15.25.056. Nomination by party petition where incumbent dies or is disqualified or incapacitated. (a) If an unopposed incumbent candidate for renomination dies, becomes disqualified from holding the office he is seeking, or is certified as being incapacitated between June 1 of the election year and that date which is 45 days before the date of the primary election, his place on the ballot may be filled by party petition. The petition shall state that the political party requests the name of the proposed candidate replace that of the incumbent on the primary election ballot and shall be accompanied by a declaration of candidacy from the person named in the petition. The petition must be received by the director no later than 14 days after the death, disqualification or certification of incapacity of the incumbent or 40 days before the primary election date, whichever time is earlier. (b) The method for certifying an incumbent candidate for nomination as being incapacitated, the method for selecting the person who is to be named in the party petition, and the method for placing the name of the person selected on the primary nomination ballot are the same as those prescribed in AS 15.25.110 and 15.25.130 relating to filling vacancies of party nominees in a general election. (c) The death, disqualification or certification of incapacity of the incumbent within 40 days before or on the primary election date does not affect the counting and review of the ballots. If the result of the counting and review discloses that the candidate, if he had lived, would have been nominated, the candidate shall be

declared nominated. The vacancy may be filled by party petition as provided in AS 15.25.110 - 15.25.130.

(Sec. 24 ch 136 SLA 1966; am secs. 26, 27 ch 69 SLA 1970; am secs. 130, 131 ch 100 SLA 1980)

Sec. 15.25.060. Preparation and distribution of ballots. The primary election ballot shall be prepared and distributed by the director in the manner prescribed for general election ballots except as specifically provided otherwise for the primary election. The director shall place the names of all candidates who have properly filed in groups according to offices filed for, without regard to party affiliation. The names for each office shall be rotated as provided for the general election ballot. No blank spaces shall be provided on the ballot for the writing or pasting in of names.

(Sec. 5.06 ch 83 SLA 1960; am sec. 4 ch 1 SLA 1967; am sec. 132 ch 100 SLA 1980)

Sec. 15.25.070. Special provisions on counting ballots. No voter may vote for a person whose name is not on the ballot. Votes cast for a person whose name is not on the ballot shall not be counted, but writing in a candidate's name does not invalidate the entire ballot.

(Sec. 5.07 ch 83 SLA 1960; am sec. 5 ch 1 SLA 1967)

Sec. 15.25.080. Declaration of party preference. Repealed by sec. 231 ch 100 SLA 1980.

Sec. 15.25.090. General procedure for conduct of primary election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the primary election, including, but not limited to, provisions concerning voter qualification; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of cities and organized boroughs; provision for notification of the election; provisions regarding payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, review, and certification of returns; provisions for the determination of tie votes and of recount, contests and appeal; and provisions for absentee voting.

(Sec. 5.09 ch 83 SLA 1960; am sec. 7 ch 1 SLA 1967; am sec. 133 ch 100 SLA 1980)

Sec. 15.25.100. Placement of nominees on general election ballot. The director shall place the name of the candidate receiving the highest number of votes for an office by a political party on the general election ballot.

(Sec. 5.10 ch 83 SLA 1960; am sec. 134 ch 100 SLA 1980)

Sec. 15.25.110. Filling vacancies by party petition. If a candidate nominated at the primary election dies, withdraws, resigns, becomes disqualified from holding office for which he is nominated, or is certified as being incapacitated in the manner prescribed by this section after the primary election and 40 days or more before the general election, the vacancy may be filled by party petition. The central committee of any political party or any party district committee may certify as being incapacitated any candidate nominated by their respective party by presenting to the director a sworn statement made by a panel of three licensed physicians, not more than two of whom shall be of the same political party, that the candidate is physically or mentally incapacitated to an extent that would in his judgment prevent the candidate from active service during the term of office if elected. The director shall place the name of the person nominated by party petition on the general election ballot. The name of a candidate disqualified under this section shall not appear on the general election ballot.

(Sec. 5.11 ch 83 SLA 1960; am sec. 18 ch 125 SLA 1962; am sec. 8 ch 1 SLA 1967; am sec. 135 ch 100 SLA 1980)

Sec. 15.25.120. Requirements for party petition. Party petitions for the nomination of candidates shall state in substance that the political party desires and intends to support the named candidate for the named office and requests that the name of the proposed candidate be placed on the general election ballot. The petition may be filed no later than 40 days before the date of the general election.

(Sec. 5.12 ch 83 SLA 1960; am sec. 136 ch 100 SLA 1980)

Sec. 15.25.130. Selection of nominees for party petition. The nominees of political parties by party petition may be selected for statewide offices by the party central committee or in any other manner prescribed by the party bylaws, and the petition for statewide offices shall be signed by the chairman of the central committee or in his absence by any two members of the committee. The nominees of political parties by party petition may be selected for district-wide offices by the respective party district committee or in any other manner prescribed by the party bylaws, and the petition for district-wide offices shall be signed by the chairman of the party district committee, or in his absence by any two members of the party committee, or in any other manner prescribed by the party bylaws. The petition may be delivered in person, by mail or by telegraph.

(Sec. 5.13 ch 83 SLA 1960)

Sec. 15.25.135. Election of party committeemen and committeewomen. Repealed by sec. 21 ch 80 SLA 1963.

Sec. 15.25.140. Provision for no-party candidate nominations. Candidates not representing a political party are nominated by petition.

(Sec. 5.51 ch 83 SLA 1960)

Sec. 15.25.150. Date of filing petition. The petition is filed with the director by actual physical delivery in person at or before 5:00 p.m., prevailing time, June 1 in the year in which a general election is held for the office, or by actual physical delivery to the director by registered or certified mail return receipt requested which is postmarked at or before 5:00 p.m., prevailing time, June 1 in the year in which a general election is held for the office, and received not more than 15 days after that time. If the postmark is illegible, a dated receipt from the post office where dispatched shall be acceptable as evidence of mailing. If June 1 is a Sunday or holiday, the deadlines for postmarking and receipt of the petition shall be extended 24 hours in each instance.

(Sec. 5.52 ch 83 SLA 1960; am sec. 23 ch 228 SLA 1968; am sec. 26 ch 197 SLA 1975; am sec. 137 ch 100 SLA 1980)

Sec. 15.25.160. Required number of signatures for statewide office. Petitions for the nomination of candidates for the office of governor, lieutenant governor, United States senator and United States representative shall be signed by qualified voters of the state equal in number to at least one percent of the number of voters who cast ballots in the preceding general election. Candidates for the office of governor and lieutenant governor shall file jointly.

(Sec. 5.53 ch 83 SLA 1960; am sec. 138 ch 100 SLA 1980; am sec. 26 ch 85 SLA 1986)

Article 2. Nominations for General Election by Petition.

Sec. 15.25.170. Required number of signatures for district-wide office. Petitions for the nomination of candidates for the office of state senator or state representative shall be signed by qualified voters of the election or senate district in which the proposed nominee desires to be a candidate equal in number to at least one percent of the number of voters who cast ballots in the proposed nominee's respective election or senate district in the preceding general election. A nominating petition may not contain less than 50 signatures for any district.

(Sec. 5.54 ch 83 SLA 1960; am sec. 139 ch 100 SLA 1980; am sec. 27 ch 85 SLA 1986)

Sec. 15.25.180. Requirements for petition. The petition shall state in substance (1) the full name of the candidate, (2) the full resident address of the candidate, (3) the full mailing address of the candidate, (4) the name of the political group supporting the candidate, (5) if the candidacy is for the office of state senator or state representative, the election or senate district of which the

candidate is a resident, (6) the office for which the candidate is nominated, (7) the date of the election at which the candidate seeks election, (8) that the candidate meets, or will meet, as required by law, the specific requirements of the office for which he is a candidate, (9) that the subscribers are qualified voters of the state or election or senate district in which the candidate resides, (10) Repealed, sec. 45 ch 85 SLA 1986.b (11) that the subscribers request that they candidate's name be placed on the ballot, (12) that the proposed candidate accepts the nomination and will serve if elected, with the statement signed by the proposed candidate, (13) if the candidacy is for the office of the governor, the name of the candidate for lieutenant governor running jointly with him, (14) the name of the candidate as he wishes it to appear on the ballot, and (15) that the candidate is not a candidate for any other office to be voted on at the primary or general election and that he has not filed another nominating petition or declaration of candidacy for the office for which this petition is filed.

(Sec. 5.55 ch 83 SLA 1960; am sec. 22 ch 80 SLA 1963; am sec. 140 ch 100 SLA 1980; am sec. 45 ch 85 SLA 1986)

Sec. 15.25.190. Placement of names on general election ballot. The director shall place the names and the political group affiliation of persons who have been properly nominated by petition on the general election ballot.

(Sec. 5.56 ch 83 SLA 1960; am sec. 141 ch 100 SLA 1980)

Sec. 15.25.200. Withdrawal of candidate's name. If a candidate nominated by petition dies or withdraws after the petition has been filed and before September 1 of the election year, the director shall not place the name of the candidate on the general election ballot.

(Sec. 5.57 ch 83 SLA 1960; am sec. 142 ch 100 SLA 1980)

Article 3. Presidential Party Primary Election.

Sec. 15.25.220. Presidential party primary election. Repealed, sec. 1 ch. 2 SLA 1984.

Sec. 15.25.230. Placing recognized names on the ballot. Repealed, sec. 1 ch. 2 SLA 1984.

Sec. 15.25.240. Petition for presidential candidate. Repealed, sec. 1 ch. 2 SLA 1984.

Sec. 15.25.250. Selection of delegates. Repealed, sec. 1 ch. 2 SLA 1984.

Sec. 15.25.260. Delegates pledged. Repealed, sec. 1 ch. 2 SLA 1984.

Sec. 15.25.270. No other elections on the same date. Repealed, sec. 1 ch. 2 SLA 1984.

Sec. 15.25.280. Procedures for conduct of election.

Repealed, sec. 1 ch. 2 SLA 1984.

Chapter 30. National Elections.

Article 1. President.

Sec. 15.30.010. Provision for selection of electors. Electors of President and Vice President of the United States are selected by election at the general election in presidential election years.

(Sec. 6.01 ch 83 SLA 1960; am sec. 10 ch 71 SLA 1972)

Sec. 15.30.020. Number and manner of selecting candidates. Each political party shall select a number of candidates for electors of President and Vice President of the United States equal to the number of senators and representatives to which the state is entitled in Congress. The candidates for electors shall be selected by the state party convention or in any other manner prescribed by the bylaws of the party. The chairman and secretary of the state convention or any other party official designated by the party bylaws shall certify a list of the names of candidates for electors to the director on or before September 1 in presidential election years.

(Sec. 6.02 ch 83 SLA 1960; am sec. 143 ch 100 SLA 1980)

Sec. 15.30.025. Qualifications for limited political parties. (a) A limited political party may be organized for the purpose of selecting candidates for electors of President and Vice-President of the United States by filing with the director at least 90 days before a presidential general election a petition signed by qualified voters of the state equaling in number at least one percent of the number of voters who cast ballots for President at the last presidential election. The petition shall state that the signers intend to organize a limited political party, that they intend to select candidates for electors of President and Vice-President of the United States at the next succeeding presidential election, and the name of the limited political party. (b) A limited political party organized under this section may not assume a name which is so similar to an existing political party as to confuse or mislead the voters at an election. If the director determines that the name of the limited political party set out in a petition is confusing or misleading, he may refuse to accept the petition for filing. (c) A limited political party organized under this section ceases to be a limited political party if its presidential candidate fails to receive at least three percent of the number of voters who cast ballots for the office of President at a presidential election.

(Sec. 1 ch 160 SLA 1970; am sec. 144 ch 100 SLA 1980; am secs. 28, 29 ch 85 SLA 1986)

Sec. 15.30.030. Qualification of electors. Any qualified voter except a United States senator or representative or

person holding an office of trust or profit under the United States may be selected as a candidate for elector.

(Sec. 6.03 ch 83 SLA 1960)

Sec. 15.30.040. Requirement of party pledge. The party shall require from each candidate for elector a pledge that as an elector he will vote for the candidates nominated by the party of which he is a candidate.

(Sec. 6.04 ch 83 SLA 1960)

Sec. 15.30.050. Interpretation of votes cast for candidates for President and Vice President. In voting for presidential electors, a vote marked for the candidates for President and Vice President is considered and counted as a vote for the presidential electors of the party.

(Sec. 6.05 ch 83 SLA 1960)

Sec. 15.30.060. Notification of electors. When the results of the election of presidential electors have been determined, the director shall send a certificate of election to each elector and shall notify the electors of the time and place of their meeting and of their duties as electors.

(Sec. 6.06 ch 83 SLA 1960; am sec. 145 ch 100 SLA 1980)

Sec. 15.30.070. Place and time of meeting. The electors shall meet at the office of the director or other place designated by him at 11:00 o'clock in the morning on the first Monday after the second Wednesday in December following their election. If Congress fixes a different day for the meeting, the electors shall meet on the day designated by the Act of Congress.

(Sec. 6.07 ch 83 SLA 1960; am sec. 146 ch 100 SLA 1980)

Sec. 15.30.080. Filling of vacancies. If there is a vacancy caused by death, failure to attend, ineligibility or other cause, and if available alternates have not been designated, the electors shall fill the vacancy by plurality vote.

(Sec. 6.08 ch 83 SLA 1960; am sec. 25 ch 136 SLA 1966)

Sec. 15.30.090. Duties of electors. After any vacancies have been filled, the electors shall proceed to cast their votes for the candidates for the office of President and Vice President of the party which selected them as candidates for electors and shall perform the duties of electors as required by the constitution and laws of the United States. The director shall provide administrative services and the Department of Law shall provide legal services necessary for the electors to perform their duties.

(Sec. 6.09 ch 83 SLA 1960; am sec. 147 ch 100 SLA 1980)

Sec. 15.30.100. Compensation of electors. Each elector is entitled to receive from the state treasury the same per diem and travel expenses allowed members of the legislature.

(Sec. 6.10 ch 83 SLA 1960)

Article 2. United States Congress.

Sec. 15.30.110. Provisions for election of United States senators. A United States senator shall be elected at the general election held in the year 1960 and at the general election every sixth year thereafter. A United States senator shall be elected at the general election held in the year 1962 and at the general election every sixth year thereafter.

(Sec. 6.31 ch 83 SLA 1960)

Sec. 15.30.120. Provisions for election of United States representatives. A United States representative in Congress shall be elected from each congressional district at the general election in 1960 and at the general election every second year thereafter.

(Sec. 6.32 ch 83 SLA 1960)

Chapter 35. State Elections.

Article 1. Executive.

Sec. 15.35.010. Election of governor and lieutenant governor. A governor and lieutenant governor shall be elected at the general election in 1962 and every four years thereafter.

(Sec. 7.01 ch 83 SLA 1960)

Article 2. Legislative.

Sec. 15.35.020. Election of legislature. One-half of the members of the state senate and all members of the state house of representatives shall be elected at each general election in accordance with the apportionment articles of the state constitution.

(Sec. 7.31 ch 83 SLA 1960)

Article 3. Judiciary.

Sec. 15.35.030. Approval or rejection of supreme court justice. Each supreme court justice shall be subject to approval or rejection at the first general election held more than three years after his appointment. If approved, he shall thereafter be subject to approval or rejection in a like manner every tenth year.

(Sec. 7.51 ch 83 SLA 1960)

Sec. 15.35.040. Filing declaration by supreme court justice affective January 1, 1987. Each justice seeking retention in office shall file with the director a declaration of candidacy for retention no later than August 1 before the general election at which approval or rejection is requisite.

(Sec. 7.52 ch 83 SLA 1960; am sec. 148 ch 100 SLA 1980; am sec. 30 ch 85 SLA 1986)

Sec. 15.35.041. Requirement of filing fee for supreme court candidate. At the time the declaration is filed, each candidate for retention shall pay a filing fee to the director. The filing fee for a candidate for retention on the supreme court is \$100.

(Sec. 23 ch 80 SLA 1963; am sec. 149 ch 100 SLA 1980)

Sec. 15.35.050. Placing name of supreme court justice on ballot. The director shall place the name of a supreme court justice who has properly filed a declaration of candidacy for retention on the judicial ballot in each judicial district of the state for the general election at which approval is sought.

(Sec. 7.53 ch 83 SLA 1960; am sec. 2 ch 18 SLA 1969; am sec. 150 ch 100 SLA 1980)

Sec. 15.35.053. Approval or rejection of a judge of the court of appeals. Each judge of the court of appeals shall be subject to approval or rejection at the first general election held more than three years after his appointment. If approved, he is thereafter subject to approval or rejection in a like manner every eighth year.

(Sec. 151 ch 100 SLA 1980)

Sec. 15.35.055. Filing declaration by judge of the court of appeals. Each judge of the court of appeals seeking retention in office shall file with the director a declaration of candidacy for retention no later than August 1 before the general election at which approval or rejection is requisite.

(Sec. 151 ch 100 SLA 1980; am sec. 31 ch 85 SLA 1986)

Sec. 15.35.057. Requirement of filing fee for court of appeals. At the time the declaration is filed, each candidate for retention shall pay a filing fee to the director. The filing fee for a candidate for retention on the court of appeals is \$100.

(Sec. 151 ch 100 SLA 1980)

Sec. 15.35.059. Placing name of judge of the court of appeals on ballot. The director shall place the name of a judge of the court of appeals who has properly filed a declaration of candidacy for retention on the judicial ballot in each judicial district of the state for the general election at which approval is sought.

(Sec. 151 ch 100 SLA 1980)

Sec. 15.35.060. Approval or rejection of superior court judge. Each superior court judge shall be subject to approval or rejection at the first general election held more than three years after his appointment. If approved, he shall thereafter be subject to approval or rejection in a like manner every sixth year.

(Sec. 7.54 ch 83 SLA 1960)

Sec. 15.35.070. Filing declaration by superior court judge. Each judge seeking retention in office shall file with the director a declaration of candidacy for retention no later than August 1 before the general election at which approval or rejection is requisite.

(Sec. 7.55 ch 83 SLA 1960; am sec. 152 ch 100 SLA 1980; am sec. 32 ch 85 SLA 1986)

Sec. 15.35.071. Requirement of filing fee for superior court candidate. At the time the declaration is filed, each candidate for retention shall pay a filing fee to the director. The filing fee for a candidate for retention on the superior court is \$30.

(Sec. 24 ch 80 SLA 1963; am sec. 153 ch 100 SLA 1980)

Sec. 15.35.080. Determination of judicial district in which to seek approval. The judge shall seek approval in the judicial district to which he was originally appointed, except in case of assignments and transfers with the judge's consent, in which case he shall seek approval in the district where he has served the major portion of his term. The judge shall designate on his declaration of candidacy the judicial district to which he was appointed, except in case of assignments and transfers in which case he shall designate the district where he has served the major portion of his term.

(Sec. 7.56 ch 83 SLA 1960)

Sec. 15.35.090. Placing name of superior court judge on ballot. The director shall place the name of a superior court judge who has properly filed a declaration of candidacy for retention on the judicial ballot in the judicial district designated in his declaration of candidacy for the general election at which approval is sought.

(Sec. 7.57 ch 83 SLA 1960; am sec. 3 ch 18 SLA 1969; am sec. 154 ch 100 SLA 1980)

Sec. 15.35.100. Approval or rejection of district judge.
(a) Each district judge shall be subject to approval or rejection at the first general election held more than one year after his appointment under the provisions of AS 22.15.170. If approved, he shall thereafter be subject to approval or rejection in a like manner every fourth year.
(b) The district judge shall seek approval in the judicial

district in which he was originally appointed, or in the district where he has served the major portion of his term. The district judge shall designate on his declaration of candidacy the judicial district in which he was appointed, or the district where he has served the major portion of his term.

(Sec. 1 ch 138 SLA 1966; am sec. 1 ch 164 SLA 1968)

Sec. 15.35.110. Filing declaration by district judge. Each district judge seeking retention in office shall file with the director a declaration of candidacy for retention no later than August 1 before the general election at which approval or rejection is requisite.

(Sec. 1 ch 138 SLA 1966; am sec. 155 ch 100 SLA 1980; am sec. 33 ch 85 SLA 1986)

Sec. 15.35.120. Requirement of filing fee for district court candidate. At the time the declaration is filed, each candidate for retention on the district court shall pay a filing fee of \$30 to the director.

(Sec. 1 ch 138 SLA 1966; am sec. 156 ch 100 SLA 1980)

Sec. 15.35.130. Placing name of district judge on ballot. The director shall place the name of a district judge who has properly filed a declaration of candidacy for retention on the judicial ballot in the judicial district designated in his declaration of candidacy for the general election at which approval is sought.

(Sec. 1 ch 138 SLA 1966; am sec. 4 ch 18 SLA 1969; am sec. 157 ch 100 SLA 1980)

Sec. 15.35.140 - 15.35.170. Judges of the court of appeals: Requirements for retention in office. Repealed by sec. 231 ch 100 SLA 1980.

Chapter 40. Special Elections and Appointments.

Article 1. United States Senate.

Sec. 15.40.010. Conditions and time of filling vacancy by appointment. When a vacancy occurs in the office of United States senator, the governor, within 30 days, shall appoint a qualified person to fill the vacancy. However, if the remainder of the term of the predecessor in office will expire or if the vacancy will be filled by a special election before the senate will next meet, convene, or reconvene, the governor shall not fill the vacancy.

(Sec. 8.01 ch 83 SLA 1960)

Sec. 15.40.020. Qualification of appointee. Repealed by sec. 1 ch 139 SLA 1967.

Sec. 15.40.030. Conditions for full, unexpired term appointment. If the vacancy is for an unexpired term of two years plus five full calendar months or less, the appointment shall be for the remainder of the unexpired term.

(Sec. 8.03 ch 83 SLA 1960)

Sec. 15.40.040. Conditions for part-term appointment and special election. If the vacancy is for an unexpired term of more than two years plus five full calendar months, the governor shall call a special election by proclamation and the appointment shall expire on the date the United States senate first meets, convenes, or reconvenes, following the certification of the results of the special election by the director.

(Sec. 8.04 ch 83 SLA 1960; am sec. 158 ch 100 SLA 1980)

Sec. 15.40.050. Date of special election. The special election to fill the vacancy shall be held on the date of the first general election which is held more than three full calendar months after the vacancy occurs.

(Sec. 8.05 ch 83 SLA 1960)

Sec. 15.40.060. Proclamation of special election. The governor shall issue the proclamation calling the special election at least 80 days before the election.

(Sec. 8.06 ch 83 SLA 1960)

Sec. 15.40.070. Term of elected senator. At the special election, a United States senator shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States senate first meets, convenes, or reconvenes following the certification of the results of the special election by the director.

(Sec. 8.07 ch 83 SLA 1960; am sec. 159 ch 100 SLA 1980)

Sec. 15.40.080. Selection of nominees in manner provided for general election. If the vacancy in the office of the United States senator occurs one calendar month or more before the filing date for the primary election, candidates for the special election shall be nominated in the manner provided for the nomination of candidates for general elections.

(Sec. 8.08 ch 83 SLA 1960; am sec. 28 ch 69 SLA 1970)

Sec. 15.40.090. Designation of nominees by petition. If the vacancy occurs less than one calendar month before the filing date for the primary election and more than three calendar months before the next general election, candidates shall be nominated by petition transmitted by actual delivery to the director before September 2 immediately preceding the special election.

(Sec. 8.09 ch 83 SLA 1960; am sec. 29 ch 69 SLA 1970; am sec. 160 ch 100 SLA 1980)

Sec. 15.40.100. Requirements of petition for no-party candidates. Petitions for the nomination of candidates not representing a political party shall be signed by qualified voters of the state equal in number to at least one percent of the number of voters who cast ballots in the preceding general election, and shall state in substance that which is required in petitions for nomination for general elections provided in AS 15.25.180.

(Sec. 8.10 ch 83 SLA 1960; am sec. 161 ch 100 SLA 1980; am sec. 34 ch 85 SLA 1986)

Sec. 15.40.110. Requirements of petition by political party. Petitions for the nomination of candidates of political parties shall state in substance that the political party desires and intends to support the named candidate for the office of United States senator at the special election and requests that the name of the candidate be placed on the ballot.

(Sec. 8.11 ch 83 SLA 1960)

Sec. 15.40.120. Selection of political party nominees. The nominees of political parties to be designated by special petition may be selected by the state convention or by any other manner as prescribed by the party bylaws, and the petition shall be signed by the chairman and secretary of the state convention or, if the nominee is designated by the central committee, the petition shall be signed by the chairman of the central committee or in any other manner prescribed by the party bylaws.

(Sec. 8.12 ch 83 SLA 1960)

Sec. 15.40.130. General provision for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of United States senators, including, but not limited to, provisions concerning voter qualifications; provisions regarding the duties, powers, rights and obligations of the director, of other election officials, and of cities and organized boroughs; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

(Sec. 8.13 ch 83 SLA 1960; am sec. 162 ch 100 SLA 1980; am sec. 38 ch 59 SLA 1982)

Article 2. United States House of Representatives.

Sec. 15.40.140. Condition and time of calling special election. When a vacancy occurs in the office of United States representative, the governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy occurs. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in general election years, the governor shall not call a special election.

(Sec. 8.21 ch 83 SLA 1960; am sec. 30 ch 69 SLA 1970)

Sec. 15.40.150. Condition for holding special election with primary. If the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the primary election, the governor shall, by proclamation, call the special election to be held on the date of the primary election.

(Sec. 8.22 ch 83 SLA 1960; am sec. 31 ch 69 SLA 1970)

Sec. 15.40.160. Proclamation. The governor shall issue the proclamation at least 50 days before the election.

(Sec. 8.23 ch 83 SLA 1960)

Sec. 15.40.170. Term of elected representative. At the special election, a United States representative shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States house of representatives meets, convenes, or reconvenes following the certification of the results of the special election by the director.

(Sec. 8.24 ch 83 SLA 1960; am sec. 163 ch 100 SLA 1980)

Sec. 15.40.180. Date of nominations. Candidates for the special election shall be nominated by petition transmitted by (1) the actual physical delivery of the petition in person; (2) by mail postmarked not later than midnight of the filing date; or (3) by telegram of a copy in substance of the statements made in the petition to the director before the 21st day after the vacancy occurs.

(Sec. 8.25 ch 83 SLA 1960; am sec. 19 ch 125 SLA 1962; am sec. 164 ch 100 SLA 1980)

Sec. 15.40.190. Requirements of petition for no-party candidates. Petitions for the nomination of candidates not representing a political party shall be signed by qualified voters of the state equal in number to at least one percent of the number of voters who cast ballots in the preceding general election and shall state in substance that which is required for nomination petitions by AS 15.25.180.

(Sec. 8.26 ch 83 SLA 1960; am sec. 165 ch 100 SLA 1980; am sec. 35 ch 85 SLA 1986)

Sec. 15.40.200. Requirements of party petition. Petitions for the nomination of candidates of political parties shall state in substance that the party desires and intends to support the named candidate for the office of United States representative at the special election and requests that the name of the candidate nominated be placed on the ballot.

(Sec. 8.27 ch 83 SLA 1960)

Sec. 15.40.210. Selection of party nominees.

The nominees of political parties may be selected by the state convention or in any other manner prescribed by the party bylaws, and the petition shall be signed by the chairman and secretary of the state convention, or if the nominees are selected by the party central committee, the petition shall be signed by the chairman of the central committee or in any other manner prescribed by the party bylaws.

(Sec. 8.28 ch 83 SLA 1960)

Sec. 15.40.220. General provisions for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of the United States representative, including, but not limited to provisions specifically referred to in AS 15.40.130.

(Sec. 8.29 ch 83 SLA 1960)

Article 3. Governor and Lieutenant Governor.

Sec. 15.40.230. Condition and time of calling special election. When a person appointed to succeed to the office of lieutenant governor succeeds to the office of acting governor, the acting governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy in the office of the governor occurred. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in years in which a governor is regularly elected, the acting governor shall serve the remainder of the unexpired term and shall not call a special election.

(Sec. 8.31 ch 83 SLA 1960; am sec. 32 ch 69 SLA 1970)

Sec. 15.40.240. Conditions for holding special election with primary or general election. If the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the primary election in years in which a governor is regularly elected or if the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the primary election or general election in election years in which a governor is not regularly elected, the acting governor shall, by proclamation, call the special election to be held on the date of the primary election or general election.

(Sec. 8.32 ch 83 SLA 1960; am sec. 33 ch 69 SLA 1970)

Sec. 15.40.250. Proclamation of special election. The acting governor shall issue the proclamation at least 50 days before the election.

(Sec. 8.33 ch 83 SLA 1960)

Sec. 15.40.260. Term of elected governor and lieutenant governor. At the special election, a governor and a lieutenant governor shall be elected to fill the remainder of the unexpired terms and shall take office on the date the results of the special election are certified.

(Sec. 8.34 ch 83 SLA 1960)

Sec. 15.40.270. Date of nominations. Candidates for the special election shall be nominated by petition transmitted by (1) actual physical delivery of the petition in person; (2) by mail postmarked not later than midnight of the filing date; or (3) by telegram of a copy in substance of the statements made in the petition to the director before the 21st day after the vacancy occurs.

(Sec. 8.35 ch 83 SLA 1960; am sec. 20 ch 125 SLA 1962; am sec. 166 ch 100 SLA 1980)

Sec. 15.40.280. Requirements of petition for no-party candidates. Petitions for the nomination of candidates not representing a political party shall be signed by qualified voters of the state equal in number to at least one percent of the number of voters who cast ballots in the preceding general election, shall include nominees for the office of governor and lieutenant governor, and shall state in substance that which is required for nomination petitions by AS 15.25.180.

(Sec. 8.36 ch 83 SLA 1960; am sec. 167 ch 100 SLA 1980; am sec. 36 ch 85 SLA 1986)

Sec. 15.40.290. Requirements of party petition. Petitions for the nomination of candidates of political parties shall state in substance that the party desires and intends to support the named candidates for the offices of governor and lieutenant governor at the special election and requests that the names of the two candidates nominated be placed on the ballot.

(Sec. 8.37 ch 83 SLA 1960)

Sec. 15.40.300. Selection of party nominees. The nominees of political parties may be selected by state convention or in any other manner prescribed by the party bylaws, and the petition shall be signed by the chairman and secretary of the state convention, or if the nominees are selected by the party central committee, the petition shall be signed by the chairman of the central committee or in any other manner prescribed by the party bylaws.

(Sec. 8.38 ch 83 SLA 1960)

Sec. 15.40.310. General provisions for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of the governor and lieutenant governor, including, but not limited to, provisions specifically referred to in AS 15.40.130.

(Sec. 8.39 ch 83 SLA 1960)

Article 4. Legislature.

Sec. 15.40.320. Condition and time for filling vacancy by appointment. When a vacancy occurs in the state legislature, the governor, within 30 days, shall appoint a qualified person to fill the vacancy. However, if the remainder of the term of the predecessor in office will expire or if a vacancy in the state senate will be filled by a special election before the legislature will next meet, convene or reconvene, the governor shall not fill the vacancy.

(Sec. 8.51 ch 83 SLA 1960)

Sec. 15.40.330. Qualification and confirmation of appointee. (a) The appointee shall meet the qualifications of a member of the legislature as prescribed in sec. 2, art. II of the state constitution, shall be a member of the same political party as that which nominated the predecessor in office, and shall be subject to confirmation by a majority of the members of the legislature who are members of the same political party which nominated the predecessor in office and of the same house as was the predecessor in office. If the predecessor in office was not nominated by a political party or if no other member of his political party is a member of his house of the legislature, the governor may appoint any qualified person. If the appointee is not a member of a political party, the appointment is not subject to confirmation. If the appointee is a member of a political party, the appointment is subject to confirmation as provided by this section for the confirmation of political party appointees. (b) A member of a political party is a person who supports the political program of a party. The filing for office of a candidate as an independent or no-party candidate does not preclude a candidate from being a member of a political party. Recognition of an independent or no-party candidate as a member of a party caucus of members of the legislature at the legislative session following his election is recognition of his party membership at the time filings were made by party candidates for the preceding general election.

(Sec. 8.52 ch 83 SLA 1960; am sec. 168 ch 100 SLA 1980)

Sec. 15.40.340. Date of office of appointee. If the appointment is not subject to confirmation, the term of the appointee shall begin on the first day the appointee is present when the legislature meets, convenes, or reconvenes after the date of the appointment. If the appointment is

subject to confirmation, the term of the appointee shall begin on the date the appointment is confirmed.

(Sec. 8.53 ch 83 SLA 1960)

Sec. 15.40.350. Procedure upon rejection. If an appointment is rejected, the governor, within 10 days, shall appoint another qualified person as provided in AS 15.40.330, who shall also be subject to confirmation, as provided in that section.

(Sec. 8.54 ch 83 SLA 1960)

Sec. 15.40.360. Term of appointed representative. If the vacancy is in the state house of representatives, the appointment shall be for the remainder of the unexpired term.

(Sec. 8.55 ch 83 SLA 1960)

Sec. 15.40.370. Conditions for full, unexpired term senate appointment. If the vacancy is for an unexpired senate term of two years plus five full calendar months or less, the appointment shall be for the remainder of the unexpired term.

(Sec. 8.56 ch 83 SLA 1960)

Sec. 15.40.380. Conditions for part-term senate appointment and special election. If the vacancy is for an unexpired senate term of more than two years and five full calendar months, the governor shall call a special election by proclamation and the appointment shall expire on the date the state senate first convenes or reconvenes following the certification of the results of the special election by the director.

(Sec. 8.57 ch 83 SLA 1960; am sec. 169 ch 100 SLA 1980)

Sec. 15.40.390. Date of special election. The special election to fill a vacancy in the state senate shall be held on the date of the first general election held more than three full calendar months after the senate vacancy occurs.

(Sec. 8.58 ch 83 SLA 1960)

Sec. 15.40.400. Proclamation of special election. The governor shall issue the proclamation calling the special election at least 50 days before the election.

(Sec. 8.59 ch 83 SLA 1960)

Sec. 15.40.410. Term of elected senator. At the special election a state senator shall be elected to fill the remainder of the unexpired term and shall take office on the date the state senate first convenes or reconvenes following the certification of the results of the special election by the director.

(Sec. 8.60 ch 83 SLA 1960; am sec. 170 ch 100 SLA 1980)

Sec. 15.40.420. Selection of nominees in manner provided for general election. If the vacancy in the office of state senator occurs one calendar month or more before the filing date for the primary election, candidates for the special election shall be nominated in the manner provided for the nomination of candidates for general elections.

(Sec. 8.61 ch 83 SLA 1960; am sec. 34 ch 69 SLA 1970)

Sec. 15.40.430. Designation of nominees by petition. If the vacancy occurs less than one calendar month before the filing date and more than three calendar months before the next general election, candidates shall be nominated by petition transmitted by (1) the actual physical delivery of the petition in person; (2) by mail postmarked not later than midnight of the filing date; or (3) by telegram of a copy in substance of the statements made in the petition to the director before September 2 just before the special election.

(Sec. 8.62 ch 83 SLA 1960; am sec. 21 ch 125 SLA 1962; am sec. 171 ch 100 SLA 1980)

Sec. 15.40.440. Requirements of petition for no-party candidates. Petitions for the nomination of candidates not representing a political party shall be signed by qualified voters equal in number to at least one percent of the number of voters who cast ballots in the proposed nominee's respective election or senate district in the preceding general election. A nominating petition may not contain less than 50 signatures for any district, and shall state in substance that which is required in petitions for nomination for general elections provided in AS 15.25.180.

(Sec. 8.63 ch 83 SLA 1960; am sec. 172 ch 100 SLA 1980; am sec. 37 ch 85 SLA 1986)

Sec. 15.40.450. Requirements of petition by political party. Petitions for the nomination of candidates of political parties shall state in substance that the party desires and intends to support the named candidate for the office of state senator at the special election and requests that the name of the candidate be placed on the ballot.

(Sec. 8.64 ch 83 SLA 1960)

Sec. 15.40.460. Selection of political party nominees. The nominees of political parties may be selected by the respective party district committee or by any other manner as provided by the party bylaws, and the petition shall be signed by the chairman of the party district committee or by any other party official designated by the party bylaws.

(Sec. 8.65 ch 83 SLA 1960)

Sec. 15.40.470. General provision for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of state

senators, including, but not limited to, the provisions specifically referred to in AS 15.40.130.
(Sec. 8.66 ch 83 SLA 1960)

Chapter 45. Initiative, Referendum and Recall.

Article 1. Initiative.

Sec. 15.45.010. Provision and scope for use of the initiative. The law-making powers assigned to the legislature may be exercised by the people through the initiative. However, no initiative may be proposed to dedicate revenues, to make or repeal appropriations, to create courts, to define the jurisdiction of courts or prescribe their rules, or to enact local or special legislation.

(Sec. 9.01 ch 83 SLA 1960)

Sec. 15.45.020. Filing application.

An initiative is proposed by filing an application with the lieutenant governor. A deposit of \$100 must accompany the application. This deposit will be retained if a petition is not properly filed. If a petition is properly filed, the deposit shall be refunded.

(Sec. 9.02 ch 83 SLA 1960; am sec. 22 ch 125 SLA 1962)

Sec. 15.45.030. Form of application.

The application shall include (1) the proposed bill to be initiated, (2) a statement that the sponsors are qualified voters who signed the application with the proposed bill attached, (3) the designation of an initiative committee of three sponsors who shall represent all sponsors and subscribers in matters relating to the initiative, and (4) the signatures and addresses of not less than 100 qualified voters.

(Sec. 9.03 ch 83 SLA 1960)

Sec. 15.45.040. Form of proposed bill.

The proposed bill shall be in the following form: (1) the bill shall be confined to one subject, (2) the subject of the bill shall be expressed in the title, (3) the enacting clause of the bill shall be: "Be it enacted by the People of the State of Alaska," (4) the bill may not include subjects restricted by AS 15.45.010.

(Sec. 9.04 ch 83 SLA 1960)

Sec. 15.45.050. Manner of notice. Notice to the initiative committee on any matter pertaining to the application and petition may be served on any member of the committee in person or by mail addressed to a committee member as indicated on the application.

(Sec. 9.05 ch 83 SLA 1960)

Sec. 15.45.060. Designation of sponsors. The qualified voters who subscribe to the application are designated as sponsors. The initiative committee may designate additional sponsors by giving written notice to the lieutenant governor of the names and addresses of those so designated.
(Sec. 9.06 ch 83 SLA 1960)

Sec. 15.45.070. Review of application for certification. The lieutenant governor shall review the application and shall either certify it or notify the initiative committee of the grounds for denial.

(Sec. 9.07 ch 83 SLA 1960)

Sec. 15.45.080. Bases of denial of certification. The lieutenant governor shall deny certification if he determines, in writing, that (1) the proposed bill to be initiated is not in the required form, (2) the application is not substantially in the required form, or (3) there is an insufficient number of qualified sponsors.
(Sec. 9.08 ch 83 SLA 1960)

Sec. 15.45.090. Preparation of petition. If the application is certified, the lieutenant governor shall prescribe the form of and prepare petitions containing (1) a copy of the proposed bill, if the number of words included in both the formal and substantive provisions of the bill is 500 or less, (2) an impartial summary of the subject matter of the bill, (3) the warning prescribed in AS 15.45.100, (4) sufficient space for signature and address, and (5) other specifications prescribed by the lieutenant governor to assure proper handling and control. Petitions, for purposes of circulation, shall be prepared by the lieutenant governor in a number reasonably calculated to allow full circulation throughout the state. The lieutenant governor shall number each petition and shall keep a record of the petition delivered to each sponsor. Upon request of the committee, the lieutenant governor shall report the number of persons who voted in the preceding general election.
(Sec. 9.09 ch 83 SLA 1960)

Sec. 15.45.100. Statement of warning. Each petition shall include a statement of warning that a person who signs a name other than his own on the petition, or who knowingly signs his name more than once for the same proposition at one election, or who signs the petition knowing he is not a qualified voter, is guilty of a class B misdemeanor.

(Sec. 9.10 ch 83 SLA 1960; am sec. 173 ch 100 SLA 1980)

Sec. 15.45.110. Circulation by sponsor. The petitions may be circulated throughout the state only by a sponsor and only in person.

(Sec. 9.11 ch 83 SLA 1960)

Sec. 15.45.120. Manner of signing and withdrawing name from petition. Any qualified voter may subscribe to the petition

by signing his name and address. A person who has signed the initiative petition may withdraw his name only by giving written notice to the lieutenant governor before the date the petition is filed.

(Sec. 9.12 ch 83 SLA 1960)

Sec. 15.45.130. Certification of sponsor. Before being filed, each petition shall be certified by an affidavit by the sponsor who personally circulated the petition. The affidavit shall state in substance that (1) the person signing the affidavit is a sponsor, (2) the person is the only circulator of that petition, (3) the signatures were made in his actual presence, and (4) to the best of his knowledge, the signatures are those of the persons whose names they purport to be. In determining the sufficiency of the petition, the lieutenant governor shall not count subscriptions on petitions not properly certified.

(Sec. 9.13 ch 83 SLA 1960)

Sec. 15.45.140. Filing of petition. The sponsors must file the initiative petition within one year from the time the sponsors received notice from the lieutenant governor that the petitions were ready for delivery to them, and the petition must be signed by qualified voters equal in number to 10 per cent of those who voted in the preceding general election and resident in at least two-thirds of the election districts of the state. If the petition is not filed within the one year period provided for in this section, the petition has no force or effect.

(Sec. 9.14 ch 83 SLA 1960; am sec. 1 ch 128 SLA 1971)

Sec. 15.45.150. Review of petition. Within not more than 60 days of the date the petition was filed, the lieutenant governor shall review the petition and shall notify the initiative committee whether the petition was properly or improperly filed, and at which election the proposition shall be placed on the ballot.

(Sec. 9.15 ch 83 SLA 1960)

Sec. 15.45.160. Bases for determining the petition was improperly filed. The lieutenant governor shall notify the committee that the petition was improperly filed if he determines (1) that there is an insufficient number of qualified subscribers, or (2) that the subscribers were not resident in at least two-thirds of the election districts of the state.

(Sec. 9.16 ch 83 SLA 1960)

Sec. 15.45.170. Submission of supplementary petition. Upon receipt of notice that the filing of the petition was improper, the initiative committee may amend and correct the petition by circulating and filing a supplementary petition within 30 days of the date that notice was given.

(Sec. 9.17 ch 83 SLA 1960)

Sec. 15.45.180. Preparation of ballot title and proposition. If the petition is properly filed, the lieutenant governor, with the assistance of the attorney general, shall prepare a ballot title and proposition. The ballot title shall, in not more than six words, indicate the general subject of the proposition. The proposition shall, in not more than 100 words, give a true and impartial summary of the proposed law.

(Sec. 9.18 ch 83 SLA 1960)

Sec. 15.45.190. Placing proposition on ballot. The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot of the first statewide general, special, or primary election that is held after (1) the petition and any supplementary petition have been filed, (2) a legislative session has convened and adjourned, and (3) a period of 120 days has expired since the adjournment of the legislative session.

(Sec. 9.19 ch 83 SLA 1960; am sec. 35 ch 69 SLA 1970; am sec. 174 ch 100 SLA 1980)

Sec. 15.45.200. Display of proposed law. The director shall provide each election board with 10 copies of the proposed law being initiated, and the election board shall display three copies of the proposed law in a conspicuous place in the room where the election is held.

(Sec. 9.20 ch 83 SLA 1960; am sec. 175 ch 100 SLA 1980)

Sec. 15.45.210. Determination of void petition. If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.

(Sec. 9.21 ch 83 SLA 1960)

Sec. 15.45.220. Adoption and effective date of proposed law. If a majority of the votes cast on the initiative proposition favor its adoption, the proposed law is enacted, and the lieutenant governor shall so certify. The act becomes effective 90 days after certification.
(Sec. 9.22 ch 83 SLA 1960)

Sec. 15.45.230. Insufficiency of application or petition. No initiative submitted to the voters shall be held void because of the insufficiency of the application or petitions by which the submission was procured.

(Sec. 9.23 ch 83 SLA 1960)

Sec. 15.45.240. Judicial review. Any person aggrieved by a determination made by the lieutenant governor under AS 15.45.010 - 15.45.230 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of the determination was given.

(Sec. 9.24 ch 83 SLA 1960; am sec. 176 ch 100 SLA 1980)

Sec. 15.45.245. Delegation by lieutenant governor. The lieutenant governor may delegate the duties imposed on him by AS 15.45.010 - 15.45.240 to the director.

(Sec. 177 ch 100 SLA 1980)

Article 2. Referendum.

Sec. 15.45.250. Provision and scope of use of referendum. The people may approve or reject acts of the legislature by referendum. However, no referendum may be applied to dedication of revenues, to appropriation, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety.

(Sec. 9.31 ch 83 SLA 1960)

Sec. 15.45.260. Filing application. A referendum is proposed by filing an application with the lieutenant governor. A deposit of \$100 must accompany the application. This deposit will be retained if a petition is not properly filed. If a petition is properly filed, the deposit shall be refunded.

(Sec. 9.32 ch 83 SLA 1960; am sec. 23 ch 125 SLA 1962)

Sec. 15.45.270. Form of application. The application shall include (1) the act to be referred, (2) a statement that the sponsors are qualified voters who signed the application with the proposed bill attached, (3) the designation of a referendum committee of three sponsors who shall represent all sponsors and subscribers in matters relating to the referendum, and (4) the signatures and addresses of not less than 100 qualified voters.

(Sec. 9.33 ch 83 SLA 1960)

Sec. 15.45.280. Manner of notice. Notice to the referendum committee on any matter pertaining to the application and petition may be served on any member of the committee in person or by mail addressed to a committee member as indicated on the application.

(Sec. 9.34 ch 83 SLA 1960)

Sec. 15.45.290. Designation of sponsors. The qualified voters who subscribe to the application are designated as sponsors. The referendum committee may designate additional sponsors by giving notice to the lieutenant governor of the names and addresses of those so designated.

(Sec. 9.35 ch 83 SLA 1960)

Sec. 15.45.300. Time of review of application for certification. Within seven calendar days after the date the application is received, the lieutenant governor shall review the application and shall either certify it or notify the referendum committee of the grounds for denial.

(Sec. 9.36 ch 83 SLA 1960; am sec. 178 ch 100 SLA 1980)

Sec. 15.45.310. Bases of denial of certification. The lieutenant governor shall deny certification if he determines (1) that the application is not substantially in the required form, or (2) that there is an insufficient number of qualified sponsors, or (3) that more than 90 days have expired since the adjournment of the legislative session at which the act being referred was passed.

(Sec. 9.37 ch 83 SLA 1960)

Sec. 15.45.320. Preparation of petition. If the application is certified, the lieutenant governor shall, within seven calendar days after the date of certification, prescribe the form of, and prepare, a petition containing (1) a copy of the act to be referred, if the number of words included in both the formal and substantive provisions of the bill is 500 or less, (2) an impartial summary of the subject matter of the act, (3) the warning prescribed in AS 15.45.330, (4) sufficient space for signatures and addresses, and (5) other specifications prescribed by the lieutenant governor to assure proper handling and control. Petitions, for purposes of circulation, shall be prepared by the lieutenant governor in a number reasonably calculated to allow full circulation throughout the state. The lieutenant governor shall number each petition and shall keep a record of the petitions delivered to each sponsor. Upon request of the referendum committee, the lieutenant governor shall specify the number of persons who voted in the preceding general election.

(Sec. 9.38 ch 83 SLA 1960)

Sec. 15.45.330. Statement of warning. Each petition shall include a statement of warning that a person who signs a name other than his own to the petition, or knowingly signs his name more than once for the same proposition at one election, or who signs the petition knowing he is not a qualified voter is guilty of a class B misdemeanor.

(Sec. 9.39 ch 83 SLA 1960; am sec. 179 ch 100 SLA 1980) **Sec. 15.45.340. Circulation by sponsor.** The petitions may be circulated throughout the state only by a sponsor and only in person.

(Sec. 9.40 ch 83 SLA 1960)

Sec. 15.45.350. Manner of signing and withdrawing name from petition. Any qualified voter may subscribe to the petition by signing his name and address. A person who has signed the referendum petition may withdraw his name only by giving written notice to the lieutenant governor before the date the petition is filed.

(Sec. 9.41 ch 83 SLA 1960)

Sec. 15.45.360. Certification of sponsor. Before being filed, each petition shall be certified by an affidavit by the sponsor who circulated the petition. The affidavit shall state in substance that (1) the person signing the affidavit is a sponsor, (2) the person is the only circulator of the petition, (3) the signatures were made in his actual presence, and (4) to the best of his knowledge, the signatures are the signatures of persons whose names they purport to be. In determining the sufficiency of the petition, the lieutenant governor shall not count subscriptions on petitions not properly certified.

(Sec. 9.42 ch 83 SLA 1960)

Sec. 15.45.370. Filing of petition. The sponsors may file the petition only within 90 days after the adjournment of the legislative session at which the act was passed and only if signed by qualified voters equal in number to 10 per cent of those who voted in the preceding general election and resident in at least two-thirds of the election districts of the state.

(Sec. 9.43 ch 83 SLA 1960)

Sec. 15.45.380. Review of petition. Within not more than 60 days of the date the petition was filed, the lieutenant governor shall review the petition and shall notify the committee whether the petition was properly or was improperly filed and at which election the proposition shall be placed on the ballot.

(Sec. 9.44 ch 83 SLA 1960)

Sec. 15.45.390. Bases for determining the petition was improperly filed. The lieutenant governor shall notify the committee that the petition was improperly filed if he determines that (1) there is an insufficient number of qualified subscribers, or (2) the subscribers were not resident in at least two-thirds of the election districts of the state, or (3) the petition was not filed within 90 days after the adjournment of the legislative session at which the act was passed.

(Sec. 9.45 ch 83 SLA 1960)

Sec. 15.45.400. Submission of supplementary petition. Upon receipt of notice that the filing of the petition was improper, the committee may amend and correct the petition by circulating and filing a supplementary petition within 10 days of the date that notice was given if 90 days have not expired after the adjournment of the legislative session at which the act was passed.

(Sec. 9.46 ch 83 SLA 1960)

Sec. 15.45.410. Preparation of ballot title and proposition. The lieutenant governor, with the assistance

of the attorney general, shall prepare a ballot title and proposition if he determines that the petition is properly filed. The ballot title shall, in not more than six words, indicate the general subject area of the act. The proposition shall, in not more than 100 words, give a true and impartial summary of the act being referred.

(Sec. 9.47 ch 83 SLA 1960)

Sec. 15.45.420. Placing proposition on ballot. The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot for the first statewide general, special, or primary election held more than 180 days after adjournment of the legislative session at which the act was passed.

(Sec. 9.48 ch 83 SLA 1960; am sec. 36 ch 69 SLA 1970; am sec. 180 ch 100 SLA 1980)

Sec. 15.45.430. Display of act being referred. The director shall provide each election board with 10 copies of the act being referred, and the election board shall display three copies of the act in a conspicuous place in the room where the election is held

(Sec. 9.49 ch 83 SLA 1960; am sec. 181 ch 100 SLA 1980)

Sec. 15.45.440. Rejection of act. If a majority of the votes cast on the referendum proposition favor the rejection of the act referred, the act is rejected, and the lieutenant governor shall so certify. The act rejected by referendum is void 30 days after certification.

(Sec. 9.50 ch 83 SLA 1960)

Sec. 15.45.450. Insufficiency of application or petition. No referendum submitted to the voters shall be held void because of the insufficiency of the application or petition by which the submission was procured.

(Sec. 9.51 ch 83 SLA 1960)

Sec. 15.45.460. Judicial review. Any person aggrieved by any determination made by the lieutenant governor under AS 15.45.250 - 15.45.450 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of the determination was given.

(Sec. 9.52 ch 83 SLA 1960; am sec. 182 ch 100 SLA 1980)

Sec. 15.45.465. Delegation by lieutenant governor. The lieutenant governor may delegate the duties imposed upon him by AS 15.45.250 - 15.45.460 to the director.

(Sec. 183 ch 100 SLA 1980)

Article 3. Recall.

Sec. 15.45.470. Provision and scope for use of recall. The governor, the lieutenant governor, and members of the state legislature are subject to recall by the voters of the state or the political subdivision from which elected.

(Sec. 9.71 ch 83 SLA 1960)

Sec. 15.45.480. Filing application. The recall of the governor, lieutenant governor, or a member of the state legislature is proposed by filing an application with the director. A deposit of \$100 must accompany the application. This deposit will be retained if a petition is not properly filed. If a petition is properly filed the deposit shall be refunded.

(Sec. 9.72 ch 83 SLA 1960; am sec. 24 ch 125 SLA 1962; am sec. 184 ch 100 SLA 1980)

Sec. 15.45.490. Time of filing application. No application may be filed during the first 120 days of the term of office of any state public official subject to recall.

(Sec. 9.73 ch 83 SLA 1960)

Sec. 15.45.500. Form of application. The application shall include (1) the name and office of the person to be recalled, (2) the grounds for recall described in particular in not more than 200 words, (3) a statement that the sponsors are qualified voters who signed the application with the statement of grounds for recall attached, (4) the designation of a recall committee of three sponsors who shall represent all sponsors and subscribers in matters relating to the recall, (5) the signatures of at least 100 qualified voters who subscribe to the application as sponsors for purposes of circulation, and (6) the signatures and addresses of qualified voters equal in number to 10 percent of those who voted in the preceding general election in the state or in the senate or electoral district of the official sought to be recalled.

(Sec. 9.74 ch 83 SLA 1960; am sec. 185 ch 100 SLA 1980)

Sec. 15.45.510. Grounds for recall. The grounds for recall are (1) lack of fitness, (2) incompetence, (3) neglect of duties, or (4) corruption.

(Sec. 9.75 ch 83 SLA 1960)

Sec. 15.45.520. Manner of notice. Notice on all matters pertaining to the application and petition may be served on any member of the recall committee in person or by mail addressed to a committee member as indicated on the application.

(Sec. 9.76 ch 83 SLA 1960)

Sec. 15.45.530. Notice of the number of voters. The director, upon request, shall notify the recall committee of the official number of persons who voted in the preceding

general election in the state or in the senate or election district of the official to be recalled.

(Sec. 9.77 ch 83 SLA 1960; am sec. 186 ch 100 SLA 1980)

Sec. 15.45.540. Review of application. The director shall review the application and shall either certify it or notify the recall committee of the grounds of refusal.

(Sec. 9.78 ch 83 SLA 1960; am sec. 187 ch 100 SLA 1980)

Sec. 15.45.550. Bases of denial of certification. The director shall deny certification if he determines that (1) the application is not substantially in the required form, (2) the application was filed during the first 120 days of the term of office of the official subject to recall or within less than 180 days of the termination of the term of office of any official subject to recall, (3) the person named in the application is not subject to recall, or (4) there is an insufficient number of qualified subscribers.

(Sec. 9.79 ch 83 SLA 1960; am sec. 188 ch 100 SLA 1980)

Sec. 15.45.560. Preparation of petition. If the director certifies the application, he shall prescribe the form of, and prepare, a petition containing (1) the name and office of the person to be recalled, (2) the statement of the grounds for recall included in the application, (3) the statement of warning required in AS 15.45.570, (4) sufficient space for signatures and addresses, and (5) other specifications prescribed by the director to assure proper handling and control. Petitions, for purposes of circulation, shall be prepared by the director in a number reasonably calculated to allow full circulation throughout the state or throughout the senate or election district of the official sought to be recalled. The director shall number each petition and shall keep a record of the petitions delivered to each sponsor.

(Sec. 9.80 ch 83 SLA 1960; am sec. 189 ch 100 SLA 1980)

Sec. 15.45.570. Statement of warning. Each petition and duplicate copy shall include a statement of warning that a person who signs a name other than his own to the petition, or who knowingly signs his name more than once for the same proposition at one election, or who signs the petition knowing he is not a qualified voter, is guilty of a class B misdemeanor.

(Sec. 9.81 ch 83 SLA 1960; am sec. 190 ch 100 SLA 1980)

Sec. 15.45.580. Circulation by sponsor. The petitions may be circulated only by a sponsor and only in person throughout the state or senate or election district represented by the official sought to be recalled.

(Sec. 9.82 ch 83 SLA 1960)

Sec. 15.45.590. Manner of signing and withdrawing name from petition. Any qualified voter may subscribe to the petition by signing his name and address. A person who has signed the petition may withdraw his name only by giving written notice to the director before the date the petition is filed.

(Sec. 9.83 ch 83 SLA 1960; am sec. 191 ch 100 SLA 1980)

Sec. 15.45.600. Certification of sponsor. Before being filed, each petition shall be certified by an affidavit by the sponsor who personally circulated the petition. The affidavit shall state in substance that (1) the person signing the affidavit is a sponsor, (2) the person is the only circulator of that petition or copy, (3) the signatures were made in his actual presence, and (4) to the best of his knowledge, the signatures are those of the persons whose names they purport to be. In determining the sufficiency of the petition, the director shall not count subscriptions on petitions not properly certified.

(Sec. 9.84 ch 83 SLA 1960; am sec. 192 ch 100 SLA 1980)

Sec. 15.45.610. Filing of petition. No petition may be filed within less than 180 days of the termination of the term of office of a state public official subject to recall. The sponsor may file the petition only if signed by qualified voters equal in number to 25 per cent of those who voted in the preceding general election in the state or in the senate or election district of the official sought to be recalled.

(Sec. 9.85 ch 83 SLA 1960)

Sec. 15.45.620. Review of petition. Within 30 days of the date of filing, the director shall review the petition and shall notify the recall committee and the person subject to recall whether the petition was properly or improperly filed.

(Sec. 9.86 ch 83 SLA 1960; am sec. 193 ch 100 SLA 1980)

Sec. 15.45.630. Bases for determining the petition was improperly filed. The director shall notify the committee that the petition was improperly filed if he determines that (1) there is an insufficient number of qualified subscribers, or (2) the petition was filed within less than 180 days of the termination of the term of office of the official subject to recall.

(Sec. 9.87 ch 83 SLA 1960; am sec. 194 ch 100 SLA 1980)

Sec. 15.45.640. Submission of supplementary petition. Upon receipt of notice that the filing of the petition was improper, the committee may amend and correct the petition by circulating and filing a supplementary petition within 20 days of the date that notice was given, if filed within less than 180 days of the termination of the term of office of the person subject to recall.

(Sec. 9.88 ch 83 SLA 1960)

Sec. 15.45.650. Calling special election. If the director determines the petition is properly filed and if the office is not vacant, he shall prepare the ballot and shall call a special election to be held on a date not less than 60, nor more than 90, days after the date that notification is given that the petition was properly filed. If a primary or general election is to be held not less than 60, nor more than 90, days after the date that notification is given that the petition was properly filed, the special election shall be held on the date of the primary or general election.

(Sec. 9.89 ch 83 SLA 1960; am sec. 37 ch 69 SLA 1970; am sec. 195 ch 100 SLA 1980)

Sec. 15.45.660. Preparation of ballot. The ballot shall be designed with the question of whether the public official shall be recalled, placed on the ballot in the following manner: "Shall (name of official) be recalled from the office of?". Provision shall be made for marking the question "Yes" or "No."

(Sec. 9.90 ch 83 SLA 1960)

Sec. 15.45.670. Conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of a general election shall govern the conduct of a special election for the recall of the state public official, including but not limited to, provisions concerning voter qualification; provisions regarding duties, powers, rights and obligations of the director, of other election officials, and of cities and organized boroughs; provision for notification of the election; provision for the payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for counting, reviewing, and certification of returns; provision for the determination of votes and of recount contests and court appeal; and provisions for absentee voting.

(Sec. 9.91 ch 83 SLA 1960; am sec. 196 ch 100 SLA 1980)

Sec. 15.45.680. Display of bases for and against recall. The director shall provide each election board in the state or in the senate or election district of the person subject to recall with 10 copies of the statement of the grounds for recall included in the application and 10 copies of the statement of not more than 200 words made by the official subject to recall in justification of his conduct in office. The person subject to recall may provide the director with his statement within 10 days after the date the director gave notification that the petition was properly filed. The election board shall post three copies of the statements for and against recall in three conspicuous places in the polling place.

(Sec. 9.92 ch 83 SLA 1960; am sec. 197 ch 100 SLA 1980)

Sec. 15.45.690. Certification of election results. If a majority of the votes cast on the question of recall favor the removal of the official, the director shall so certify and the office is vacant on the day after the date of certification.

(Sec. 9.93 ch 83 SLA 1960; am sec. 198 ch 100 SLA 1980)

Sec. 15.45.700. Filling vacancy. A vacancy caused by a recall is filled as a vacancy caused by any other means is filled.

(Sec. 9.94 ch 83 SLA 1960)

Sec. 15.45.710. Insufficiency of grounds, application, or petition. No recall submitted to the voters shall be held void because of the insufficiency of the grounds, application, or petition by which the submission was procured.

(Sec. 9.95 ch 83 SLA 1960)

Sec. 15.45.720. Judicial review. Any person aggrieved by a determination made by the director under AS 15.45.470 - 15.45.710 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of determination was given.

(Sec. 9.96 ch 83 SLA 1960; am sec. 199 ch 100 SLA 1980)

Chapter 50. Constitutional Amendments and Conventions.

Article 1. Constitutional Amendments.

Sec. 15.50.010. Preparation of proposition for constitutional amendment. The lieutenant governor shall prepare a proposed ballot title and proposition for each amendment to the state constitution proposed by the legislature or by a constitutional convention. Each amendment shall be confined to one subject. Within 30 days of the date of adjournment of a legislative session or of the date of adjournment of a constitutional convention, the lieutenant governor shall provide one copy of the proposed ballot title and proposition for each amendment to each member of the legislature and shall make copies available to the public.

(Sec. 10.01 ch 83 SLA 1960; am sec. 1 ch 99 SLA 1978)

Sec. 15.50.020. Description of ballot title and proposition. The ballot title shall, in not more than six words, indicate the general subject of the act. The proposition shall, in not more than 100 words, give a true and impartial summary of the amendment proposed.

(Sec. 10.02 ch 83 SLA 1960)

Sec. 15.50.025. Objection to proposed ballot title and proposition. A qualified voter, or the Legislature of the State of Alaska acting directly or through the Legislative

Council, who believes that the proposed ballot title and proposition prepared by the lieutenant governor under AS 15.50.010 does not provide a true and impartial summary of the amendment proposed may, within 15 days of the date of mailing of the proposed ballot title and proposition to the members of the legislature, submit to the lieutenant governor a statement of objection to the proposed ballot title and proposition, giving his reasons for objection, and suggesting alternative language revising the wording of the title or proposition. The lieutenant governor shall consider any objection received before directing that the ballot containing the proposition be prepared by the director. Not more than 10 days after the deadline for receipt of objections, he shall advise any person who submitted a statement of objection to the proposed ballot title and proposition of his final decision.

(Sec. 2 ch 99 SLA 1978; am sec. 200 ch 100 SLA 1980)

Sec. 15.50.027. Judicial review. A qualified voter, or the Legislature of the State of Alaska acting directly or through the Legislative Council, who has filed with the lieutenant governor a statement of objection to a proposed ballot title and proposition as provided in AS 15.50.025 and who believes that the ballot title and proposition as finally prepared does not provide a true and impartial summary of the amendment proposed may bring an action in the superior court to have the determination reviewed. An action shall be commenced within 45 days of the date of mailing of the proposed ballot title and proposition to members of the legislature as provided in AS 15.50.010.

(Sec. 2 ch 99 SLA 1978)

Sec. 15.50.030. Placing proposition on ballot. The lieutenant governor shall direct the director to place the ballot title and proposition on the ballot for the next statewide general election held after the amendment proposed by the legislature or held 120 days after the amendment proposed by a constitutional convention. If there is insufficient time to permit the proposition to be placed on the regular ballot by the director, the lieutenant governor shall direct the director to prepare a separate ballot for the proposition.

(Sec. 10.03 ch 83 SLA 1960; am sec. 201 ch 100 SLA 1980)

Sec. 15.50.040. Display of resolution. The director shall provide each election board with 10 copies of the resolution proposing the constitutional amendment by the legislature or by the convention, and the election board shall display three copies of the resolution in a conspicuous place in the room where the election is held.

(Sec. 10.04 ch 83 SLA 1960; am sec. 202 ch 100 SLA 1980)

Sec. 15.50.050. Certification of vote. If a majority of the votes cast on the proposition favor the amendment, the

constitutional amendment is adopted, and the lieutenant governor shall so certify.

(Sec. 10.05 ch 83 SLA 1960)

Sec. 15.50.060. Effective date. Unless otherwise provided in the amendment, it becomes effective 30 days after certification.

(Sec. 10.06 ch 83 SLA 1960)

Article 2. Constitutional Conventions.

Sec. 15.50.070. Placing question of constitutional convention on ballot. If during any 10-year period a constitutional convention has not yet been held, and the question of holding a constitutional convention has not been placed before the voters, the lieutenant governor shall direct the director to place the question on the ballot for the next regular statewide general or primary election.

(Sec. 10.51 ch 83 SLA 1960; am sec. 203 ch 100 SLA 1980)

Sec. 15.50.080. Certification of vote. If a majority of votes cast on the question are in the affirmative, the lieutenant governor shall so certify and shall issue the call for the convention.

(Sec. 10.52 ch 83 SLA 1960)

Sec. 15.50.090. Time and manner of selecting delegates. Delegates to the convention shall be elected at the next statewide general election in the number and manner prescribed in the call for the convention by the lieutenant governor or as provided by law.

(Sec. 10.53 ch 83 SLA 1960)

Sec. 15.50.100. Certification of constitutional amendment by convention. The president of the constitutional convention shall certify to the lieutenant governor each proposed amendment to the constitution adopted by the constitutional convention.

(Sec. 10.54 ch 83 SLA 1960)

Article 3. Delegation by Lieutenant Governor.

Sec. 15.50.110. Delegation by lieutenant governor. The lieutenant governor may delegate the duties imposed on him by AS 15.50.010 - 15.50.100 to the director.

(Sec. 204 ch 100 SLA 1980)

Chapter 55. Election Offenses, Corrupt Practices and Penalties.

Sec. 15.55.010 - 15.55.250. Repealed. Repealed by sec. 231 ch 100 SLA 1980.

Chapter 56. Election Offenses, Corrupt Practices, and Penalties.

Sec. 15.56.010. Campaign misconduct in the first degree.

(a) A person commits the crime of campaign misconduct in the first degree if he (1) knowingly circulates or has written, printed or circulated a letter, circular, or publication relating to an election, to a candidate at an election, or an election proposition or question without the name and address of the author appearing on its face; (2) knowingly prints or publishes an advertisement, billboard, placard, poster, handbill, paid-for television or radio announcement or other communication intended to influence the election of a candidate or outcome of a ballot proposition or question without the words "paid for by" followed by the name and address of the candidate, group or individual paying for the advertising or communication and, if a candidate or group, with the name of the campaign chairman; or (3) knowingly writes or prints and circulates, or has written, printed and circulated, a letter, circular, bill, placard, poster or advertisement in a newspaper, on radio or television (A) containing false factual information relating to a candidate for an election; (B) which he knows to be false; and (C) which would provoke a reasonable person under the circumstances to a breach of the peace or damages the candidate's reputation for honesty, integrity, or his qualifications to serve if elected to office. (b) Violation of this section is a corrupt practice. (c) Campaign misconduct in the first degree is a class A misdemeanor.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.020. Campaign misconduct in the second degree.

(a) A person commits the crime of campaign misconduct in the second degree if, during the hours the polls are open, he intentionally is within 200 feet of an entrance to a polling place, and (1) attempts to persuade a person to vote for or against a candidate, proposition, or question; or (2) circulates cards, handbills, or marked ballots, or posts political signs or posters relating to a candidate at an election or election proposition or question. (b) Election judges shall post warning notices at the required distance in the form and manner prescribed by the director or the chief municipal elections official in a local election. (c) Campaign misconduct in the second degree is a class B misdemeanor.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.030. Unlawful interference with voting in the first degree.

(a) A person commits the crime of unlawful interference with voting in the first degree if he (1) uses, threatens to use, or causes to be used force, coercion, violence, or restraint; or if he inflicts, threatens to inflict, or causes to be inflicted damage, harm or loss upon or against a person to induce or compel the person to vote or refrain from voting for a candidate in an

election or for any election proposition or question; (2) gives, promises to give, offers, or causes to be given or offered money or other valuable thing to a person with the intent to induce the person to vote for or refrain from voting for a candidate at an election or for an election proposition or question; or (3) solicits, accepts, or agrees to accept money or other valuable thing with the intent to vote for or refrain from voting for a candidate at an election or for an election proposition or question. (b) Violation of this section is a corrupt practice. (c) Unlawful interference with voting in the first degree is a class C felony.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.035. Unlawful interference with voting in the second degree. (a) A person commits the crime of unlawful interference with voting in the second degree if he (1) has an official ballot in his possession outside of the voting room unless he 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 his 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; or (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. (b) Violation of (a)(3) of this section is a corrupt practice. (c) Unlawful interference with voting in the second degree is a class A misdemeanor.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.040. Voter misconduct in the first degree. (a) A person commits the crime of voter misconduct in the first degree if he (1) votes or attempts to vote in the name of another person or in a name other than his own; (2) votes or attempts to vote more than once at the same election with the intent that his vote be counted more than once; (3) intentionally makes a false affidavit, swears falsely or falsely affirms under an oath required by the Alaska Election Code (AS 15.05 - AS 15.60); (4) knowingly votes or solicits a person to vote after the polls are closed with the intent that his vote be counted. (b) Voter misconduct in the first degree is a class C felony.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.050. Voter misconduct in the second degree. (a) A person commits the crime of voter misconduct in the second degree if he (1) registers to vote when he is not entitled to register under AS 15.07.030; (2) knowingly makes a material false statement while applying for voter registration or reregistration; or (3) votes or attempts to vote in an election after being disqualified under AS

15.05.030. (b) Voter misconduct in the second degree is a class A misdemeanor.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.060. Unlawful interference with an election. (a) A person commits the crime of unlawful interference with an election if he (1) induces or attempts to induce an election official to fail in his duty by force, threat, intimidation or offers of reward; (2) intentionally changes, attempts to change, or causes to be changed an official election document including ballots, tallies and returns; (3) intentionally delays, attempts to delay, or causes to be delayed the sending of the certificate, register, ballots, or other materials whether original or duplicate, required to be sent by AS 15.15.370; or (4) is contracted or employed by the state to print or reproduce in any manner an official ballot, and he knowingly (A) appropriates to himself, or gives or delivers to, or permits to be taken by anyone other than a person authorized by the director, official ballots; or (B) prints or reproduces or has printed or reproduced official ballots in a form or with a content other than that prescribed by law or as directed by the director. (b) Unlawful interference with an election is a class C felony.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.070. Election official misconduct in the first degree. (a) A person commits the crime of election official misconduct in the first degree if he is an election official, and he (1) intentionally fails to perform an election duty or knowingly does an unauthorized act with the intent to affect an election or its results; (2) knowingly permits or makes or attempts to make a false count of election returns; or (3) intentionally conceals, withholds, destroys, or attempts to conceal, withhold or destroy election returns. (b) Election official misconduct in the first degree is a class C felony.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.080. Election official misconduct in the second degree. (a) A person commits the crime of election official misconduct in the second degree if he is an election official, and while the polls are open, he (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 his ballot; or (4) shows a person to do one of the acts prescribed in (1), (2), or (3) of this subsection. (b) Election official misconduct in the second degree is a class A misdemeanor.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.090. Improper subscription to petition. (a) A person commits the crime of improper subscription to

petition if he (1) signs a name other than his own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for state or local office; (2) knowingly signs his name more than once for the same proposition, question, or candidate at one election; or (3) signs a petition proposing an initiative, referendum, recall, or nomination of a candidate for state or local office, knowing he is not a qualified voter. (b) Improper subscription to petition is a class B misdemeanor.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.100. Refusal to allow employees time off. (a) An employer commits the offense of refusal to allow employees time off if he refuses to allow an employee time off for the purpose of voting, or if he, after allowing the time off, deducts the time from the wages of the employee, except as provided in (b) of this section. (b) An employee who has two consecutive hours in which to vote, either between the opening of the polls and the beginning of his regular working shift, or between the end of his regular working shift and the close of the polls, is considered to have sufficient time outside of his working hours within which to vote. (c) Refusal to allow employees time off to vote is a violation.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.110. Effect of certain convictions. (a) The election of a candidate to the state legislature or to municipal office who knowingly commits a corrupt practice or whose campaign treasurer or deputy campaign treasurer knowingly commits a corrupt practice is voidable under this section. (b) If a successful candidate or the campaign treasurer or the deputy campaign treasurer of a successful candidate for the state legislature or for a seat on a city council or borough assembly or for borough or city mayor is convicted of a felony or misdemeanor described in this chapter as a corrupt practice, the eligibility of the successful candidate to hold the office to which elected shall be determined as to (1) a member of the legislature under art. II, sec. 12 of the state constitution; (2) a member of the borough assembly under AS 29.20.170(6); (3) a borough mayor under AS 29.20.280(6); (4) a member of the city council under AS 29.20.170(6); (5) a city mayor under AS 29.20.280(6).

(Sec. 205 ch 100 SLA 1980; am secs. 37 - 40 ch 74 SLA 1985)

Sec. 15.56.115. Disposition of cases involving corrupt practice. When a candidate or a nominee or the campaign treasurer of a candidate or a nominee is charged with a felony or misdemeanor described in this chapter as a corrupt practice, the case shall be promptly tried and the case shall be accorded a preferred status by the courts to ensure a speedy disposition of the matter.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.120. Election defined. For purposes of this chapter, "election" includes a local election as defined in AS 15.60.010(13) in addition to a state election.

(Sec. 205 ch 100 SLA 1980)

Sec. 15.56.130. Time limitation. A prosecution for an offense described in the Alaska Election Code (AS 15.05 - 15.60) may not be maintained unless it is begun within one year after the date of the election in connection with which the offense is alleged to have been committed.

(Sec. 205 ch 100 SLA 1980)

Chapter 57 Election Pamphlet

Sec. 15.57.010 - 15.57.060. Repealed.
Repealed by sec. 232 ch 100 SLA 1980.

Chapter 58 Election Pamphlet

Sec. 15.58.010. Election pamphlet.

Before each state general election, the lieutenant governor shall prepare, publish and mail at least one election pamphlet to each household identified from the official registration list. The pamphlet shall be prepared on a regional basis as determined by the lieutenant governor.

(Sec. 206 ch 100 SLA 1980; am sec. 38 ch 85 SLA 1986)

Sec. 15.58.020. Contents of pamphlet. Each election pamphlet shall contain (1) photographs and campaign statements submitted by eligible candidates for elective office in the region; (2) information and recommendations filed under AS 15.58.050 on judicial officers subject to a retention election in the region; (3) a map of the election district or districts of the region; (4) sample ballots for election districts of the region; (5) an absentee ballot application; (6) for each ballot proposition submitted to the voters by initiative or referendum petition or by the legislature, (A) the full text of the proposition specifying constitutional or statutory provisions proposed to be affected; (B) the ballot title and the summary of the proposition prepared by the director or by the lieutenant governor; (C) a neutral summary of the proposition prepared by the Legislative Affairs Agency; (D) statements submitted which advocate voter approval or rejection of the proposition not to exceed 500 words; (7) for each bond question, a statement of the scope of each project as it appears in the Bond Authorization Act; (8) a maximum of two pages of material submitted by each political party; (9) additional information on voting procedures that the lieutenant governor considers necessary; (10) for the question whether a constitutional convention shall be called, (A) a full statement of the question placed on the ballot; (B) statements not to exceed 500 words that advocate voter approval or rejection of the question.

(Sec. 206 ch 100 SLA 1980; am sec. 1 ch 33 SLA 1983)

Sec. 15.58.030. Material to be filed by candidate.

(a) No later than July 15 of a presidential election year, candidates for the offices of the United States President and Vice-President may file with the lieutenant governor photographs and statements advocating their candidacy. (b) No later than July 15 of a year in which a state general election will be held, a candidate for the office of United States senator, United States representative, governor, lieutenant governor, state senator, or state representative may file with the lieutenant governor a photograph and a statement advocating the candidacy. (c) Each candidate for an office designated under (a) or (b) of this section is allowed one page of space in the pamphlet for a photograph and statement. (d) Pages on which candidate's photographs or statements appear must be clearly identified with the words "paid for by the candidate." (e) A candidate's statement must be typewritten and is limited to a position statement of 250 words or less and a biographical statement of 150 words or less. (f) A candidate's photograph must be a 5" x 7" black and white glossy print taken within the past five years. The photograph must be limited to the head, neck and shoulders of the candidate. (g) No later than August 7 of the year in which the state general election will be held, a person seeking retention in office as a justice or judge may file with the lieutenant governor a photograph and a statement advocating the candidacy.

(Sec. 206 ch 100 SLA 1980; am secs. 39 - 41 ch 85 SLA 1986)

Sec. 15.58.040. Material to be filed by political parties.

(a) No later than July 15 of a year in which a state general election will be held, a political party may file with the lieutenant governor a maximum of two pages of material. (b) Each page purchased must be clearly identified with the words "paid for by" followed by the name of the political party, the name of the state chairman of the party, and the name of the party treasurer.

(Sec. 206 ch 100 SLA 1980; am sec. 42 ch 85 SLA 1986)

Sec. 15.58.050. Information and recommendations on judicial officers. No later than August 7 of the year in which the state general election will be held, the judicial council shall file with the lieutenant governor a statement including information about each supreme court justice, court of appeals judge, superior court judge, and district court judge who will be subject to a retention election. The statement shall reflect the evaluation of each justice or judge conducted by the judicial council according to law. A statement may not exceed 600 words.

(Sec. 206 ch 100 SLA 1980; am sec. 43 ch 85 SLA 1986)

Sec. 15.58.060. Charges for space in pamphlet. (a) Each general election candidate shall pay to the lieutenant governor at the time of filing material under this chapter the following: (1) President or Vice-President of the United States, United States senator, United States

representative, governor, lieutenant governor, supreme court justice and court of appeals judge, \$150 each; (2) superior court judge, district court judge, \$75 each; (3) state senator, and state representative, \$50 each. (b) The state chairman or executive committee of a political party shall pay to the lieutenant governor at the time of filing material under this chapter \$200 for each page purchased. (c) There is no charge for statements and recommendations submitted by the judicial council or for statements advocating approval or rejection of a proposition submitted to the voters for approval.

(Sec. 206 ch 100 SLA 1980)

Sec. 15.58.070. Organization of material. Material in the election pamphlet shall be organized to the extent possible in the same manner and form in which it will appear on the ballot. The decision of the lieutenant governor on the form of material is final.

(Sec. 206 ch 100 SLA 1980)

Sec. 15.58.080. Distribution. (a) Not less than 30 days before the general election, the lieutenant governor shall mail to every registered voter one copy of the pamphlet prepared for the region in which the voter resides. Additional pamphlets may be obtained from the director, the office of the lieutenant governor, and the area election offices. (b) The state library shall make a recording of the appropriate regional pamphlet available to a blind voter without cost. The lieutenant governor shall assist with the preparation of recording each regional pamphlet.

(Sec. 206 ch 100 SLA 1980)

Sec. 15.58.090. Delegation by lieutenant governor. The lieutenant governor may delegate the duties imposed on him by this chapter to the director.

(Sec. 206 ch 100 SLA 1980)

Chapter 60. General Provisions.

Sec. 15.60.010. Definitions. In this title, unless the context otherwise requires, (1) "absentee voting official" means a person appointed to serve as an absentee voting official in accordance with AS 15.20.045; (2) "ballot" means a hand-marked ballot and a punch-card ballot; (3) "director" means the director of elections who is the chief elections officer of the state appointed in accordance with AS 15.10.105(a); (4) "election board" means the local precinct board composed of the three election judges; (5) "election district" means one of the districts described in art. XIV, sec. 3, of the state constitution, as may be modified under art. VI of the state constitution; (6) "election official" means election judges, clerks, counters, members of counting or review boards, employees of the division of elections and absentee voting officials; (7) "federal election" means a general, special, or primary election held solely or in part for the purpose of

selecting, nominating or electing a candidate for the office of President, Vice-President, presidential elector, United States senator or United States representative; (8) "felony involving moral turpitude" includes those crimes which are immoral or wrong in themselves such as murder, sexual assault, robbery, kidnapping, incest, arson, burglary, theft, and forgery; (9) "general election" means the election held on the Tuesday after the first Monday in November of even-numbered years; (10) "hand-marked ballot" means a ballot designated to be marked by hand with a pen or pencil; (11) "Lieutenant governor" includes an appointed lieutenant governor, governor, or acting governor if a vacancy has occurred in the office of lieutenant governor or governor; (12) "limited political party" means a political group which organizes for the purpose of selecting candidates for electors for President and Vice-President; (13) "local election" means a regular or special election held by a borough, city, school district, or regional educational attendance area; (14) "master register" means the list of all registered voters in the state which is maintained by the director of elections; (15) "member of a political party" means a person who supports the political program of a party; (16) "oath" includes affirmation; "sworn" includes affirmed; (17) "official registration list" means the list of all voters qualified to vote at a particular election compiled in accordance with AS 15.07.125; (18) "party district committee" means the political party committee that performs the executive function for a region representing an area larger than a precinct and smaller than the state; (19) "political group" means a group of organized voters which represents a political program and which does not qualify as a political party; (20) "political party" means an organized group of voters that represents a political program and that nominated a candidate for governor who received at least three percent of the total votes cast at the preceding general election for governor. (21) "precinct" means the territory within which resident voters may cast votes at one polling place; (22) "presidential election year" means a year in which the presidential electors are elected; (23) "proposition" means an initiative, referendum, or constitutional amendment submitted at an election to the public for vote; (24) "punch-card ballot" means a ballot designed to be punched by a machine and counted by automatic data processing equipment; (25) "qualified voter" means a person who has the qualification of a voter and is not disqualified as provided by art. V, sec. 2, of the state constitution and AS 15.05.030; (26) "question" means an issue placed on the ballot to determine whether a judge or justice shall be accepted or rejected, whether a constitutional convention shall be called, whether a state debt shall be contracted, or whether a state official shall be recalled; (27) "registration official" includes an employee of the division of elections when performing the task of voter registration and a person appointed to serve as a registration official in accordance with AS 15.07.081 or 15.07.100; (28) "senate district" means the territory included in the election districts as designated in art.

XIV, sec. 2, of the state constitution, as may be modified under art. VI of the state constitution; (29) "signature" or "subscription" includes a mark intended as a signature or subscription; (30) "special election" means an election held at a time other than when the general or primary election is held and an election called to be held with, and at the time of, the general or primary election; (31) "state chairman" means the party official elected as the highest ranking statewide party executive; (32) "unconditional discharge" means that a person is released from all disability arising under a conviction and sentence, including probation and parole; (33) "vacancy" exists in an office when the person elected or appointed to the office resigns, retires, dies, is recalled, is rejected by majority vote on the question at an election, is convicted of a corrupt practice, is removed by impeachment, or is expelled; (34) "voter" means a person who presents himself for the purpose of voting either in person or by absentee ballot.

(Sec. 12.01 ch 83 SLA 1960; am sec. 11 ch 71 SLA 1972; am sec. 13 ch 38 SLA 1974; am sec. 29 ch 197 SLA 1975; am sec. 9 ch 208 SLA 1975; am sec. 207 ch 100 SLA 1980; am sec. 64 ch 6 SLA 1984; am sec. 44 ch 85 SLA 1986)

Sec. 15.60.020. Short title. AS 15.05.010 - 15.60.020 may be cited as the Alaska Election Code.
(Sec. 12.02 ch 83 SLA 1960)

Chapter 62. Miscellaneous Provisions.

Sec. 15.62.010. Application of election code recall provisions to party representatives. Repealed by sec. 26 ch 80 SLA 1963.

Chapter 65. Rights of Voter and Prohibitions.

Sec. 15.65.010 - 15.65.050. Prohibitions; rights of voters. Repealed by sec. 231 ch 100 SLA 1980.

JB

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

WILLIAM SIGLER, JOHN WARD,)
STEPHEN PIDGEON,)

Plaintiffs,)

vs.)

STATE OF ALASKA LIEUTENANT)
GOVERNOR STEVEN McALPINE, in)
his official capacity of)
Director of Elections,)

Defendant.)

Case No. 3AN-88-8695 CI

MEMORANDUM DECISION AND ORDER

In this ballot access case, plaintiffs William Sigler, John Ward and Stephen Pidgeon challenge the constitutionality of that portion of Alaska's Election Code, AS 15.25.150 and .170 (amended),¹ which requires third-party candidates to obtain nominations for state district-wide offices by filing, on or before June 1 of the election year, a petition for nomination containing voter signatures totaling at least one percent of the number of

1. AS 15.25.170 provides: Petitions for the nomination of candidates for the office of state senator or state representative shall be signed by qualified voters of the election or senate district in which the proposed nominee desires to be a candidate equal in number to at least one percent of the number of voters who cast ballots in the proposed nominee's respective election or senate district in the preceding general election. A nominating petition may not contain less than 50 signatures for any district.

voters who cast ballots in that district during the preceding general election. Plaintiffs argue that the foregoing election scheme, i.e. the allegedly "early" filing deadline, the one-percent signature requirement and the statutory prohibition against "write-in" candidates on the ballots, AS 15.25.070, violates the freedom of expression and association rights of plaintiffs and their supporting voters under the First and Fourteenth Amendments to the United States Constitution, and creates a constitutionally impermissible barrier to ballot access for third party candidates. Plaintiffs seek a declaration that the foregoing election scheme is unconstitutional along with an order requiring defendant to place plaintiffs' names on this year's general election ballot.

Factual Background

Plaintiffs Sigler, Pidgeon and Ward are members of Alaska's Libertarian Party who desired to run for state house seats in this year's general election.² Plaintiffs' petitions for nominations were, however, variously rejected by defendant election officials. More specifically, on June 1, 1988, prior to the 5:00 p.m. filing deadline, plaintiffs Sigler and Pidgeon filed petitions for nominations for state representatives for

2. The instant Memorandum of Decision will constitute this Court's findings of fact and conclusions of law on the issues adjudicated herein.

District 11, Seats B & A respectively. The petitions were reviewed and accepted by election coordinator, Jeri Dalton, with Ms. Dalton confirming that the filing documents, on their face, were in proper form. Sigler's petition contained 76 signatures and Pidgeon's petition contained 72 signatures. Elections officials determined that pursuant to AS 15.25.170, a minimum of 62 valid signatures was required for each candidate.

Following a staff check to verify the eligibility of subscribers to each of the nominating petitions, defendant election officials determined that only 54 of plaintiff Sigler's 76 subscribers and 51 of plaintiff Pidgeon's 72 subscribers were eligible. Both petitions were then deemed to be insufficient, and defendant sent plaintiffs Sigler and Pidgeon a letter on June 10, 1988 informing them that they had been disqualified. Some time following the receipt of their notice of disqualification, both plaintiffs collected additional signatures from voters which plaintiffs contend would make up the signature deficiencies found in their petitions. Apparently, such additional signatures were never presented to defendant and, in any event, would not have been accepted, according to Ms. Sandra Stout, Director of Alaska's Division of Elections. See Stout Affidavit, ¶ 15, dated September 2, 1988.

Both plaintiffs also testified that despite their receipt of the notices of disqualification, they believed they could still obtain access to the general election ballot through

"write-in" campaigns. Plaintiffs later learned that they were misinformed, however, when defendant's elections officials told them that pursuant to AS 15.25.070,³ "write-in" votes are not officially counted in the primary or general elections.

Plaintiff Ward presents a somewhat different situation. Ward testified that it was not until a major party candidate switched party affiliation immediately before the primary election - in late August, 1988 - that he first became interested in running for the state representative for District 16, Seat A. Plaintiff Ward obtained some 200 signatures on his nominating petition. The petition was, according to Ward, tendered to and rejected by elections officials on August 29, 1988. Elections officials have no record or recollection of any such petition having been filed by plaintiff Ward on or after June 1.

The instant action was commenced on August 30, 1988. On the same day, this Court issued a temporary restraining order, enjoining defendant from printing election ballots until the Court could hold a hearing on plaintiffs' challenge to the third-party elections scheme.

3. AS 15.25.070 provides: Special provisions on counting ballots. No voter may vote for a person whose name is not on the ballot. Votes cast for a person whose name is not on the ballot shall not be counted, but writing in a candidate's name does not invalidate the entire ballot.

On September 6, 1988, this Court held a hearing on plaintiffs' motion for preliminary injunction, and defendant's oral cross-motion for summary judgment. Affidavits of the parties were considered by the Court along with testimony and exhibits from the plaintiffs as well as from other voters and/or supporters of plaintiffs.⁴ The testimony from such voters and supporters established that some individuals encountered difficulty in soliciting names for nominating petitions for third-party candidates, and that at least one Libertarian voter felt disenfranchised or disaffected as a result of having a ballot choice of only two major-party candidates and not being able to vote for a third-party alternative.

Following the hearing, defendant was afforded an opportunity to present any additional evidence pertaining to the State's interests and justifications for the requirements of the challenged elections scheme. Additional affidavits were submitted by defendant.

Discussion

I. One-percent Signature Requirement.

4. At this hearing, the Court also allowed plaintiffs to orally amend their complaint and join, as co-plaintiffs, several of their supporters and voters from their district.

As mentioned, plaintiffs challenge Alaska's ballot access scheme in its "totality."⁵ The State agrees that this approach is the proper analytical approach in considering the constitutionality of the third-party aspect of Alaska's Election Code. See McLain v. Meier, 637 F.2d 1159, 1164 (8th Cir. 1980).

Moreover, in analyzing the constitutionality of the foregoing elections procedures, defendant must show "compelling government interests" in order to justify the encroachment of such fundamental constitutional rights as the freedom of speech and association. Vogler v. Miller, 651 P.2d 1, 5 (Alaska 1982) ("Vogler I"). In assessing the State's justifications for such limitations, it is essential to inquire into "whether less restrictive alternatives will adequately protect [the government's] interests", since "only a regulation which impinges on the right to speak and associate to the least degree possible consistent with the achievement of the state's legitimate goals will pass constitutional muster." Id.

5. Citing Storer v. Brown, 415 US. 724, 737, 94 S.Ct. 1274, 1282 (1974), the 8th Circuit Court of Appeals in McLain v. Meier, supra, 637 at 1164 n. 11, addressed the applicability of the concept of "totality" in the following way: "The concept of 'totality' is applicable...in the sense that a number of facially valid provisions of election laws may operate in tandem to produce impermissible barriers to constitutional rights."

Turning to the one-percent signature requirement set forth in AS 15.25.170 (amended) and challenged by plaintiffs,⁶ the starting point of the constitutional analysis is Vogler I. In that case, the Alaska Supreme Court recognized the validity of a ballot restriction requiring a third party candidate to demonstrate a "significant modicum of support", even when expressed as a percentage of the state's voting population, but held that a three percent signature requirement was constitutionally too burdensome. Id. at 4, 6. In so holding, the Court impliedly approved a one-percent signature requirement as being within constitutional bounds. Id. at 5, 6, 6 n. 12. To the same effect is the Alaska Supreme Court's observation in DeNardo v. State, 741 P.2d 1197, 1199 (Alaska 1987), wherein the Court noted that "by implicitly approving a one percent voter signature requirement in Vogler I, we have already found the rule to be neither unreasonable nor arbitrary." In view of the Alaska Supreme Court's clear commentary in Vogler I and DeNardo, this Court concludes that the one percent signature requirement in AS 15.25.170 (amended) is,

6. Plaintiffs disagree between themselves over their challenge to the one percent signature requirements. Some plaintiffs concede that the one percent signature requirement is, by itself, not unconstitutional, but becomes constitutionally invalid when considered in connection with the prohibition on write-ins, AS 15.25.070 and the June 1 "early" filing deadline, AS 15.25.150. Other plaintiffs argue that the one-percent signature requirement--indeed, any signature requirement--is unconstitutional.

when considered by itself, a constitutional restriction to ballot access.⁷ See also Munro v. Socialist Workers Party, 479 U.S. ___, 107 S.Ct. ___, 93 L.Ed.2d 499 (1986) (upholding a Washington election law requiring minor party candidates to receive at least 1% of the total primary vote).⁸

II. June 1 Filing Deadline.

In the instant case, the thrust of plaintiffs' constitutional challenge to Alaska's election code is the allegedly "early" June 1 filing deadline for third-party candidates' petitions for nominations, AS 15.25.150. Plaintiffs contend that this filing deadline imposes an unfair burden on third-party candidates, deprives voters -- particularly voters disinterested in major party candidates -- of effective electoral alternatives, and violates the First and Fourteenth Amendment rights of such third-party candidates and their voters and supporters. The State maintains that the June 1 filing deadline is a constitutional restriction on ballot access, citing as justification therefor governmental interests of equal treatment

7. Subsequent to Vogler I, the Alaska legislature amended AS 15.25.170, to reduce the signature requirement from 3% to 1%. In DeNardo, the Alaska Supreme Court rejected a challenge to a one-percent signature requirement contained in an administrative regulation promulgated subsequent to Vogler I and prior to the amendment of AS 15.25.170.

8. The United States Supreme Court did not address, in Munro v. Socialist Workers Party, *supra*, the constitutionality of Washington's filing requirement for minor party candidates.

of all political candidates, the promotion of voter education, the reduction of voter confusion, the maintenance of political stability and various administrative concerns.

The lead ballot access case in analyzing constitutional challenges to "early" filing deadlines by independent or third-party candidates is Anderson v. Celebrezze, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983). In Anderson, an independent presidential candidate successfully challenged Ohio's late-March filing deadline as imposing an unconstitutional burden on such candidate's supporters and voters. In striking down the early filing deadline, the United States Supreme Court reasoned that the deadline deprived voters, who were dissatisfied with the candidates of the two major political parties, of electoral alternatives and imposed a heavy burden on the signature-gathering efforts of the third-party candidates and their supporters. Thus, noting that "An early filing deadline may have a substantial impact on independent minded voters," the Supreme Court explained that:

Ohio's filing deadline prevents persons who wish to be independent candidates from entering the significant political arena established in the State by a Presidential election campaign--and creating new political coalitions of Ohio voters--at any time after mid to late March. At this point developments in campaigns for the major-party nominations have only begun, and the major parties will not adopt their nominees and platforms for another five months. Candidates and supporters within the major parties thus have the political advantage of continued flexibility; for independents, the

inflexibility imposed by the March filing deadline is a correlative disadvantage because of the competitive nature of the electoral process.

If the State's filing deadline were later in the year, a newly emergent independent candidate could serve as the focal point for a grouping of Ohio voters who decide, after mid-March, that they are dissatisfied with the choices within the two major parties. As we recognized in *Williams v. Rhodes*, supra, at 33, 21 L.Ed. 2d 24, 89 S.Ct. 5, 45 Ohio Ops.2d 236, '[s]ince the principal policies of the major parties change to some extent from year to year, and since the identity of the likely major party nominees may not be known until shortly before the election, this disaffected 'group' will rarely if ever be a cohesive or identifiable group until a few months before the election.

Id. at 790-91. Elaborating upon the additional burdens imposed upon a third-party candidate's signature gathering efforts by an early filing deadline, the Court observed that

[The early filing deadline] also burdens the signature-gathering efforts of independents who decide to run in time to meet the deadline. When the primary campaigns are far in the future and the election itself is even more remote, the obstacles facing an independent candidate's organizing efforts are compounded. Volunteers are more difficult to recruit and retain, media publicity and campaign contributions are more difficult to secure, and voters are less interested in the campaign.

Id. at 792.

In Anderson, the United States Supreme Court considered, and rejected, three justifications advanced by Ohio in support of its late-March filing deadline: the promotion of voter education, equal treatment of all candidates and the

maintenance of political stability. Rejecting the voter education justification, the Court noted that modern communications capability and the literacy of the electorate made it "somewhat unrealistic to suggest that it takes more than seven months to inform the electorate about the qualifications of a particular candidate simply because he lacks a partisan label." Id. at 797.

Regarding the state's equal treatment rationale, the Court recognized the realistic differences in the nominating procedures for minor and major-party candidates, and observed that

It is true that a candidate participating in a primary election must declare his candidacy on the same date as an independent. But both the burdens and the benefits of the respective requirements are materially different, and the reasons for requiring early filing for a primary candidate are inapplicable to independent candidates in the general election.

The consequences of failing to meet the statutory deadline are entirely different for party primary participants and independents. The name of the nominees of the Democratic and Republican Parties will appear on the Ohio ballot in November even if they did not decide to run until after Ohio's March deadline had passed, but the independent is simply denied a position on the ballot if he waits too long. Thus, under Ohio's scheme, the major parties may include all events preceding their national conventions in the calculus that produces their respective nominees and campaign platforms, but the independent's judgment must be based on a history that ends in March.

Id. at 799-800.

The Supreme Court further rejected administrative concerns as a justification for the early filing deadline, finding that elections officials did not require many months lead time to count or verify third-party petition signatures before the general election ballots were printed. Id. at 800.

Finally, the high court rejected the state's political stability rationale, concluding that

Ohio's asserted interest in political stability amounts to a desire to protect existing political parties from competition--competition for campaign workers, voter support, and other campaign resources--generated by independent candidates who have previously been affiliated with the party.

Id. at 801. The Anderson Court thus held that the voters' freedom of choice and association interests outweighed the Ohio's "minimal interest in imposing a March deadline". Accordingly, the Court struck down the March filing deadline and ultimately upheld the trial court's injunction requiring the addition of the third-party candidate's name to the general election ballot.⁹

To the same effect, the Eighth Circuit invalidated North Dakota's ballot access requirements for third-party

9. Nor was Ohio's election scheme saved by a procedure allowing "write-in" votes for independent candidates. The Court concluded that such procedure was "not an adequate substitute for having the candidate's name appear on the printed ballot." Anderson v. Celebrezze, supra, 460 U.S. at 799 n. 26. Compare AS 15.25.070 (prohibiting "write-ins").

candidates, including a 3.3% petition signature requirement and a June 1 filing deadline. McLain v. Meier, 637 F.2d 1159 (8th Cir. 1980). Regarding the early filing deadline, the Court of Appeals observed:

North Dakota's filing deadline of June 1, more than ninety days before the primary election and more than one hundred fifty days before the general election is particularly troublesome. While voters are not required to exercise their franchise or participate in the political process within the framework of organized political parties, most voters in fact look to third party alternatives only when they have become dissatisfied with the platforms and candidates put forward by the established political parties. This dissatisfaction often will not crystalize until party nominees are known... (citations omitted). Accordingly, it is important that voters be permitted to express their support for independent and new party candidates during the time of the major parties' campaigning and for some time after the selection of candidates by party primary.

Id. at 1164.¹⁰ But see Rainbow Coalition v. Oklahoma State Election Board, 844 F.2d 740 (10th Cir. 1988) (upholding a 5% signature requirement and a May 31 filing deadline for third-party candidates).¹¹

10. Compare Alaska's June 1 filing deadline, 84 days from the primary election and 160 days from the general election.

11. This Court declines to follow the holding in Rainbow Coalition v. Oklahoma State Election Board, supra, for two reasons. First, the Tenth Circuit in Rainbow Coalition rejected the "compelling state interest" analysis and adopted, instead, a "balancing test." Id. at 743. By contrast, the

(Footnote Continued)

The teaching of Anderson and McLain is that early filing deadlines for nominating petitions for independent or third-party candidates impose an unfair burden upon such candidates and their supporters. The courts in those cases realistically recognize the differences between minimally financed and supported minor party candidacies and the selection process by which major-party candidates emerge. The Anderson and McLain courts also recognize the political reality that voters may first begin to focus upon political candidates and policy choices after the major party candidates have been nominated at their parties' primary elections and/or during the campaigning activities which ensue. Thus, it is not until the period between the major party primaries and the general election that voters tend to become interested in candidates who present a fundamental alternative to the major-parties' representatives and the latter's stances on the important political issues. Any elections procedure, such as a filing deadline many months in

(Footnote continued)

Alaska Supreme Court has adopted, in Vogler I, supra at 5, the "compelling government interest" test in considering ballot access cases involving such fundamental rights as freedom of speech and association.

Second, the Tenth Circuit in Rainbow Coalition attempted to distinguish Anderson on the grounds that that case concerned an independent candidate's bid for a national, rather than local, public office. Id. at 746 n. 9. This court finds such difference to be without legal significance and concludes that the policy and rationale of Anderson are equally applicable to ballot access barriers confronting third-party candidates seeking local or state-wide offices.

advance of the general election, which discourages the emergence of such third-party alternatives, infringes impermissibly upon the freedom of speech and association interests of such third-party candidates and their voters and supporters.

Applying the rationale and policy of Anderson and McLain to the instant case, this Court concludes that Alaska's June 1, filing deadline, the one-percent signature requirement and the statutory prohibition against "write-in" candidates, when considered in their totality, unconstitutionally deprive plaintiff third-party candidates and their supporters and voters of their fundamental rights of freedom of speech and association. Particularly troublesome to the Court is the effect the early filing deadline may have on voters who, at or after the primary election, may seek alternatives to the major party candidates, and on the third-party candidates' signature drives. Like the voters of Ohio and North Dakota in Anderson and McLain, supra, Alaska voters -- at least those voters in the House districts at issue in this litigation -- will be deprived of electoral alternatives, specifically the plaintiff-Libertarian Party candidates herein, should such voters become dissatisfied with the choices of the two major parties. As the Eighth Circuit emphasized, "[i]t is important that voters be permitted to express their support for independent and new party candidates ... for some time after the selection of candidates by party primaries." Id. at 1164 (emphasis added). By requiring third-party

candidates to file their nominating petitions some 84 days in advance of the primary election and 160 days before the general election, Alaska's early filing deadline, as the record indicates, tends to discourage such third-party candidates from filing and tends to deprive Alaska voters of electoral alternatives at the general election.

Further, as the record also establishes, Alaska's early filing deadline may compound the signature drive and organizing efforts of third-party candidates. As the United States Supreme Court observed in Anderson, "volunteers are more difficult to recruit and retain, media publicity and campaign contributions are more difficult to secure, and voters are less interested in the campaign" at a point in time so far in advance of the primary and general elections. 460 U.S. at 792. But see Stout Affidavit, ¶ 12, dated September 9, 1988 (listing some third-party candidates who have, between 1980-88, met the filing requirements and appeared on the ballot).

Equally troubling is the inability of third-party candidates in Alaska to secure access to the ballot through a traditional "write-in" procedure. AS 15.25.070 flatly prohibits "write-ins" on primary ballots, and instructs elections officials not to count any votes for candidates written in on the ballots. Indeed, assuming Alaska's election code contained such a write-in procedure, the Anderson Court found such procedure to be "not an adequate substitution for having the [third party] candidate's

name appear on the printed ballot." 460 U.S. at 799 n. 26. In the instant case, two plaintiff-candidates indicated that they were less concerned with the fact that their petitions had been rejected by elections officials because they erroneously assumed that they would still have ballot access through a traditional "write-in" procedure. Had they known that such a "write-in" procedure was prohibited in this jurisdiction, they may well have increased their early signature drive activities. In any event, the Court concludes that the absence of any "write-in" procedure in Alaska's election code further limits and discourages access to the ballot for third-party candidates and their supporters and voters.

Finally, the justifications advanced by the State in support of the ballot access restrictions challenged herein are neither "compelling" nor supported by the record in this case. Equality of treatment of all candidates is, in reality, not achieved by requiring third-party candidates to file for election by June 1 - months in advance of the primary and general elections. As the Anderson Court observed, "'equal treatment' of partisan and independent candidates simply is not achieved by imposing the [early] filing deadline on both." 460 U.S. at 801.

Similarly, the need to promote voter education is not necessitated by the filing of a third-party candidate's petition some five months in advance of the general election. In view of modern communications technology and the literacy of the

electorate, it is, as the Anderson Court observed, simply "unrealistic to suggest that it takes more than seven months to inform the electorate about the qualifications of a particular candidate...." Id. at 797.

Further, concerns regarding possible voter confusion, "laundry" list ballots, undue factionalism and party fragmentation are, as the state candidly concedes, largely theoretical and "reflect a perception of potential problems, rather than any actual experience in Alaska." Stout Affidavit, ¶ 4, dated September 9, 1988; see also Vogler I, supra, 651 P.2d at 5-6; but see Munro v. Socialist Workers Party, supra, 93 L.Ed.2d at 505-06 (a particularized evidentiary showing of voter confusion, ballot overcrowding, etc. is not required to sustain reasonable ballot access restrictions).

Lastly, the challenged ballot access restrictions are not compelled by administrative necessity. Like Ohio in Anderson, the State in this case does not suggest that the June 1 filing deadline for third-party candidates is necessary to allow petition verification and signature counting. 460 U.S. at 800. Plainly, as the State concedes, the election officials could conduct their petition and signature verification activities in substantially less time than five months. See Stout Affidavit, ¶ 10, dated September 9, 1988. Nor does the State require anything like five months of lead time in order to

prepare and print ballots and the official election pamphlet.¹² Accordingly, the June 1 filing deadline cannot be justified on administrative grounds.

The State's final response to plaintiffs' challenge to Alaska's election code provisions is the doctrine of laches. That is, the State contends that plaintiffs should have initiated their action sooner than August 30, 1988, and that as a result of such delay, plaintiffs should now, as a matter of equity, be barred from bringing their instant claims.

It is true that plaintiffs could have brought the present action earlier than August 30. Yet, defendant has made no showing of substantial prejudice to elections officials as a result of plaintiffs' delay, nor does the record reflect any such real prejudice. Further, the record establishes that any post-filing deadline submissions by plaintiffs to defendant elections officials would have been futile. See Stout Affidavit, ¶ 15, dated September 2, 1988. In view of the importance of the fundamental constitutional interests at stake in this action -- the freedom of association and speech interests of plaintiff third-party candidates and their supporters and voters -- and the

12. The record establishes that the printing of the general election ballots (and absentee ballots) is presently set for September 29, 1988. (A "Special Election Ballot", apparently sent to about 200 non-resident military personnel, was printed on or about September 7, 1988. Plaintiffs do not seek to have their names added to this "Special Elections Ballot.").

lack of any real prejudice to the State resulting from the 2-3 month delay in the initiation of this action, this Court declines to exercise its equity authority to bar plaintiffs' claims, pursuant to the doctrine of laches, from being adjudicated on their merits.

Conclusion

The importance of promoting effective political alternatives in the electoral process, and of encouraging all voters to participate in such process, cannot be overstated. As the Alaska Supreme Court stressed in Vogler I:

The range of political views in our society cannot be compressed into the platforms of only two parties. Even where minor parties do not actually place candidates in office, their presence on the ballot provides disaffected voters with a means of protesting the status quo or of embracing unorthodox ideas. ... (citations omitted). The ballot box is our established means of effecting change, and excessive restrictions on it may redirect the pressure for change into other, less legitimate channels.

Id. at 5.

Bearing these concerns in mind, this Court finds and concludes in the present case that the June 1 filing deadline, particularly when considered in combination with the one-percent signature requirement and the prohibition against "write-in" candidacies, impermissibly infringes upon the fundamental constitutional interests of freedom of association and speech of plaintiff-third-party candidates and their supporters and voters. The Court further finds and concludes that the State has, on this

record, failed to justify the filing deadline by "compelling interests", and that the State's concerns can be met with a less restrictive requirement, namely, a filing deadline for third-party candidates considerably closer to the general election.¹³ Accordingly, the Court hereby declares the June 1 filing deadline for third-party candidates to be unconstitutional under the First and Fourteenth Amendments to the United States Constitution, and issues the following order and injunctive relief:

ORDER

IT IS HEREBY ORDERED that:

1. Plaintiffs' Motion for Preliminary Injunction is granted, and
 - a. The names of plaintiffs Sigler, Pidgeon and Ward shall be added to the November, 1988 general election ballots as Libertarian Party candidates for state representatives

13. In so holding, the Court declines to opine whether Anderson and McLain adopt a "per se" rule, i.e., a rule holding that third-party candidates filing deadlines which precede the primary elections are "per se" unconstitutional. Nor is the Court inclined to suggest exactly when -- at, near or following the primary elections -- such a filing deadline should be set. All that the Court is holding in the instant case is that the existing filing deadline of June 1 fails to pass constitutional muster, for the reasons expressed herein.

for Seats B and A of District 11 and Seat A of District 16, respectively,¹⁴ and

b. That to the extent that it is still reasonably practicable to do so, appropriate texts regarding such candidates shall also be included in the Official Election Pamphlet,¹⁵ and

c. The temporary restraining order previously issued herein, enjoining the printing of general election ballots, is hereby vacated.

14. While plaintiff Ward presents a different factual circumstance than plaintiffs Sigler and Pidgeon, having attempted to file his nominating petition on or about August 29, 1988 (6 days following the August 23 primary election), Ward Affidavit, ¶ 2, dated August 30, 1988, the Court nevertheless concludes that granting plaintiff Ward access to the ballot is consistent with the policy and rationale of Anderson and McLain. See McLain v. Meier, supra, 637 F.2d at 1164 ("It is important that voters be permitted to express their support for independent and new party candidates during the time of the major parties' campaigning and for some time after the selection of candidates by party primary.").

15. The Court notes Ms. Stout's testimony that candidates must normally submit biographical information to defendant State for inclusion in the Official Election Pamphlet by July 15 of the election year, in order for the pamphlet to be published and distributed by early October. Stout Affidavit, ¶ 9, dated September 9, 1988. The record herein is unclear as to whether such pamphlet has already been printed, and/or, what administrative expense and difficulty would be encountered by the State as a result of including plaintiffs' biographical information therein at this time. To the extent that the pamphlet has not yet been printed, and the State can reasonably make the foregoing additions, it is ordered to do so. Defendant shall advise plaintiffs of this possibility, and plaintiffs shall immediately provide defendant with relevant biographical information about themselves.

IN THE SUPREME COURT FOR THE STATE OF ALASKA

DAVID FINKELSTEIN,)
)
 Appellant,)
)
 vs.)
)
 SANDRA STOUT, Director of the)
 Alaska Division of Elections,)
 and STEPHEN A. McALPINE,)
 Lieutenant Governor of Alaska,)
)
 Appellees,)
)
 and)
)
 W.E. "BRAD" BRADLEY,)
)
 Intervenor.)

Supreme Court No. S-3107

Filed and Entered
AFFILIATE COURTS of the
STATE OF ALASKA

JUL 5 1989

CLERK

By _____ Deputy

SPECIAL MASTER'S REPORT

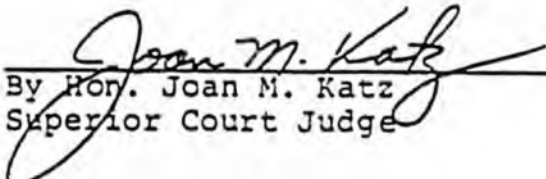

By Hon. Joan M. Katz
Superior Court Judge

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	SPECIFIC BALLOT CHALLENGES	2
	A. Appellant's Challenges	
	1. Absentee ballot envelope oaths suggesting no permanent Alaskan residence	2
	2. Post-Election affidavits demonstrating non-residency	9
	3. Military post office box "residences"	13
	4. Absentee ballot lacking witness signature	18
	5. Undated witness signatures	19
	6. Incomplete voter signature	22
	7. Different witness dates	23
	8. Ballots without postmarks received after the election	26
	9. Unregistered voter	27
	10. Punchmark ballots	27
	B. Intervenor's Challenges	
	1. Absentee ballots lacking voter signatures	33
	2. Special overseas absentee ballots	35
III.	CONCLUSION	37
	APPENDIX A	
	APPENDIX B	
	APPENDIX C	
	APPENDIX D	

I. INTRODUCTION

In the general election of November 8, 1988, David Finkelstein and W.E. "Brad" Bradley vied for Seat A in House District 13. After the election, Finkelstein was certified by appellee Stout, Director of the Division of Elections, to be the winner of that race. The count was 3,549 to 3,546.

At Bradley's request, a recount was conducted on December 1 and 2, 1988. Based on the recount, Stout certified that Bradley had defeated Finkelstein 3,563 to 3,554, a nine vote margin.

In the course of the recount, Stout determined that 26 votes had been improperly counted. Finkelstein Ex. 1. The ballots had been commingled, rendering it impossible to ascertain for whom they had been cast. Based on the formula set forth in Hammond v. Hickel, 599 P.2d 256 (Alaska 1978), cert. denied, 441 U.S. 907 (1979), Stout proportionately reduced Bradley's vote total by 15.02 votes and Finkelstein's total by 9.98 votes. These reductions resulted only in narrowing the gap between the candidates to 3.96 votes. Having determined that the outcome of the election would not have been different based on the rejected ballots, Stout certified the election results premised on the recount totals demonstrating Bradley to be the prevailing candidate by nine votes.

This recount appeal was timely filed with the Alaska Supreme Court pursuant to AS 14.20.510(2). On December 8, 1988, the court appointed the undersigned as special master charged

with making findings and recommendations regarding each ballot issue raised, as well as summary findings and recommendations pertaining to the ultimate fate of this election contest. Bradley was subsequently granted permission to intervene.

A discovery and briefing schedule was established immediately upon the appointment of the master, with supplemental briefing requested by the master as such proved necessary. Oral argument was conducted on January 3, 1989. Limited testimony was taken. The findings and recommendations of the master are based on the complete record and pertinent legal authority. The findings address each of the parties' challenges to specific ballots, or groups of ballots, in the order in which the issues have been presented in the briefings.

II. SPECIFIC BALLOT CHALLENGES

A. Appellant's Challenges

1. Absentee ballot envelope oaths suggesting no permanent Alaskan residence

Finkelstein challenges the state's failure to reject 14 absentee ballots in light of indications on the voter oaths on the ballot envelopes suggesting that these voters did not have a permanent Alaskan residence in District 13 at the time of the election. The statutory framework for this issue is as follows:

Under AS 15.05.010(4), a person may vote in an election if, inter alia, he or she "has been a resident of . . . the election district in which the person seeks to vote for at least 30 days just before the election." Residence is defined in AS

15.05.020(2) as being "that place in which the person's habitation is fixed, and to which, whenever absent the person has the intention to return." Subparagraph (3) of the statute provides that "There can only be one residence." Finally, subparagraph (10) states:

The address of a voter as it appears on an official voter registration card is presumptive evidence of the person's voting residence. If the person has changed voting residence, this presumption is negated only by the voter executing an affidavit on a form prepared by the director setting out the new voting residence.

In Fischer v. Stout, 741 P.2d 217, 222-23 (Alaska 1987), the court held that the absentee voter oath is a "form prepared by the director" sufficient to rebut the presumption of residency arising from the voter registration card. The court struck the ballots of eleven voters who were determined, based on absentee voter oaths, to have resided outside of the district in question. Finkelstein seeks the same result in the case of these 14 challenged ballots.

The state opposes this relief on two grounds. First, appellees contend that Fischer v. Stout should be overturned. Second, the state argues that a statutory provision safeguarding residency as it pertains to students, as well as members of the military and their families, removes most of these 14 cases from application of the Fischer rule.

The state's basis for urging reversal of Fischer is the presumptive validity afforded the residency information provided on a voter's registration form. Appellees insist that the code contemplates that a voter may "have a voting residence at one location, yet 'reside' at still another." Appellees' Brief at 10. Appellees contend that "the registration rolls offer a 'snapshot' of a highly mobile electorate, and the components of the picture consist of the voter's habitation as of the time of registration." Id. (Emph. added.) Appellees cite to AS 15.07.090 as authorizing amendment of registration only by execution of "new" registrations. The presumption raised by registration is said to be "conclusive."

This line of argument is not persuasive. The state overlooks the explicit mandate of AS 15.05.010(4) limiting the class of people entitled to vote to those who have in fact been residents of the district for the 30 days preceding the election. This mandate derives from Article V, Section 1 of the Alaska Constitution, which reads:

Every citizen of the United States who is at least eighteen years of age, who meets registration residency requirements which may be prescribed by law, and who is qualified to vote under this article, may vote in any state election. A voter shall have been, immediately preceding the election, a thirty-day resident of the election district in which he seeks to vote, except that for purposes of voting for President and Vice President of the United States other residency requirements may be prescribed by law. Additional voting qualifications may be

prescribed by law for bond issue elections of political subdivision.

Thus, not only is the 30-day residency requirement a sine qua non of voter qualification, it is clearly differentiated from "registration residency requirements" (emph. added) which must also be observed.

It is obvious, then, that registration supplies only an evidentiary tool for establishing voter residency. Registration cannot provide a "conclusive" presumption. To allow this effect would be to authorize the voting by non-residents in contravention of the Alaska Constitution. This result was prohibited in Turkington v. City of Kachemak, 380 P.2d 593 (Alaska 1963). There, the court invalidated a territorial act which contemplated the voting of non-resident property owners in certain local elections. The court held that the legislation directly contravened Article V, Section 1 of the subsequently adopted constitution.

In a related argument, the state observes that the voter oath is not intended to constitute a new registration. While this may be true, as suggested above, it is irrelevant. The critical fact is that the oath provides updated information which must be taken into account.

Finally, appellees suggest that the Fischer rule should be overturned, because the absentee voter oath does not make a clear distinction between mailing and residence addresses, as does the registration form. In both Fischer v. Stout, supra, at 223-224 and Willis v. Thomas, 600 P.2d 1079, 1087 (Alaska 1979),

the court suggested that errors attributable to the state should not result in disenfranchisement of the electorate.

It is possible that the form could have been clearer in this regard. However, the relevant portion asks specifically for "My permanent Alaskan Residence Address." It advises voters, moreover: "(DO NOT use P.O. Box, Rural Route #. You must use street address, #, legal description, or other physical location description.)" The master does not deem these instructions so misleading as to explain the rationale of voters in putting down out-of-state addresses or writing "no permanent Alaskan residence." The only reasonable explanation for such entries is that the voters did not, in fact, have a permanent Alaskan residence.

Appellees' second argument is more persuasive. AS 15.05.020 provides, in pertinent part:

Rules for determining residence of voter.
For the purpose of determining residence for voting, the place of residence is governed by the following rules:

(1) A person may not be considered to have gained a residence solely by reason of presence or may a person lose it solely by reason of absence while in the military service . . . of the United States or . . . because of marriage to a person engaged in the . . . military service . . . of the United States, while a student at an institution of learning

Subparagraph (2), cited previously, defines "residence" as "that place in which the person's habitation is fixed and to which, whenever absent, the person has the intention to return."

Read together, these two sections require that if a citizen establishes residency as a registered voter in Alaska

prior to leaving the state as a member of the military, a military dependent, or for educational purposes, such person is not deprived of his or her registered voting residency, notwithstanding an absence of intent to return to the precise voting residence location.

This is the only logical interpretation of these sections for two reasons. First, the reality is that many people in the military, as well as those attending institutions of higher education, have lived either in military housing or rental units prior to leaving the state. This is a young and mobile segment of the population which, from a factual standpoint, generally cannot be expected to own a home such as would qualify as a "permanent residence" in the sense intended by subparagraph (2). People who leave the state do not retain an interest in rental units or specific military housing that would support an intent to return to such specific locations.

Additionally, if subparagraph (1) were intended to be limited to those students and members of the military who have purchased a home or otherwise secured a true fixed habitation in Alaska, the provision would be superfluous. Subparagraph (2) already instructs that if anyone is absent from a residence to which he or she intends to return, legal residency is established. It is hornbook law that legislation must be construed to give meaning to all its parts. Alaska Transp. Comm'n. v. AIRPAC, Inc., 685 P.2d 1248, 1253 (Alaska 1984). The only reasonable conclusion here is that voting residents who

leave the state in the military or to go to school are entitled to rely on their last registered address for purposes of voting in Alaska.

Review of the 14 oaths challenged here discloses that ten of the voters explicitly referenced the military or educational pursuits to explain why they had no permanent Alaska address. These voters include Jennifer Dahlmann (Appellees Ex. 8), James W. Dahlmann (Appellees Ex. 9), Ginger Rusnock (Appellees Ex. 10), Jodie Callahan (Appellees Ex. 11), Patrick A. Tuller (Appellees Ex. 12), Candice J. Tuller (Appellees Ex. 13), Anna M. Steward (Appellees Ex. 14), Tony R. Steward (Appellees Ex. 15), Donna S. Kuehn (Appellees Ex. 16), and Judith Hanf (Appellees Ex. 17). Their ballots were properly counted.

Cheryl A. Henry (Appellees Ex. 6) did not mention being a current member of the military. But she wrote her old Elmendorf address on the oath and had her oath notarized by Air Force Captain Richard Henry. Captain Henry can fairly be assumed to be Cheryl Henry's husband. There is enough information provided from which it can reasonably be inferred that Ms. Henry is either military or a military dependent. Her vote was properly counted.

There are three individuals, however, who gave no clear indication that they fall within any of the exceptions authorized by AS 15.05.202(1). Melanie McDermott (Appellees Ex. 5) was in the military in Alaska at the time of her registration. But she did not state in her oath that she continues to serve in this

capacity. McDermott provided a Texas address and gave no information to suggest that it is on a military installation. Homer C. Rice, Jr. (Appellees Ex. 7) similarly made no reference to present military status. The address he provided on the oath is different from that given on his registration. Finally, Adam P. Behnen (Appellees Ex. 18) did not indicate that he was in the military even on his registration. Moreover, he provided an address of "C/o Michael Rethlake" on his oath, with a street location that is outside of District 13.

The state argues generally against rejection of any of these ballots due to the alleged hardship of disenfranchising these voters. However, the last-mentioned three voters would be "disenfranchised" only in respect to a contest in a district in which they have demonstrated that they do not have actual residency. They have not established their entitlement to any exception. Exclusion of these ballots is necessary and reasonable to insure that the "political community" is maintained intact without suffering dilution of the vote of legitimate district residents. See Dunn v. Blumstein, 405 U.S. 330, 31 L.Ed.2d 274 (1972); Reynolds v. Sims, 337 U.S. 533, 555 (1963). The ballots of voters McDermott, Rice, and Behnen should not have been counted.

2. Post-Election affidavits
demonstrating non-residency

Subsequent to both the election and the recount, 21 voters executed official voter registration affidavits attesting to the fact that they were not residents of the district on the

day of the election. In each case, the individuals in question filled in the blank asking for "My current residence at this [non-District 13] address (or in this district [other than 13], whichever is longer) began" with a date prior to the November 8, 1988 election. Appellant claims that the votes of these affiants should not have been counted.

In their briefs, appellees argued that the new affidavits take effect only on the date that they are postmarked or executed (if accomplished in person). Reiterating their position vis-a-vis the absentee voter oath, appellees urged that absent a new registration in effect 30 days prior to the election, the presumptive validity of the old registration governs. It was asserted that:

ominously, Finkelstein's proffered interpretation would create a limbo period in which a voter would be a legal resident of neither district, thus depriving that voter of an opportunity to vote on even statewide matters.

Appellees' Brief at 21.

At oral argument, new evidence surfaced in support of the state's position. It became apparent through representations of counsel and the testimony of Mr. Finkelstein that most, if not all, of the 21 affidavits had been solicited by the Finkelstein campaign. Oral argument transcript at 53, l. 24-53, l. 15. The affidavits do not represent spontaneous decisions by the voters to update their registrations. Rather, the affidavits are the product of one party's attempt to alter the outcome of the election.

Based only on the arguments presented in the briefs, the master would adopt appellant's position. It is true that the amended registrations modify the voter's registration record only as of the date the new forms are executed or postmarked. But if the information contained on the new form explicitly demonstrates lack of residency in the election just passed, such information rebuts the presumption afforded the "valid," older registration. AS 15.05.020(10). The Alaska Constitution would, ordinarily, require that the votes of the non-residents be set aside.

The new registration form is not confusing. Appellees argue that the form does not distinguish between residency for purposes of "living" versus voting. Yet, none of the Division of Elections forms sets forth this distinction. Under the state's analysis, no registration would be valid, because no form alerts the voter to this possible distinction.

Additionally, there is no "limbo," as fearfully portended by the state. The Legislature has anticipated this dilemma. AS 15.07.090(c) allows individuals to change their registration up to 30 days prior to the election. The statute requires the director to transfer the registration of a voter from one district to another when requested by the voter. Again, the voter must reside in the new district for at least 30 days in order to vote. AS 15.20.015 provides as follows:

Moving from election district just before election. A person who meets all voter qualifications except that listed in AS 14.05.010(4) [30 day residency] is qualified to vote by absentee ballot in the election district in which the person formerly resided

if the person lived in that election district for at least 30 days immediately before changing residence.

Thus, to insure against disenfranchisement, the Legislature has authorized people to vote in their old district, at least for state-wide elections, if they cannot meet the 30-day residency requirement at their new address.

Based on the above reasoning, if the affidavits had been submitted spontaneously, constitutional considerations would override claims of administrative convenience. These 21 ballots would be rejected. To apply the Hammond v. Hickel formula to these commingled ballots, however, would work an injustice. The affidavits were solicited by Finkelstein. Presumably, the campaign workers identified themselves as such to these 21 voters; (if not, the failure to do so would in itself have been improper). It is reasonable to assume that the 21 individuals supported Finkelstein, or they would not have been willing to cooperate with his campaign in updating their registrations. There is a high probability that most, if not all, of these 21 votes were cast for Finkelstein. At a minimum, the unusual circumstances under which these new registrations were secured renders it unlikely that these 21 votes were cast in the same proportions reflected in the election at large.

If the proportionate impact formula were to be applied, most of the votes would be deducted from the Bradley column. Finkelstein might, thereby, effectively receive two votes from many of these 21 individuals. He would retain the vote they cast originally, and he would benefit from the vote subsequently

deducted from the Bradley total. To apply the Hammond v. Hickel formula in this case would, thus, subvert its very purpose in attempting to approximate realistic and fair election results. There should be no alteration in the proportionate reduction computations based on these 21 affidavits.

3. Military post office
box "residences"

Eleven people, some of whom voted absentee and some of whom voted in person, utilized an Elmendorf Postal Service Center ("PSC") box number on their registrations. Finkelstein contends that under the supreme court's ruling in Fischer v. Stout, such post office box addresses do not meet residency requirements. Appellees argue, to the contrary, that the court in Fischer also indicated that an address of "Elmendorf Air Force Base" would suffice for residency purposes. The state claims that the addition of a post office box number should not defeat residency based on the designation of Elmendorf.

Fischer v. Stout does provide the starting point for this analysis. The pertinent discussion from that opinion is as follows:

Fischer contests the ballots of five voters who listed as their residence address only "Elmendorf Air Force Base." Elmendorf Air Force Base is a bounded area wholly within Senate District H. Thus, merely listing "Elmendorf Air Force Base" is sufficient to fix a voter's residence to a specific locale within District H. These votes were properly counted.

Fischer also challenges those absentee voters who registered to vote using a post office box or private mail service as the

voter's residence. A post office box or private mail service address is clearly not a voter's fixed place of habitation and is therefore insufficient to fix a voter's residence within a voting district. Thus, any voter providing such an address as his or her residence would be ineligible to vote unless he or she provided additional information regarding that voter's residence.

741 P.2d at 221. It is undisputed that had these 11 voters simply utilized "Elmendorf AFB" as their residence, their votes could not be challenged. The issue is whether the reliance on a military post office box effectively converts their addresses from residences to mere mail receptacles. Resolution of this issue, in turn, depends on identification of the classes of people who are entitled to use these boxes.

Finkelstein supplied the court with copies of a booklet apparently utilized at Elmendorf which describes the function of postal service centers. Finkelstein Ex. 52. At page 3 of the exhibit, the brochure reads:

A civilian contractor operates three postal service centers on base. PSC-1 in building 2-900 and PSC-2 in building 31-160 serve people living in areas where USPS does not provide free resident delivery service. Also, temporary general delivery service is available for people who will not be living in the dormitories.

Finkelstein also furnished an excerpt from the Department of Defense Postal Manual. Finkelstein Ex. A to Ex. 53. This excerpt states, first, that "In CONUS, receptacles are assigned only to service members not afforded free mail delivery by the USPS at their quarters address." The manual then goes on to indicate that postal service center boxes may be used by certain

professionals within the military, regardless of where they reside, for the purpose of receiving professional papers, journals, and other job-related materials. In the case of such assignments, the manual admonishes: "Under no circumstances shall receptacles be used to conduct private business."

The state submitted an unsworn memorandum from one Captain Raymond B. Rounds, Elmendorf's Installation Voting Officer, to Linda Edgeworth, the information officer for the Division of Elections. (Appellees Ex. 21). The memorandum is undated, but appears to have been written in response to a December 13, 1988 telephone call between Edgeworth and Rounds described in Edgeworth's affidavit (Appellees Ex. 1).

Captain Rounds advises that the procedures set forth in the postal manual referenced, supra, are implemented at Elmendorf. He continues:

Receptacles are assigned only to service members who do not receive mail delivered by the US Postal Service. According to the directive no one living off-base will be assigned a receptacle or PSC box number. There may be a PSC box number assigned to a military member who has just arrived or is leaving within a short period of time who does not have an address, but the box number will be withdrawn as soon as the member finds a place to live permanently or has left the area. Further, a person will have his/her receptacle or PSC box privileges taken away if he/she moves from the barracks into off-base quarters or into family housing on Elmendorf AFB. Family base housing is serviced by the US Postal Service. Only those military members who live in the barracks on Elmendorf AFB, or who are in transition, will be assigned a PSC box number. The exceptions noted in the remainder of section 502.2 are designed only for receipt of job-related

materials, are not to be used for private mail delivery, and are therefore not used to receive voting materials.

Id.

In appellant's reply brief and supplemental affidavit of Joseph McKinnon, Finkelstein produces excerpts from the state voter registration lists which demonstrate that of the 343 registered voters who have supplied an Elmendorf PSC box as their mailing address, 26, or 7.6%, have provided an off-base voting residence address. Finkelstein's point is that recitation of a PSC address does not provide complete assurance that the individual actually resides on base.

The master concludes that the evidence¹ generally supports appellees' view that PSC boxes are distinct from private post office boxes. The overwhelming majority of these boxes are used by dormitory residents of Elmendorf who are not entitled to regular mail delivery. Since professionals assigned PSC boxes are not authorized to receive personal mail there, the only individuals likely to use the boxes for voter registration purposes other than base residents would be recent military arrivals or those whose departure is imminent.

None of the 11 voters challenged here has been demonstrated to have another address off-base. This is a critical distinction from the 26 individuals identified by appellant. Each citizen's vote is entitled to a presumption of

¹Due to the time constraints imposed in this case, the "evidence" submitted on this issue included hearsay and uncertified public documents. The master deemed this material sufficiently trustworthy to be relied upon in this analysis.

validity. See Carr v. Thomas, 586 P.2d 622, 626 (Alaska 1978). The presumption is amply supported here by the greater than 90 percent correlation between PSC boxes and residence on Elmendorf.

Additionally, as noted previously, the supreme court has indicated that errors by the Division of Elections resulting in deficient registration of individual voters should not lead to disenfranchisement of these voters. Fischer v. Stout, supra, at 223-224; Willis v. Thomas, supra, at 1087 (Alaska 1979). In this case, Linda Edgeworth of the Division of Elections stated by affidavit:

Military voters and their dependents oftentimes use a Postal Service Center (PSC) Box Number as their residence address in the registration process. The division's longstanding policy is to accept such addresses as a residence address because they indicate an on-base residence. Because military installations are included within a single precinct, use of a PSC address nonetheless allows the division to know in which district and precinct the voter resides.

Appellees Ex. 1, par. 3. It is apparent that the Division never alerted potential voters to any problem with their use of PSC box numbers for residency purposes. To the contrary, reliance on such addresses was officially sanctioned. Under these circumstances, rejection of votes by individuals listing PSC boxes as their residences would be manifestly unjust. These 11 votes were properly counted.

Two of these ballots, moreover, provide independent verification of a physical residence on Elmendorf. Mark A. Bramer is registered at a PSC box. He voted absentee and

identified his permanent residence address as "Arcadia Drive BLD 31-270 RM 355.2." Finkelstein Ex. 39. Intervenor Bradley advises that there is an "Acacia Drive" on Elmendorf. Bradley argues that the building and room number used by Mr. Bramer confirms that the address listed is a barracks location on base. Bradley notes further that the zip code on the oath is 99506, the Elmendorf zip code. In contrast, the zip code for Arcadia Drive is 99503. The master concurs in Bradley's analysis.

Keith E. Boulware registered using a PSC box; his voter's oath contained a building number address on Elmendorf, clearly bringing Mr. Sculware within the physical location requirement of Fischer. Finkelstein Ex. 4i.

4. Absentee ballot lacking
witness signature

Finkelstein objects to the vote of Karen J. Leander. Ms. Leander voted absentee. On the place for witness signature, there is only a postmark, with no signature. The state urges acceptance of the postmark as constituting the signature of the postal clerk. The state relies on Fischer v. Stout, quoting from the opinion:

The Director refused to count the ballot of Mr. Baker on the ground that the attesting officer had initialed the attestation section rather than signed. It is black letter law that any mark intended as a signature will function as such.

741 P.2d at 224. Later in the opinion, the court said:

The signature may be affixed in any manner and may consist of any character, symbol,

figure, or name so long as such mark is intended by the signator as a substitute for the individual's given name.

Id. at 225.

The state's citation is its own undoing. It is clear from Fischer that the signature must provide some means of identifying the individual who signed the document. The postmark does not meet this test. Failure to execute the witness certificate requires invalidation of the ballot. AS 15.20.203(b)(2). Leander's ballot was improperly counted.

5. Undated witness signatures

Three individuals cast absentee ballots on which the attesting official did not date his or her signature. These voters were Steven E. Walls (Finkelstein Ex. 55); Lisa Crowley Walls (Finkelstein Ex. 56); and DiAnn Schoeff (Finkelstein Ex. 57).

AS 15.20.081(d) requires attesting officials to date their signatures. All parties acknowledge, as did the court in Fischer, that it is the intent of AS 15.20.081(d) that the voter cast the ballot and execute the oath in the presence of the official or other witnesses. The oath to be signed by the official witness attests to the fact that the voter appeared before the official on the date specified.

In considering defects relating to absentee voting, the Alaska Supreme Court has made a distinction between obligations which are mandatory and those which are merely directory. In the case of mandatory obligations, failure to comply requires

rejection of the vote. Violation of directives, on the other hand, does not impair the viability of the ballot. An election requirement is mandatory only if enforcement was sought before the election, or if the requirement is

of a character to affect an obstruction to the free and intelligent casting of the vote or to the ascertainment of the result, or unless the provisions affect an essential element of the election, or unless it is expressly declared by the statute that the particular act is essential to the validity of an election, or that its omission shall render it void.

Carr v. Thomas, supra, at 627 (Alaska 1976).

The supreme court has held that the purpose of postmarks and date-received stamps is to insure that the vote was cast on or before the date of the election. Hammond v. Hickel, supra. Thus, the absence of either or both of those required items does not invalidate a ballot, as long as the witness has dated his or her affidavit in a timely fashion. Id. In Willis v. Thomas, supra, the court somewhat gratuitously included witness dating in its summary of the Hammond v. Hickel ruling: "We held that the postmark, witness date and date stamping provisions of AS 15.20.150 were directory and not mandatory" 600 P.2d at 1083 (emph. added). The facts in Willis, once again, involved ballots which had late postmarks. They were properly dated by a witness on or before the election day.

In this case, the inverse appears to be true. While not properly dated, there is no evidence that the ballots were

not postmarked so as to indicate timely voting. If the only issue is timeliness, the absence of a witness date should be recognized as violative of a directory requirement, and not fatal to the vote.

There is, however, a second issue. Witness presence is required not only to insure timeliness, but to protect against other forms of fraud in the electoral process. Witness presence warrants that the person claiming to have voted is the individual who actually cast the ballot and executed the oath. And most critically, witness presence helps to assure the absence of improper influence and pressure at the time that the ballot is marked.

A voter's identity can be verified by his or her signature, as well as through information supplied regarding birthdate and social security number. Witness presence is not required for this function. There is no substitute for witness presence, however, in assuring that voter fraud in the form of improper influence is prevented. Other courts have signaled the importance of safeguarding the integrity of the electoral process through the witnessing requirement. E.g., Fouche' v. Racland, 424 S.2d 559, 561 (Miss. 1982); Wynn v. Dunleavy, 440 A.2d 261, 272 (Conn. 1982); Kiehne v. Atwood, 604 P.2d 123, 133 (N.M. 1979); and Desjourdy v. Board of Registrars of Voters of Uxbridge, 266 N.E.2d 672, 677 (Mass. 1971).

While the cases cited are distinguishable on the grounds of specific facts or statutory provisions, the emphasis

on the importance of witness presence to prevent fraud is applicable to this election contest. AS 15.20.203(b)(2) compels rejection of a ballot when an official fails to execute the certificate. At a minimum, substantial compliance with the execution requirements must be achieved in order to include such ballots in the absentee vote tallies. Wrinn v. Dunleavy, supra.

The three officials whose attestations are questioned here did no more than inscribe their names, titles, and limited addresses. Out of five lines on their respective certificates, they each filled out only two. They did not in any way affirm that the voter's oath was "subscribed and sworn" to before them nor did they indicate the date that such act might have taken place. In light of the fact that the spaces for them to so indicate were immediately above the lines on which they signed their names, there is no basis for alleging reasonable confusion. The emptiness of these simple blanks almost gives rise to an inference that the voters did not subscribe their oaths in the witnesses' presence. The failure of these officials to execute their certificates properly affects an essential element of the election and contravenes the statutory requirement set forth in AS 15.20.203(b)(2). These three votes should have been rejected.

6. Incomplete voter signature

Kevin Dowell apparently began to sign his name on his absentee ballot oath; the first part of the "K" is written on the signature line. For some reason, however, he failed to complete even one letter of his name. Finkelstein Ex. 58. Appellant has

challenged Dowell's absentee ballot on the grounds of lack of signature. The state has defended on the basis of the language in Fischer v. Stout, cited in Section 4, supra.

Finkelstein's challenge is well taken. Mr. Dowell did not complete any mark which can fairly be said to represent a signature. In Willis v. Thomas, supra, at 1086 the court held that "The voter's signature is a basic part of the certificate and failure to properly attach it invalidates the ballot." The court based its decision on the language now found in AS 15.20.203(b), cited above, which requires that a ballot be rejected if the voter has "failed to properly execute the certificate." See also Erickson v. Blair, 670 P.2d 749, 757 (Colo. 1983), where the court stated: "A 'signature . . . is not only a mark' of identity but also a sworn affirmation or adoption of the contents of the affidavit itself. Without the signature, there is in reality no affidavit." Mr. Dowell's vote must be rejected.

7. Different witness dates

Thirty-two voters submitted absentee ballots which had been witnessed by lay persons on different dates. Three additional voters submitted ballots in which only the first witness supplied a date with his or her signature. The Division has segregated 10 of the total of 35 ballots raising lay witness dating issues. (Finkelstein Exs. 60-69). The actual votes in these cases can still be ascertained. The remaining ballots in this category have been commingled (Finkelstein Exs. 70-94). Finkelstein challenges all these votes on the grounds that the

varying dates indicate that at least one of the witnesses was not present when the ballots were cast.

As discussed in Section 5, supra, all parties agree that the Legislature intended for witnesses to be present at the time the vote is cast and the oath executed. The state argues, however, that neither AS 15.20.081(d) nor AS 15.20.203(b) explicitly apply this requirement to the lay witnesses, as opposed to the official witness. The state stresses that while ballots are to be rejected if voters fail to "properly" execute their oaths under AS 15.20.203(b)(1), witnesses are only required to "execute" their certificates, not necessarily to do so "properly." AS 15.20.203(b)(2). The state concludes that dating of lay witness signatures is only directory. It is contended that any lack of dates or discrepancies therein are of no legal significance.

The master determined previously that presence of the official witness when the ballot is cast and the voter's certificate executed is a mandatory aspect of absentee voting. The lay witnesses are to be relied upon only in the event no official witness is available. AS 15.20.081(d). When the court decided, in Hammond v. Hickel, that only one lay witness was required, the Legislature clarified its intent by overturning that decision through an amendment to the election law explicitly requiring two lay witnesses. See Committee Analysis of the Changes Proposed to the Election Code (Finkelstein Ex. 96). As stated in Finkelstein's brief,

It defies logic to conclude that the Legislature would require strict adherence to procedural safeguards when an absentee ballot is voted before a public official, but relax those standard when an absentee ballot is voted in a less preferred manner.

Appellant's Brief at 32.

Based on the above analysis, it would appear that the lack of dates, or inconsistent dating, in connection with lay witness signatures should prove fatal to these 35 ballots. If it is mandatory that one official execute the witness certificate to establish "presence," then, similarly, it must be mandatory that both lay witnesses execute their certificates for the same purpose.

However, once again, the Division has utilized procedures, in this case forms, that are seriously deficient. Option 2 under the witnessing affidavit provides in full:

If no authorized official is reasonably available, you may have the certificate witnessed by two persons over the age of 18.

Witness Signature _____ Date _____

Witness Signature _____ Date _____

at (City/State or Country) _____

Finkelstein Ex. 147, p. 1. Unlike the official executing an affidavit under Option 1, the lay witnesses are not told what it is that they are to "witness." They may reasonably believe that it is sufficient if a person they know to be the individual whose name appears on the oath brings the certificates to them to sign, after the fact. Such an interpretation would be consistent with

the type of certification required on permanent fund dividend application forms.

While the witness' certificate is simply unclear, the instructions to the voter on the secrecy envelope are actually misleading. The voter is directed to take the certain steps. The first four are summarized below. The fifth step is quoted as it appears in the instructions.

[1. & 2. Mark the ballot.]

[3. Turn the ballot over and vote the other side.]

[4. After all choices have been marked, put the ballots in the secrecy envelope.]

5. Complete and sign the VOTER OATH on the back of the return mailing envelope. Also have your oath WITNESSED, using OPTION 1 or OPTION 2 described on the back of the return mailing envelope.

Two additional steps regarding mailing follow.

These instructions suggest that the voting process itself need not be witnessed. There is, furthermore, nothing said to inform the voter that his or her oath should be executed in the presence of the lay witnesses. To negate the votes of 35 individuals on the grounds that they did not meet requirements never made known to them or their witnesses would constitute disenfranchisement of a most egregious sort. Under these circumstances, the ballots of these individuals were properly counted.

8. Ballots without postmarks
received after the election

Finkelstein seeks rejection of four absentee ballots which were received after the election and which did not contain

a postmark. Appellant relies on a portion of AS 15.20.081(e) which provides that "If the ballot is postmarked, it must be postmarked on or before election day. After the day of the election, no ballots shall be accepted unless received by mail." Finkelstein observes that delivery of a ballot after the day of election by means other than mail constitutes grounds for rejecting the ballot. AS 15.20.203(b)(5).

In this case, however, there is no evidence that these four ballots were delivered other than by mail. The state does not support its contention that postmarks are frequently lacking on "franked" mailings. But the state is correct in asserting that Finkelstein bears the burden of demonstrating that a means other than mail was used. That burden has not been met. These ballots were valid.

9. Unregistered voter

Appellant demonstrated that voter Eileen M. Snyder was not registered at the time she submitted her absentee ballot. Finkelstein Ex. 101. The state has conceded error and agreed that Snyder's ballot should not have been counted. The court concurs.

10. Punchmark ballots

Finkelstein objects to the counting of 14 votes for Bradley when the punchmarks were placed in the boxes for both Bradley and Finkelstein. Appellant relies on AS 15.20.730(b)(1), which provides that the computer shall be programmed to count votes "only if the punch is clearly spaced in the square designed

by a plus sign following the name of the candidate the voter desires to select. . . ." Appellant also cites administrative rules for evaluating ballots, particularly a paragraph 5 which states: "The marks . . . SHALL BE COUNTED ONLY if they are substantially inside the square provided, or touching the square so as to indicate clearly that the voter intended the particular square to be designated." Finkelstein Ex. 118. Finally, Finkelstein notes that instructions posted in the voting booths advise voters who spoil their ballots to obtain new ballots. Finkelstein Ex. 117.

The state's position regarding these challenges is that a voting machine in Precinct 153 malfunctioned, causing punch marks to register low. No verified evidence was presented to support this theory, other than the ballots themselves, which cannot be tied to a particular voting machine. (But see Affidavit of Diane Holmstrom, submitted by the state in its "Filing of Supplemental Affidavit.")

The supreme court has stated that the "crucial question in determining the validity of ballot markings is one of voter intent." Willis v. Thomas, supra, at 1085. The Willis court examined the entire ballot in at least one instance to ascertain the voter's intent in regard to a specific race. In McCavitt v. Registrars of Voters of Brockton, 434 N.E.2d 620, 625 (Mass. 1982), the court held that "the judge correctly inspected each ballot for patterns that reveal the voters' intent." In the same opinion, it was recognized that the judge must make a de novo

determination of voter intent, and not rely on the administrative determination below.

The master has inspected each ballot to determine whether, standing alone, a pattern of consistently low punchmarks on a particular ballot gives rise to a clear inference of voter intent vis-a-vis that ballot. The statutory and administrative guidelines for assessing ballot marks are intended to accomplish the objective stated by the supreme court: to determine voter intent. There is no deviation from administrative rule 5 in any of the cases in which the master recommends that challenged ballots be counted. The punchmarks attributed to Bradley are all "clearly spaced" when considered in the context of the physical placement of all marks on the respective ballots.

The master's findings are as follows:

Ballot 20 (Finkelstein Ex. 102). The punchmark is evenly divided between the Finkelstein and Bradley boxes. The same is true of the other state legislative races. The races for U.S. Congress and President are the only ones which do not give rise to any question of voter intent. The votes for Young and Bush do not cross over into any other candidate's box. While there is certainly a possibility in this case that all the punchmarks were registering low, the fact that three out of the four marks on the first side of the ballot are squarely divided between two candidates leaves the master with no basis for finding that a vote for Bradley has been demonstrated. The

presidential boxes are large enough that a voter can readily position the lever in varying parts of the box without a clear inference being reasonably drawn from such act. This vote should not have been counted.

Ballot 21 (Finkelstein Ex. 103). In this case, all the punchmarks on the first side of the ballot bisected the line of a box approximately evenly. However, in each race other than the Finkelstein-Bradley contest, the line bisected was the bottom line of the box for the last candidate for that particular race. Thus, there was no question about the voter's intent in regard to three out of the four races on that side of the ballot; it is logical to assume that low registration accounts for the placement of all the punchmarks, including that in the Bradley-Finkelstein race. The vote was properly counted.

Ballot 22 (Finkelstein Ex. 104). This situation is identical to that obtaining on Ballot 21. This vote was also properly counted.

Ballot 30 (Finkelstein Ex. 105). This voter registered in the middle between the Bradley and Finkelstein boxes, low in the Young box, and low in the write-in box for the Martin-Whittle race (with no write-in candidate specified). No vote was cast in the Phillips-Pourchot race. The mark was low in the Bush box. Since the Bradley-Finkelstein race was the only one in which the vote was "split," and because of the irrelevant vote in the Martin-Whittle race, the master does not believe a fair inference

of voter intent can be drawn in this case. The vote should not have been counted.

Ballot 1 (Finkelstein Ex. 106). In three of the four races on the first side of this ballot, the mark was substantially in the upper candidate's box, but touched to some extent the box of the candidate below. In the Phillips-Pourchot contest, the mark was low in the second candidate's box so that it would have crossed into the next candidate's space had there been a name below. Here there is substantial evidence of an intent to vote for the person in whose box the greater part of the mark was located. The vote was correctly included for Bradley.

Ballot 4 (Finkelstein Ex. 107). Well over half of the mark here fell inside the Bradley box. Similarly, the other marks on this side of the ballot were predominantly located in the lower portion of one candidate's box. Bradley was entitled to this vote.

Ballot 6 (Finkelstein Ex. 108). All prevailing candidates received marks substantially within their boxes, crossing over slightly into the box below. The intent of the voter to support Bradley was correctly honored.

Ballot 25 (Finkelstein Ex. 109). Again all votes were substantially in one candidate's box but crossed over the bottom line to some degree. The vote for Bradley was correctly counted.

Ballot 26 (Finkelstein Ex. 110). All votes were on the line between two candidates; all were close to two-thirds into the upper candidate's box. On the reverse side of the ballot,

every presidential candidate except one received a punchmark -- all low in the respective boxes. The intent to vote for Bradley was correctly ascertained.

Ballot 27 (Finkelstein Ex. 111). This is a close call. The ballot is marked slightly more in the Bradley box than in the Finkelstein space, and the punchmark is similarly divided in the Phillips-Pourchot contest. The Young mark is similarly proportioned, but with no candidate below, gives rise to the inference that the mark was registering low. The uncertainty is created by the vote for Martin, which similarly divides the top line of Martin's box. It appears most likely to the undersigned that the voter recognized belatedly that his marks were registering low and sought to correct the problem by going high to eliminate any possibility of confusion. Comparing the high and low marks, it does not appear that a mark squarely within the center of any of these boxes would have been feasible. The vote was properly attributed to Bradley.

Ballot 28 (Finkelstein Ex. 112). Three-fifths of the punchmark was in the Bradley box. Since the same proportion was in the boxes for Pourchot and Whittle, who had no candidates below them on the ballot, it can be assumed that the mark was registering low. Bradley was entitled to this vote.

Ballot 29 (Finkelstein Ex. 113). The mark in the Bradley box here is slightly greater than that in the Finkelstein space. However, this is the only mark between two candidates on this ballot. In voting for Martin and Phillips, the voter

bisected the top line of these candidates' boxes leaving no room for doubt as to the intention. Only the vote for Young -- with no candidate beneath him -- similarly bisected the bottom line of the box. The presidential vote was low. The undersigned does not find that voter intent has been demonstrated. This ballot should not have been counted.

Ballot 31 (Finkelstein Ex. 114). All votes on this ballot were three- to four-fifths in the box of a given candidate, including Bradley. All registered low in that candidate's box. The vote was properly attributed to Bradley.

Ballot 32 (Finkelstein Ex. 115). Again, all punchmarks were predominantly within specific candidates' boxes. This represents a vote for Bradley.

Scrutiny of each of the above-referenced ballots results in a subtraction of three votes from Bradley's total.

B. Intervenor's Challenges

1. Absentee ballots lacking voter signatures

Intervenor contends that 15 absentee ballots which were not counted for lack of voter signatures should have been included. Bradley's position is much the same as was argued by the state in connection with the incomplete signature provided by Mr. Dowell (Section A. 6, supra). Bradley also argues that the placement of the signature line in the general area under the instruction to "Provide at least one of the following for identification purposes," which space includes blanks for voter number, birthdate and social security number, is confusing. The voter,

according to Bradley, might believe that the signature blank is optional, if other identifying information is provided.

As a factual matter, the undersigned does not agree that there is a substantial opportunity for confusion. The request for voter signature is stated in red ink, differentiating it from the black ink utilized to ask for voter number, etc. Moreover, the requests for voter number, social security number, and birthdate precede the line left blank for insertion of the information; the voter signature line is preceded only by an "X." The words "Voter Signature" appear below the line. The instructions on the secrecy envelope into which the ballot itself is placed state in red "Complete and sign," and then in black, "the VOTER OATH on the back of the return mailing envelope." Any voter confusion is due to the individuals' own lack of diligence in following instructions. See, original Exs. 146 and 147 to Appellant's Reply Brief.

In addition to disagreeing with Bradley on the factual basis for his claim, as a matter of law, the master considers the voter signature requirement to be a mandatory one. The reasoning for this position was set forth in Section 6, above.

Bradley does add a new factor, however, in the case of voters Deborah C. Thomas and Michael S. Lynch. These voters executed -- and signed -- new affidavits containing all the information set forth on their original oaths and attesting that the information was true at the time of mailing their absentee ballots and at the time the new affidavits were sworn. The same

witnesses who attested to the original ballots averred that the voter's statements were originally made to them on the date stated on the original envelope. Intervenor Exs. 16 and 17.

As discussed earlier (Section A.2), to insure the accuracy of decisions regarding voter qualifications and ballot validity, some after-the-fact presentations of relevant information on Division of Election forms should be permitted. In this case, however, Intervenor acknowledged at oral argument that these new affidavits were solicited by his campaign. They are akin, in that respect, to the affidavits acquired by Finkelstein to demonstrate non-residency. These Bradley affidavits, moreover, were not presented on Division forms. Without the safeguards of regularity, these affidavits must be disregarded. The Division was correct in refusing to include these 15 ballots in the vote tallies.

2. Special overseas absentee ballots

AS 15.20.082(d) authorizes a procedure whereby voters overseas may receive special absentee ballots prior to the time candidates are certified for all the races. On these special ballots, the voters are given the option of casting their ballots based solely on party preference. Voters submitting such special absentee ballots are subsequently sent regular absentee ballots identifying all the candidates by name. According to statute, "The director shall, if the regular absentee ballot is received within the time required by law, count the regular absentee ballot in preference to the special absentee ballot."

Bradley presents the names of three voters, Cherie D. Riney, Roger A. Sturdy, and Kathleen E. Lund, who submitted valid special absentee ballots (Intervenor Exs. 18, 19 and 29, respectively). These individuals subsequently mailed in regular absentee ballots which, although timely, were rejected by the Division for either lack of signature or witnessing. Bradley argues that since no valid regular absentee ballots were received, the original special ballots should have been counted.

Finkelstein and the state both disagree. While the presumption in favor of enfranchisement of the electorate supports Bradley's position, to allow overseas voters who improperly execute a regular absentee ballot to rely on earlier special ballots would afford one limited class of voters multiple opportunities for casting a valid ballot. According to the statute, once the regular absentee ballot is received, valid or otherwise, it supersedes the special absentee ballot. The only purpose of the overseas ballot is to enhance the opportunity for this group of voters to cast an absentee ballot. Bradley's construction would favor individuals casting ballots overseas in preference to other absentee voters. As such it cannot be adopted.

Moreover, without inspection of the special, regular absentee ballots, there is no way to ascertain whether any of these individuals changed his or her vote from the special to regular ballots. Such inspection would violate these voters' right to ballot secrecy. See Alaska Constitution, Art. V, §3. These votes were properly rejected.

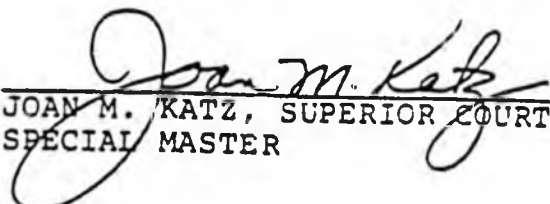
III. CONCLUSION

Based on the findings and recommendations contained hereinabove, it is the master's conclusion that the election should be set aside. The findings made in Section II.A.10 of this report require that three full-count votes be deducted from Bradley's post-recount total. This computation leaves Bradley with 3,560 votes to Finkelstein's 3,554, a six-vote margin. Findings in Section II.A.1, 4, 5, 6, and 9, pertaining to commingled votes, necessitate subtraction of nine votes in addition to those previously deducted by the Director to ascertain proportionate impact pursuant to the Hammond v. Hickel formula. This calculation indicates a potential impact on the outcome of the election to the extent of 1.17 votes in Finkelstein's favor. All parties agree that such a finding, if upheld, requires that a new election be held.

Regardless of how the supreme court rules on this contest, the master recommends that the Legislature and Division of Elections be alerted to the need to modify statutes, forms and procedures, as may be appropriate, to insure that some of the problems which gave rise to challenges in this case do not recur. It is particularly important that the Division specifically prohibit the use of Postal Service Center box numbers, at a minimum for persons who do not reside on base. Additionally, the Legislature or Division should prescribe an oath which advises the official and lay witnesses that they are attesting to

their observation of the casting of the ballot and the execution of the voter's oath; the secrecy envelope instructions should be revised accordingly.

These findings and recommendations are submitted to the Alaska Supreme Court this 5th day of January, 1989.


JOAN M. KATZ, SUPERIOR COURT JUDGE
SPECIAL MASTER

APPENDIX A

FINDINGS ON FINKELSTEIN'S CHALLENGES TO DIRECTOR'S DECISIONS
TO COUNT SEGREGATED VOTES

Vote Improperly
Counted?

- I. ATTESTATIONS OF TWO WITNESSES ON DIFFERENT DATES
- A. Voter Ballots (Finkelstein Ex. Nos. 60-69) NO
- B. Results
- 1. Votes Improperly Counted: 0
 - 2. Subtraction from Finkelstein Total: 0
 - 3. Subtraction from Bradley Total: 0
- II. THE PUNCH CARD BALLOTS
- A. Finkelstein Ex. Nos.
- | | |
|---------|-----|
| 1. 102 | YES |
| 2. 103 | NO |
| 3. 104 | NO |
| 4. 105 | YES |
| 5. 106 | NO |
| 6. 107 | NO |
| 7. 108 | NO |
| 8. 109 | NO |
| 9. 110 | NO |
| 10. 111 | NO |
| 11. 112 | NO |
| 12. 113 | YES |
| 13. 114 | NO |
| 14. 115 | NO |
- B. Results
- 1. Votes Improperly Counted: 3
 - 2. Subtraction from Finkelstein Total: 0
 - 3. Subtraction from Bradley Total: 3
- III. Results of Election After Special Master's Findings on Segregated Votes
- A. Vote Totals After Recount
- | | |
|------------------|------|
| Bradley..... | 3563 |
| Finkelstein..... | 3554 |
- B. Vote Totals After Special Master's Findings
- | | |
|------------------|------|
| Bradley..... | 3560 |
| Finkelstein..... | 3554 |

APPENDIX E
 FINDINGS ON FINKELSTEIN'S CHALLENGES TO DIRECTOR'S DECISIONS
 TO COUNT COMMINGLED VOTES*

<u>Ballot Category</u>	<u>Votes Challenged</u>	<u>Challenges Accepted</u>	<u>Change Per Ballot</u>	<u>Total Vote Change</u>
Absentee Voter Oath Defects	14	3	B: -.6183 F: -.3817	B: -1.855 F: -1.145
Post-Election Affidavits Demonstrating Non-residency	20 in-person 1 absentee	0	B: -.6302 F: -.3698	B: 0 F: 0
Postal Boxes	4 absentee 7 in-person	0	B: -.6183 F: -.3817	B: 0 F: 0
No Witness	1	1	B: -.6183 F: -.3817	B: -.6183 F: -.3817
Undated Witness	3	3	B: -.6183 F: -.3817	B: -1.855 F: -1.145
Two Witness Dates	25	0	B: -.6183 F: -.3817	B: 0 F: 0
Post-Election Day Ballots	4	0	B: -.6183 F: -.3817	B: 0 F: 0
Unregistered Voter	1	1	B: -.6183 F: -.3817	B: -.6183 F: -.3817
No Voter Signature	1	1	B: -.6183 F: -.3817	B: -.6183 F: -.3817
TOTAL		9	Bradley: Finkelstein:	-5.565 -3.435

* applying the formula prescribed in Hammond v. Hickel, 588 P.2d 256, 260 (Alaska 1978).

APPENDIX C
FINDINGS ON BRADLEY'S CHALLENGES TO DIRECTOR'S DECISIONS
NOT TO COUNT VOTES

Votes Improperly Stricken?

- | | |
|---------------------------------------------------------------------------------------------------------|----|
| I. ABSENTEE BALLOTS NOT SIGNED(15) | NO |
| II. SPECIAL ADVANCED OVERSEAS BALLOTS(3) | NO |
| III. Results of Election After Special Master's Findings on Intervenor Bradley's Challenges: Unaffected | |

APPENDIX D

SUMMARY OF EFFECT ON VOTE TOTALS AFTER
SPECIAL MASTER'S FINDINGS

I.	Results of Election After Special Master's Findings on Segregated Votes (See Appendix A)	
	Bradley.....	3560
	Finkelstein.....	3554
II.	Proportionate Impact Using Hammond v. Hickel Formula After Special Master's Findings on Commingled Votes	
A.	Results of Proportionate Reduction by Director of Elections (See Finkelstein Ex. 1)	
	Bradley.....	3547.98
	Finkelstein.....	3544.02
	Margin.....	3.96
B.	Adjustment to Total Vote Count due to Findings on Segregated Vote Totals	
	Bradley.....	3544.98
	Finkelstein.....	3544.02
C.	Results of Additional Proportionate Reduction by Special Master (See Appendices B and C)	
	Bradley.....	3544.98
		<u>-5.565</u>
		3539.415
		Special Master's Findings Net
	Finkelstein....	3544.02
		<u>-3.435</u>
		3540.585
		Special Master's Findings Net
	NEW MARGIN BETWEEN CANDIDATES.....1.17 (in Finkelstein's favor)	

Filed and Entered
APPELLATE COURTS
STATE of ALASKA

JAN 11 1989

CLERK

IN THE SUPREME COURT OF THE STATE OF ALASKA

DAVID FINKELSTEIN,)
)
 Appellant,)
)
 v.)
)
 SANDRA STOUT, Director of the)
 Alaska Division of Elections,)
 and STEPHEN A. McALPINE,)
 Lieutenant Governor of Alaska,)
)
 Appellees,)
)
 and)
)
 W.E. "BRAD" BRADLEY,)
)
)
 Appellee/)
 Intervenor.)
)

ORDER¹

No. S-3107

Before: Matthews, Chief Justice, Rabinowitz,
 Burke, Compton, and Moore, Justices.
 [Rabinowitz, Justice, and Moore, Justice,
 dissenting.]

I. INTRODUCTION

This is an election recount appeal brought pursuant to AS 15.20.510(2). This court referred the appeal to the Honorable Joan M. Katz of the Superior Court as a Special Master on December 8, 1988. Judge Katz filed her report on January 5, 1989. The report contains a detailed analysis of the challenges from all parties and of the evidence submitted in connection with the

-
1. An opinion, and partial dissenting opinions, will follow.

challenges.² The following introduction contained in the report sets the context of this case:

In the general election of November 8, 1988, David Finkelstein and W.E. "Brad" Bradley vied for Seat A in House District 13. After the election, Finkelstein was certified by appellee Stout, Director of the Division of Elections, to be the winner of that race. The count was 3,549 to 3,546.

At Bradley's request, a recount was conducted on December 1 and 2, 1988. Based on the recount, Stout certified that Bradley had defeated Finkelstein 3,563 to 3,554, a nine vote margin.

In the course of the recount, Stout determined that 26 votes had been improperly counted. Finkelstein Ex. 1. The ballots had been commingled, rendering it impossible to ascertain for whom they had been cast. Based on the formula set forth in Hammond v. Hickel, 588 P.2d 256 (Alaska 1978), cert. denied, 441 U.S. 907 (1979), Stout proportionately reduced Bradley's vote total by 15.02 votes and Finkelstein's total by 9.98 votes. These reductions resulted only in narrowing the gap between the candidates to 3.96 votes. Having determined that the outcome of the election would not have been different based on the rejected ballots, Stout certified the election results premised on the recount totals demonstrating Bradley to be the prevailing candidate by nine votes.

Judge Katz concluded that because of various errors relating to the counting of ballots, the election should be set aside and a new election held. As explained herein, we conclude that a new

2. We express our gratitude to Judge Katz for her thoughtful and expeditious report.

election may be necessary depending on the count of nine illegally cast absentee ballots which were not commingled³ and on the precise proportionate reduction formula employed by the Director.⁴ For ease of reference we will adopt the same numbering system and terminology employed in the Master's Report.

II. SPECIFIC BALLOT CHALLENGES

A. Appellant's Challenges

1. Absentee ballot envelope oaths suggesting no permanent Alaskan residence

Finkelstein challenged fourteen absentee ballots in this group. Judge Katz accepted the challenges in three cases and rejected the other eleven. A majority of the court is of the view that none of the challenges should have been accepted. There was sufficient evidence in each case so that the voter's intent to indicate a new legal residence outside of the district was unclear. In the absence of a clear expression of intent to change a legal residence the residence cannot be considered to have been changed. Fischer v. Stout, 741 P.2d 217, 222-23 (Alaska 1987).

3. See part II.A.7., infra.

4. See part II.B.3., infra.

2. Post-election affidavits
demonstrating non-residency

After the election and the recount, twenty-one voters signed registration affidavits stating that they were not residents of the district at the time of the election. The Director of Elections had counted the votes of these individuals and they have been commingled. Judge Katz declined to apply the proportionate reduction formula set out in Hammond v. Hickel, 588 P.2d 256, 260 (Alaska 1978), cert. denied, 441 U.S. 907 (1979) to these votes. We agree with this conclusion. In our view, this objection was untimely as it was raised after the recount was concluded.

3. Military post office
box "residences"

Eleven challenges were considered under this category. All of the challenges were rejected by Judge Katz. We concur.

4. Absentee ballot
lacking witness signature

One challenge was made under this category which was accepted by Judge Katz. On the place for the signature of the witness, with respect to this absentee ballot, there is only a postmark, with no signature. We agree with Judge Katz that this ballot should not have been counted.

5. Undated witness signatures

Three individuals cast absentee ballots on which the attesting official did not date his or her signature. Judge Katz accepted these three challenges. We disagree. The attesting official witness is required to date his or her signature. AS 15.20.081(d). However, we have held that this requirement is directory rather than mandatory and does not require invalidation of the ballot so long as the ballot in question is cast on or before election day. Hammond v. Hickel, 588 P.2d 256, 269 (Alaska 1978), cert. denied, 441 U.S. 907 (1979). The burden of proving ballot illegality in general and particularly that the ballot in question was not cast on or before election day is on the challenger. This burden was not carried as all three ballots were received by the Division of Elections prior to the election.

Alaska Statute 15.20.081(d) also requires voting in the presence of the attesting witness. While a majority of the court agrees with Judge Katz that this requirement is mandatory rather than directory, it is our view that Finkelstein did not carry his burden of showing a violation of this requirement.

6. Incomplete voter signature

One voter made a hand written mark which appears to be the beginning of a "K" in the voter signature blank of the voter oath on the back of the absentee ballot. A qualified attesting official witness attested that the oath was subscribed and sworn

to before the witness. Judge Kacz ruled that this was not a signature as required by AS 15.20.081(d). She thus accepted the challenge made by Finkelstein. We disagree. The mark could be legally sufficient to serve as the voter's signature if that was the voter's intent. Fischer v. Stout, 741 P.2d at 225. Since the voter oath was properly attested as subscribed and sworn to, it is the view of a majority of the court that it has not been shown that the mark was not intended by the voter to serve as his signature.

7. Different witness dates

Thirty-two voters submitted absentee ballots which had been witnessed by two non-official witnesses on different dates. All of these votes were counted. However, the Division segregated nine of the total so that if they were counted illegally the votes can be directly deducted. The remaining twenty-three votes have been commingled. Judge Katz ruled that all thirty-two of these votes were properly counted. We disagree for the reasons that follow.

a.

Alaska Statute 15.20.081(d) sets out the procedures for voting absentee by mail. In relevant part, that section provides:

Upon receipt of an absentee ballot by mail, the voter, in the presence of [an official] . . . may proceed to mark the ballot in secret, to place the ballot in the small

envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of an official listed in this subsection who shall sign as attesting official and shall date the signature. If none of the officials listed in this subsection is reasonably accessible, an absentee voter shall have the ballot witnessed by two persons over the age of 18 years . . .

In Fischer v. Stout, we interpreted this section to mean that the two non-official witnesses must be present when the voter signs the voter's certificate. We stated:

AS 15.20.081(d) and 6 AAC 25.110(a) specify the classes of persons authorized to serve as an attesting officer. If no appropriate officer is available, the voter may sign the voter's certificate in the presence of two persons over the age of 18 years and have those two witnesses sign the attestation form.

741 P.2d at 223 (emphasis added, footnote omitted). Thus, we interpreted the statute to mean that the role of the two non-official witnesses was the same as the function of the attesting official witness set forth in the statute.

One purpose of this statute is to insure that the ballot was marked by the voter, and not someone else, in circumstances free from coercion. The Mississippi Supreme Court has said concerning a similar requirement:

The certificate . . . in addition to certifying that the voter executed the affidavit, certifies the voter first exhibited a blank ballot which was not marked or voted before it was exhibited to the witness, and that the voter then retired out of the witness' presence but within his sight so that he could see that he voted but not how

he voted, that no one was present as he marked his ballot, that the voter was not solicited or advised in voting, and finally, that after making his ballot in secret, the voter placed it in the envelope, closed and sealed the envelope in the certifying officer's presence, and then signed and made affidavit to the first certificate.

It is thus clear that the Legislature intended both signatures to be on the envelope because there were subsequent requirements to best ensure the integrity of an absentee ballot.

Fouche v. Ragland, 424 So.2d 559, 561 (Miss. 1982).

Since one objective is to insure that the voter mark his or her own ballot and that the vote be uncoerced, it would make no sense to require secret voting in the presence of an official, while waiving the presence requirement when two non-official witnesses are used.

The legislative history of the present statute, AS 15.20.081(d), confirms the view that the ballot is to be voted in the presence of either an attesting official or two non-official witnesses. Prior to 1980, the predecessor section to AS 15.20.081(d) required only one attesting witness who need not be an official. The statute was, however, clear that voting had to take place in the presence of the attesting witness.⁵ Following

5. The former statute, AS 15.20.150, read as follows:

CASTING VOTE BY PERSONAL REPRESENTATIVE OR BY MAIL. Upon receipt of an absentee ballot

(Footnote Continued)

our decision in Hammond v. Hickel the legislature amended the statute, enacting AS 15.20.081(d) in its present form. The legislative committee memo accompanying the amendment said:

Requires a person authorized to administer an oath to witness the signature on an absentee ballot. In the instance that a qualified official is not available, two persons may witness the signature.

Alaska State Senate, Special Committee on Electoral Reform, Document dated April 23, 1980 (section by section analysis). There are two conclusions to be drawn from this comment. The first is that there was no intent to change the requirement of voting in the presence of an attester. Had there been such an intent it would have been mentioned. Second, the two non-official witnesses were regarded as a substitute for the attesting official witness, if one was not available. What was to occur before the

(Footnote Continued)

through a personal representative or by mail, the voter, whether in or outside the state, in the presence of an attesting witness who is at least 18 years of age, may proceed to mark the ballot in secret, to place the ballot in the small blank envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of the above-listed official or described persons who shall sign as attesting witnesses. The voter may then return the ballot properly enclosed in the envelopes, by personal representative to the election official who provided the ballot or by the most expeditious mail service, postmarked not later than the day of the election, to the election supervisor in his district.

attesting official witness or the two non-official witnesses was regarded as identical.

b.

Having established what the law requires, the next step is to determine whether it was complied with. In the case of the thirty-two ballots containing witness signatures subscribed on different dates, it can be said with a high degree of confidence that the voter did not mark the ballot, place it in the small envelope, place the small envelope in the larger envelope and sign the voter certificate on the back of the larger envelope in the presence of both non-official witnesses. If this had been done, the dates following the witnesses signatures would be consistent. Thus, the certificates themselves rebut the presumption of regularity and demonstrate non-compliance with the law.

c.

The next question is whether the director properly counted these absentee ballots even though they were not cast in the presence of the non-official witnesses.

Alaska Statute 15.20.203 requires the district absentee counting board to examine each absentee ballot envelope to determine whether the absentee ballot has been properly cast. Part (b) of the statute provides as follows:

(b) An absentee ballot may not be counted if

- (1) the voter has failed to properly execute the certificate;
- (2) an official or the witnesses authorized by law to attest the voter's certificate fail to execute the certificate;
- (3) the ballot is not attested on or before the date of the election;
- (4) the ballot, if postmarked, is not postmarked on or before the date of the election; or
- (5) after the day of election, the ballot was delivered by a means other than mail.

The conditions set out in this statute are not exclusive. In Willis v. Thomas, 600 P.2d 1079, 1083 n.9 (Alaska 1979) we quoted the following language from Carr v. Thomas, 586 P.2d 622, 626 (Alaska 1978), which in turn quoted Rich v. Walker, 374 S.W.2d 476, 478 (1964) as follows:

All provisions of the election law are mandatory, if enforcement is sought before election in a direct proceeding for that purpose; but after election all should be held directory only, in support of the result, unless of a character to affect an obstruction to the free and intelligent casting of the vote or to the ascertainment of the result, or unless the provisions affect an essential element of the election, or unless it is expressly declared by the statute that the particular act is essential to the validity of an election, or that its omission shall render it void.

The requirement of voting in the presence of the non-official witness is, to use the terms of the language quoted above, "of a character to affect an obstruction to the free and intelligent casting of the vote . . . or to . . . affect an essential element of the election" As noted earlier, AS 15.20.081(d) is designed to insure that the vote cast is that of

the elector and that it was cast in circumstances free from coercion. Moreover, this requirement protects the integrity of the ballot process itself. Non-compliance with the requirements of AS 15.20.081(d) risks the frustration of these fundamental principles.

In Fischer v. Stout, 741 P.2d 217, 223, we noted that signing in the presence of the attester was a condition of ballot validity: "AS 15.20.081(d) provides that an absentee ballot will be valid only if the ballot envelope is signed by the voter in the presence of an attesting officer." This statement is dictum. It is, however, correct. Because the requirements of AS 15.20.081(d) serve both to protect the essence of free and intelligent voting and to safeguard the integrity of the ballot process, the requirements should be regarded as mandatory.

Desjourdy v. Board of Registrars, 266 N.E.2d 672 (Ma. 1971) is instructive. There twenty-two absentee ballots were not marked in the presence of a notary as required by Massachusetts law and the ballot envelopes were signed by notaries outside the presence of the voters. Id. at 676, 677. The Supreme Judicial Court of Massachusetts held that these ballots should not have been counted:

The procedure followed violated [the applicable statute] which sets up significant safeguards to ensure that the ballot represents the will of the voter. Its violation results in more than simply a technical irregularity. As these ballots stand, we have no way of knowing whether they were in fact marked by

those in whose names they were received and cast.

266 N.E.2d at 677 (citations omitted).

Kiehne v. Atwood, 604 P.2d 123, 133 (N.M. 1979) is another case where a court invalidated ballots because of attestation illegality. There the oaths on seven absentee ballots were notarized by the county clerk. The voters were not in the clerk's presence when they signed the documents. All of the voters testified that they wanted the county clerk to notarize their signatures. In invalidating the ballots, the court stated:

[A]s to the affidavits in question, swearing to and subscribing by the voter and attesting to by a notary or other official are not mere technicalities. The statutes prescribing these duties are not simply directory. The acts called for are significant safeguards against fraud and mistake, are necessary to preserve the purity of our elections, and are mandatory duties.

Id. at 133.

In Fugate v. Mayor and City Council of Town of City of Buffalo, 348 P.2d 76 (Wyo. 1959), twelve absentee ballot affidavit forms were attested to by an election official not in the presence of the affiants. Id. at 79. These votes were held to be illegal. Id. at 85. See also McCavitt v. Registrars of Voters of Brockton, 434 N.E.2d 620, 6289 (Mass. 1982) (ballots marked outside presence of notary held invalid).

The fact that the ballots in the present case were not cast in the presence of two non-official witnesses is due in part to the failure of the voter instructions on the voter oath form to state explicitly the requirement that the vote be cast in the presence of the witnesses. We have noted that errors "solely on the part of election officials" will not invalidate ballots. Willis v. Thomas, 600 P.2d 1079, 1087 (Alaska 1979) (registered voters' names not on voters' lists on election day). See also Fischer v. Stout, 741 P.2d at 223, 224. That observation, however, was not made where the official omission caused or contributed to a violation of a mandatory requirement, and we decline to extend it to such cases. A voter who has voted illegally has an interest in having his or her vote counted, and that interest stands on a high level where the source of the illegality lies with election officials. On the other hand, where the vote violates provisions designed to insure the integrity of the electoral process, the public has a supervening interest - that of fundamentally sound elections - which is protected by not counting illegal votes, regardless of the source of their illegality.

8. Ballots without postmarks received after the election

Official Business

Fourth V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Speaker of the House of Representatives

which were rejected by Judge Katz. We concur.



Alaska State Legislature

9. Unregistered voter

The state has conceded that the absentee ballot of the unregistered voter in question should not have been counted. Judge Katz concurred and accepted the challenge. We concur as well.

10. Punchmark ballots

Involved here are challenges to fourteen votes for Bradley where the punchmarks were placed in the boxes for both Bradley and Finkelstein. Judge Katz accepted three of these challenges, namely to ballots 29, 20, and 30. Judge Katz was evidently under the impression that ballot 29 had been counted. We are advised by all counsel that in fact it was not counted and thus it should not be subtracted from Bradley's total. Ballots 20 and 30 were called by the Director for Bradley. Judge Katz, however, was of the view that the voters' intent could not be determined from the ballots. We disagree. In our view it is evident that the voting machine was voting low and that the voters in these cases intended to vote for Bradley.

A different situation exists with respect to ballot 27. Judge Katz recommended that this vote be attributed to Bradley. We disagree and accept Finkelstein's challenge. There is no consistent pattern on this ballot of the punchmarks being either high or low. The intent of the voter cannot be determined.

On all other ballots within this category we concur with the recommendations of Judge Katz which upheld the Director.

B. Intervenor's Challenges

1. Absentee ballots lacking voter signatures

Bradley contends that fifteen absentee ballots which were not counted because they were not signed should have been included. Judge Katz held that the Division was correct in refusing to include these ballots. We concur.

2. Special overseas absentee ballots

Three voters submitted special absentee ballots and later mailed regular absentee ballots which for various reasons were held invalid. Bradley argues that under these circumstances the original special ballots of these voters should have been counted. The Division disagreed and Judge Katz recommended that the decision of the Division be upheld. We concur.

3. Proportionate Formula

In order to determine whether the errors in counting commingled ballots might have affected the election, a proportionate formula was employed. See Hammond v. Hickel, 588 P.2d 256, 260, cert. denied, 441 U.S. 907 (1979). Bradley contends that the formula was not strictly proportional because it failed to include ballots which were cast for write-in candidates or which were blank with respect to the

Finkelstein-Bradley race. We agree that the principle espoused by Bradley is correct. We are, however, uncertain as to what the precise ratio is which results from application of this principle. That should be determined by the Director on remand.

III. CONCLUSION

The Director certified that Bradley had defeated Finkelstein by nine votes, 3,563 to 3,554. We have accepted one challenge which reduces Bradley's total to 3,562 votes (part II.A.10. of this order, ballot 27). There were fifty-one illegal ballots which were counted and commingled. (Twenty-six found by the Director, twenty-three in accord with part II.A.7. of this order, and one each for parts II.A.4. and II.A.9.) In addition, there were nine illegal ballots which were counted but not commingled. (Part II.A.7.)

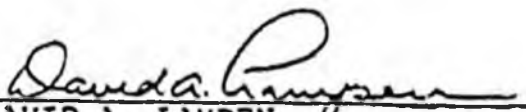
This case is REMANDED to the Director with the following instructions:

1. The nine segregated ballots should be deducted from the vote totals of the candidate for whom they were cast. A provisional prevailing candidate will then be apparent.
2. The appropriate proportional reduction formula should be applied to the fifty-one illegally counted commingled ballots.

3. If application of the proportional reduction formula does not change the provisional result noted in step 1, the Director should certify the prevailing candidate forthwith.

4. If application of the proportional reduction formula would change the provisional result achieved in step 1, a new election should be held promptly.

Entered at the direction of the court this 11th day of January, 1989.


DAVID A. LAMPEN
Clerk of the Supreme Court

RABINOWITZ, Justice, joined by MOORE, Justice, dissenting.

I dissent from the court's holding that the director improperly counted 32 absentee ballots which had been witnessed by lay persons on different dates. Thus, I would affirm the certification of the Director of the Division of Elections that W.E. "Brad" Bradley is the winner of the election for Seat A in House District 13.

This court's special master rejected the state's contention that the dating of lay witnesses signatures is only directory. Instead the special master ruled that it is a mandatory aspect of absentee voting that lay witnesses be present when the ballot is cast and the voter certificate is executed. AS 15.20.081(d). The special master further reasoned that normally the failure to comply with a mandatory provision which has as its purpose establishing "presence" should prove fatal to these ballots. Nevertheless the special master concluded that the director properly counted these disputed absentee ballots. In so doing the special master reasoned as follows:

However, once again, the Division has utilized procedures, in this case forms, that are seriously deficient. Option 2 under the witnessing affidavit provides in full:

If no authorized official is reasonably available, you may have the certificate witnessed by two persons over the age of 18.

Witness Signature _____ Date _____

Witness Signature _____ Date _____

at (City/State or Country) _____

Finkelstein Ex. 147, p. 1. Unlike the official executing an affidavit under Option 1, the lay witnesses are not told what it is that they are to "witness." They may reasonably believe that it is sufficient if a person they know to be the individual whose name appears on the oath brings the certificates to them to sign, after the fact. Such an interpretation would be consistent with the type of certification required on permanent fund dividend application forms.

While the witness' certificate is simply unclear, the instructions to the voter on the secrecy envelope are actually misleading. The voter is directed to take the certain steps. The first four are summarized below. The fifth step is quoted as it appears in the instructions.

[1. & 2. Mark the ballot.]

[3. Turn the ballot over and vote the other side.]

[4. After all choices have been marked, put the ballots in the secrecy envelope.]

5. Complete and sign the VOTER OATH on the back of the return mailing envelope. Also have your oath WITNESSED, using OPTION 1 or OPTION 2 described on the back of the return mailing envelope.

Two additional steps regarding mailing follow.

These instructions suggest that the voting process itself need not be witnessed. There is, furthermore, nothing said to inform the voter that his or her oath should be executed in the presence of the lay witnesses. To negate the votes of 35 individuals on the grounds that they did not meet requirements never made known to them or their witnesses would constitute disenfranchisement of a most

egregious sort. Under these circumstances, the ballots of these individuals were properly counted.

In my view the special master's analysis is in accord with this court's voting decisions. In Fischer v. Stout, 741 P.2d 217, 223, 224 (Alaska 1987) we said:

In Willis we upheld the decision of a master to count the votes of two voters whose names did not appear on the voters list because the registrars failed to send their registration applications to the Division of Elections. 600 P.2d at 1037. As in Willis, the error with regard to Ms. Munoz's application was 'solely on the part of the election officials.' Id. Her vote should have been counted.

An additional point in Fischer concerned whether the ballot of Daryl Wallace should have been counted. In attempting to correct an error in the address given on his voter registration card, the voter checked the box cancelling his registration. In regard to the issue we said:

Fischer argues that the voter registration card is confusing and that Mr. Wallace's ballot should have been counted. We agree . . . his vote should have been counted.^{1/}

Of additional significance is that portion of our decision in Fischer v. Stout where in connection with a name change issue it was observed that:

Accordingly, we will seek a construction of the phrase which avoids the wholesale disfranchisement of qualified electors. See

1. Fischer v. Stout, 741 P.2d 217, 224 (Alaska 1987).

Carr v. Thomas, 586 P.2d 622, 626 (Alaska 1978) (footnote omitted).^{2/}

The authorities alluded to above are reflective of this court's recognition that the right to vote is a fundamentally important right.³ Our own precedents are also in accord with the view that "Absentee voting regulation should not be construed in a manner that unduly interferes with the exercise of this right by those otherwise qualified to vote."⁴ In this regard the Supreme Court of Colorado further concluded that:

Nor should the exercise of the voting right be conditioned upon compliance with a degree of precision that in many cases may be a source of more confusion than enlightenment to interested voters. A rule of strict compliance, especially in the absence of any showing of fraud, undue influence, or intentional wrongdoing results in the needless disenfranchisement of absent voters for unintended and insubstantial irregularities without any demonstrable social benefit.^{5/}

2. Id. 741 P.2d at 225. In Carr this court noted:

Courts are reluctant to permit a wholesale disenfranchisement of qualified electors through no fault of their own and '[where] any reasonable construction of the statute can be found which would avoid such a result, the courts should and will favor it.'

Carr v. Thomas, 586 P.2d 622, 626 (Alaska 1978).

3. Erickson v. Blair, 670 P.2d 749, 754 (Col. 1983).

4. Id. 670 P.2d at 754.

5. Id. 670 P.2d at 755.

(footnote continued)

Given the importance of the right to vote, and our decisions which have refused to disenfranchise voters due to mistakes of election officials, I conclude that the special master correctly upheld the director's decision to count these 32 disputed absentee ballots.⁶ As the special master noted the lay witnesses were given unclear instructions concerning the witness certificate. Additionally, the instructions to the absent voter were "actually misleading." In short, these inadequate directions failed to articulate the precise roles the voter and his or her witnesses were to play in the absentee voting process. Further, there is no indication in this record of fraud, voter coercion, intentional wrongdoing, or a pattern of similarity among the names of the witnesses who signed the witness certifications on these absentee ballots. In such circumstances I would not penalize the absentee voters for the failure of Alaska's election officials to furnish unambiguous instructions concerning the manner in which the absentee voter, and his or her

(footnote continued)

The Erickson court went on to reject the rule of strict compliance and in turn adopted a standard of substantial compliance concluding that such standard "is adequate to the task of both preventing fraud in the elections and preserving the absent voter's right of suffrage against unnecessary and technical restrictions."

6. Application of Moore, 154 A.2d 631, 637-38 (N.J. 1959).

two lay witnesses, were required to carryout their respective roles in the absentee voting process.⁷

7. Implicit in the resolution I would reach is my agreement with the state's contention that the requirements of AS 15.20.081(d) should be construed as directory, under AS 15.20.203(b)(2), for purposes of determining the consequences of any noncompliance on the part of lay witnesses in executing absentee voter certificates.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P. O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

January 18, 1989

The Honorable Pat Pourchot
Alaska State Senator
P. O. Box V
Juneau, AK 99811

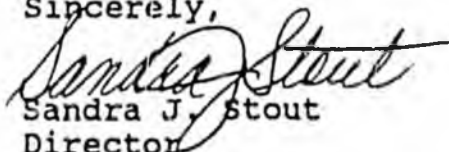
Dear Senator Pourchot:

I appreciate your interest in following up on the implementation of that portion of House Bill 284 covering the special advance ballot often called the "submarine ballot." I am happy to report that in its first implementation during the 1988 elections, it seems to have been a success. In our analysis of voter activity in connection with the use of the special advance ballot we found the following:

Number of Special Advance Ballots Sent to Overseas and APO/FPO Voters	493
Total Returned	<u>349</u>
Never Opened Because Official Ballot Was Also Received	171
Opened and Counted Because Official Ballot Was Not Received	150
Rejected Because of Deficiencies or Determination of Ineligibility, and Official Ballot Was Not Received	24
Returned Undeliverable by Post Office	4
Total Special Advance Ballots Not Received	<u>114</u>
Official Ballots Received	105
No Ballot Received From Voter	39

I hope this information is helpful. Please let me know if I can provide any additional assistance.

Sincerely,


Sandra J. Stout
Director

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

January 5, 1989

The Honorable Pat Pourchot
Alaska State Senate
P. O. Box V
Juneau, AK 99811

Dear Senator Pourchot:

In response to questions raised during last week's meeting with your staff, I have outlined a few recommendations which may offer some solutions to the various elections issues we discussed. They relate specifically to voter registration requirements, and clarifications of procedures regarding candidacy filings. These alternatives have not had the benefit of any legal review. However, they may offer some avenues for your consideration.

AS 15.07.060. Required Registration Information

- (2) address and other necessary information establishing residence and term of residence in Alaska and in election district if requested;
- (4) [TERM OF RESIDENCE IN STATE AND IN ELECTION DISTRICT AND] whether the applicant has previously been registered to vote in another jurisdiction, and, if so, the jurisdiction and address of the previous registration;

Explanation: A voter may register to vote at any time. The criteria for voting in a specific election is that they must be properly registered 30 days prior to the election. The 30 day cut off for registration is the controlling element with regard to their eligibility to vote in a specific election. As a practical matter, under the Uniformed and Overseas Citizens Absentee Voting Act, the federal government prescribes an official post card form which contains both absentee voter registration application and an absentee ballot application. The form used by overseas and military voters does not specifically request length of residency. Nearly 4,000 Federal Post Card Applications were received this year, and approximately 75% had

The Honorable Pat Pourchot
January 5, 1989
Page 2

to be rejected simply because the voter did not include his or her length of residency. Each of these voters had to be written a letter requesting them to complete new forms which included the length of residency information.

(See suggestions regarding AS 15.25.030.)

AS 15.07.070. Procedure for Registration

- (c) The names of persons submitting completed registration forms by mail which are received by the director or election supervisor [POSTMARKED] at least 30 days before the next election shall be placed on the official registration list for that election. The name of a person submitting a completed registration form by mail which was not received by the director or election supervisor [POSTMARKED] before the 30 day requirement shall not be placed on the official registration list for the next election but shall be placed on the master register after that election.
- (f) Incomplete or inaccurate registration forms may not be accepted and shall be reexecuted. The date of registration shall be the date of reexecution before a registration official, or the date the application is received by the director or election supervisor [POSTMARK DATE] if the application for registration is by mail.

Explanation: Often registration forms completed and returned by mail do not have a postmark. (Based on our study of 1800 absentee envelopes in 1984, we determined that nearly 1/3 had no readable postmark.) Additionally, voters frequently return by mail registrations and updates in an envelope. Requirement that the postmark date be the date of registration for by mail registrants adds a cumbersome and costly administrative burden to the division because it requires retention of envelopes with the applications, and/or microfilming of both sides of each application form to maintain a permanent record of the postmark, if one is affixed.

AS 15.25.030. Declaration of Candidacy

- (2) the full residence and mailing address of the candidate, and the length of the candidate's term of residence in Alaska and in the election district in which the office is being sought;

- (8) that the candidate meets [WILL MEET] the specific residency requirements of the office for which he is a candidate;
- (14) that the candidate [HE] is not a candidate for any other office to be voted on at the primary or general election [AND THAT HE HAS NOT FILED ANOTHER DECLARATION OF CANDIDACY OR NOMINATING PETITION FOR THE OFFICE FOR WHICH THIS DECLARATION IS FILED]; *(Contained in Statute 6.2)*
- (b) A person filing a declaration of candidacy under this section shall, on the same date [SIMULTANEOUSLY] file a statement of income sources and business interests which complies with the requirements of AS 39.50.010 - 39.50.200.

Explanation: Length of residency is of specific importance in relation to candidacy filings and candidate eligibility to run for office. Therefore, information about length of residency should be made part of the filing requirement.

With regard to the technical amendment to Section (b), be conflict of interest documents are accepted with the Declaration of Candidacy by the Director of Elections, however, they are really supposed to be submitted directly with APOC. The word "simultaneously" is not appropriate when the documents are actually filed at two separate locations.

Additionally, a new section would have to be added to address your concerns about candidates who withdraw their filings to refile for another seat, withdraw their declarations to file nominating petitions for the general election, or who amend their registrations and declarations of candidacy at the last moment before the filing deadline. Perhaps the simplest way to address these concerns is to provide specifically for the amendment of filings and stipulate a deadline for such amendments.

The second difficulty with the current statutes is in subsection 14 of AS 15.25.030 which requires that the candidate, under oath, state in substance that "he is not a candidate for any other office to be voted on at the primary or general election, and that he has not filed another declaration of candidacy or nominating petition for the office for which this declaration is filed." As indicated above, perhaps the second part of the statement should be deleted from the statutes. As you know, it is not uncommon for a candidate to file for office quite early.

The Honorable Pat Pourchot
January 5, 1989
Page 4

If the oath is to be taken literally, it would mean that no candidate would ever be able withdraw his or her declaration to resubmit a new one, or to make any change his or her candidacy declaration. This may not be practical.

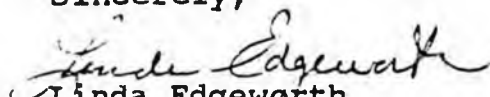
Your attorney can probably assist in clarifying the intent of the legislature in addressing the two issues about which you are concerned. One suggestion might be:

AS 15.25.030. New Section

(c) The information provided in compliance with the requirements of AS 15.25.030 on a declaration of candidacy which as been filed with the director may not be amended, altered or otherwise withdrawn and refiled by the candidate within the 15 days immediately preceding the filing deadline established in AS 15.25.040.

The Division of Elections has always been very grateful for your generous support and commitment. Please let me know if I can be of any further assistance.

Sincerely,


Linda Edgeworth
Information Officer

OLD

VOTER OATH

I, _____ declare that I am a
(Print Name)
citizen of the United States, and have been a resident of Alaska for at least 30 days. I have not requested a ballot from any other state and am not voting in any other manner in this election. I have not claimed to be a resident of any other state for any purpose during the last 30 days. If I had this oath attested to by witnesses other than an authorized official, it is because no official empowered to administer an oath was available. I swear under penalty of perjury that the foregoing is true.

1. My permanent Alaskan Residence Address is:

_____, AK _____
Zip Code
(DO NOT use PO. Box, Rural Route #. You must use street address, plat #, legal description, or other physical location description.)

2. Provide at least one of the following for identification purposes:

Voter # _____ Birthdate _____
Social Security # _____

X _____
(Voter Signature)

IMPORTANT: THIS CERTIFICATE MUST BE PROPERLY WITNESSED USE OPTION 1 OR OPTION 2 AT THE RIGHT. UNLESS PROPERLY WITNESSED, YOUR BALLOTS MAY NOT BE COUNTED

**WITNESSING AFFIDAVIT
OPTION 1**

This certificate may be executed before an official qualified to administer oaths. The following persons are qualified: Notary Public; U.S. Postmaster or authorized postal clerk; Commissioned Officer of the Armed Services; Judge; Justice; Magistrate; Clerk of the Court; employees of the Alaska Division of Elections or designated absentee voting official.

Subscribed and sworn to before me this _____ day of _____, 19 _____, Time _____, at (City/State or Country) _____

Attesting Witness _____

Title _____
(If Alaska Notary, affix seal.)
OPTION 2

If no authorized official is reasonably available, you may have the certificate witnessed by two persons over the age of 18.

Witness Signature _____ Date _____

Witness Signature _____ Date _____

at (City/State or Country) _____

REVIEW BOARD USE

Purged (Date) _____
 Deleted (Date) _____
 Count Full
 No Count _____
Reject Codes

Federal Only
 SW Only
 SW/SJ
 SW/S
 SW/J
 All but DC

Comments/Initials

Ballot Sequence#

REVIEW BOARD USE		<input type="checkbox"/> Federal Only	Comments/Initials: _____	BALLOT SEQUENCE #
<input type="checkbox"/> Purged (Date) _____	<input type="checkbox"/> Deleted (Date) _____	<input type="checkbox"/> SW Only	_____	
<input type="checkbox"/> Count Full	<input type="checkbox"/> No Count _____	<input type="checkbox"/> SW/S/J	_____	
		<input type="checkbox"/> SW/S	_____	
		<input type="checkbox"/> SW/J	_____	
		<input type="checkbox"/> All but DC	_____	

NEW

VOTER OATH

I declare that I am a citizen of the United States, and have been a resident of Alaska for at least 30 days. I have not requested a ballot from any other state and am not voting in any other manner in this election. I have not claimed to be a resident of any other state for any purpose during the last 30 days. If I had this oath attested to by witnesses other than an authorized official, it is because no official empowered to administer an oath was available. I swear under penalty of perjury that the foregoing is true.

1 My Permanent Alaskan Residence Address is _____
(City) _____ (AK ZIP) _____

(DO NOT use PO. Box, PSC Box, Rural Route #. You must use street address, plat#, legal description, or other physical location description in Alaska. If the address you provide is different than that appearing on your current voter record, your eligibility to vote in this election will be based on the new information you have provided.)

2 Provide at least one of the following for identification purposes:

Voter # _____ Birthdate _____

Social Security # _____

3 x _____
(VOTER SIGNATURE - FAILURE TO SIGN WILL RESULT IN YOUR BALLOT NOT BEING COUNTED)

WITNESSING AFFIDAVIT

OPTION 1: This certificate may be executed before an official qualified to administer oaths. The following persons are qualified: Notary Public; U.S. Postmaster or authorized postal clerk; Commissioned Officer of the Armed Services; Judge; Justice; Magistrate; Clerk of the Court; employees of the Alaska Division of Elections or designated absentee voting official.

Subscribed and sworn to before me this _____ day of _____, 19 _____.

Time _____, at (City/State or Country) _____

Attesting Witness _____

Title (IF ALASKA NOTARY AFFIDAVIT SEAL) _____

OPTION 2: If no authorized official is reasonably available, you may have the certificate witnessed by two persons over the age of 18.

Witness Affidavit: By signing below, I attest that to the best of my knowledge the voter voting this ballot is the person he or she purports to be, and that the voter oath was subscribed and sworn to before me.

Signature _____ Signature _____

Date _____ at (City/State or Country) _____

For Secrecy Sleeve

**GENERAL INSTRUCTIONS
FOR VOTING BY MAIL**

APRIL 4, 1989

**HOUSE DISTRICT 13
SPECIAL ELECTIONS**

Your ballot for this election must be voted, witnessed and mailed not later than April 4, 1989. If you mail your ballot on the last day, remind your postal clerk that the envelope must be post-marked not later than April 4, 1989.

VOTING YOUR BALLOT

1. Choose your candidate, and with a pen, mark an "X" in the box to the right of the name.
2. After you have marked your ballot, put it in the **SECRECY ENVELOPE** before placing it in the return mailer.
3. **THE LAW REQUIRES THAT YOU FILL OUT THE INFORMATION ASKED FOR ON THE RETURN MAILER. IF IT IS NOT COMPLETE, YOUR BALLOT WILL NOT BE COUNTED.**

VOTER OATH

1. To vote in this election, you must be a registered voter **AND** an Alaska resident. You are asked to give your physical residence address **WITHIN THE STATE OF ALASKA**. This means:
 - give your street address, highway name, milepost, trailer park and space number, tract or plat number. **DO NOT** use a P.O. Box, PSC Number, Star or Rural Route Number as a "residence" address.

(Instructions continued on reverse side)

NOTE: If the address you give is different than that on your current voter record, it will be treated as a change of address. The new address you give will be used to decide if you are still eligible to vote in this election.

2. You must give at least one: Voter Number, Social Security Number or Birthdate.
3. **READ AND SIGN THE VOTER OATH IN THE PRESENCE OF YOUR WITNESS(ES).**

WITNESSING AFFIDAVIT

1. You **MUST** have your Voter Oath properly witnessed. Choose Option I, or Option II described on the return mailer. Your witness(es) are attesting that you are the person you claim to be, and that you signed your Voter Oath in their presence.

IMPORTANT!

Your ballot will not be counted if you:

1. fail to give your residence address **WITHIN THE STATE OF ALASKA**;
2. fail to give your voter number, or social security number, or birthdate;
3. fail to sign your Voter Oath in the presence of your witness(es);
4. fail to have your ballot properly witnessed; or
5. fail to vote and mail your ballot on or before April 4, 1989.

Provisions

- Section 12 Sets deadline for receipt of voted absentee ballots mailed from inside U.S. to 10 days after election rather than 15.
- Section 13 Sets same deadline for APO/FPO/overseas.

Advantages

1. Closes potential window for fraud by tightening the deadline. Current 15 day deadline offers opportunity to "work" absentee list following announcements of election night returns to encourage unvoted ballots to be voted and sent in after election day.
2. Tighter deadline will allow earlier certification which is critical after primary.
3. All counting will be done at regional level so that State Review Board can audit final numbers. Under current statutes, audit begins before deadline is reached and counting is still being completed at Director's level.

Supporting Evidence

1. Only 6 states allow receipt of ballots after close of polls. Those only allow two or three days. At 10 days Alaska would still be the most liberal state.
2. Reviewed 1857 absentee ballots from 1984 general.
 - a. 85 - 90% voted absentees arrive by election day.
 - b. 1/3 of returned ballots had no readable postmark.
 - c. 30% were not returned at all and could be "worked" after election night returns are announced.
 - d. Of postmarked ballots, 98% took 5 or fewer days to be received.
 - e. 98.5% posted from APO/FPO and Overseas addresses arrived within less than 10 days of postmark.
 - f. 10 day extension was deemed adequate by court in Colorado case, with regard to military and overseas ballots.

Conforming Sections

The following sections of the bill are conforming amendments:

(9) (OK) ^{12 13 OK}
Sections 14, 15, 17, 18 relate to counting and review schedule based on the 10 day deadline.

*Part of floor manager
guide to
H.B. 804*

SUMMARY OF RECOUNTS
1978 - 1986

* Indicates OVERTURNED RACE

Year	District		Original Vote Spread	Recount Vote Spread	Charge
1978 Gen	S-F	*Kelly (R) Willis (D)	+4	+1	Free
1978 Prim	Governor	Hammond (R) Hickel (R)	+98	+98	Free
1980 Gen	H-6	Charney (D) Elliott (R)	+120	+116	Deposit
1980 Gen	H-7	Bierne (R) dal Piaz (D)	+76	+59	Deposit
1980 Gen	H-9	Kubitz (D) Buchholdt (D)	+53	+54	Deposit
1980 Gen	H-16	Chuckwuk (D) O'Hara (R)	+5	+27	Deposit
1980 Gen	H-13	Fritz (R) Malone (D)	+8	+13	Free
1980 Gen	H-20	Koponen (D) Smith (D)	+50	+57	Deposit
1982 Prim	S-J	Goddard (R) McCracken (R)	+3	+2	Free
1982 Prim	H-23	Fondell (R) Hennes (R)	+19	+19	
1982 Prim	H-24	Juettner (R) Wallis (R)	+6	+8	Free
1982 Gen	S-D	Fischer (R) Smith (D)	+52	+53	Free
1982 Gen	H-12	Uehling (R) dal Piaz (D)	+35	+33	Free
1984 Prim	H-12	Childers (D) *Ratcliff (D)	+1	+1	Free

Year	District		Vote Spread	Vote Spread	Charge
1984 Prim	H-14	Barnes (R) Pignalberi (R)	+997	+998	Deposit
1984 Gen	H-5A	Navarre (D) Sikorski (R)	+79	+72	Deposit
1984 Gen	H-5B	Fritz (R) Marrou (L)	+53	+56	Deposit
1984 Gen	H-10A	Boucher (D) Cowdery (R)	+47	+38	Free
1984 Gen	H-11	Jenkins (R) McKinnon (D)	+33	+32	Free
1984 Gen	H-25	Binkley (R) Vaska (D)	+74	+82	Deposit
1986 Prim	S-F	Faiks (R) Vonhippel (R)	+2296	+2296	Deposit
1986 Gen	S-H	Fischer (D) Uehling (R)	+15	+12	Free

NO REFUNDS WARRANTED

ONLY 2 RACES OVERTURNED - BOTH IN SITUATION IN WHICH THE VOTE SEPARATION WAS 4 OR FEWER VOTES.

Bradley request rejected

Times - 1/27/89

TIMES STAFF

The Alaska Supreme Court this morning rejected Republican House candidate Brad Bradley's request for reconsideration of its decision that forces a new election in Bradley's race against Democrat David Finkelstein.

The court decision should clear the way for the scheduled April 4 election in disputed House seat 13-A.

Bradley's motion, filed Jan. 20, asked the court to reconsider its Jan. 11 decision that he could not be declared winner of the East Anchorage seat.

Initial counts in the race gave first Finkelstein and then Bradley a narrow lead. However, Superior Court Judge Joan Katz recommended a new election, saying the Division of Elections had made so many ballot-counting errors that it was impossible to say who won.

A final recount ordered by the Supreme Court technically gave Finkelstein an eight-vote margin, but since the tally was based on a formula and not a ballot count, justices said it could not be used to award an election victory to him.

Bradley's motion for reconsideration argued that the court erred in invalidating 32 absentee ballots that were improperly witnessed.

Voting in April

WE'LL GET a trial run at the April elections that the Anchorage Assembly have decided are best for us.

Beginning in 1993, the assembly decreed a week or so ago, Anchorage's local elections will be held on the third Tuesday of the fourth month of the year, instead of the first Tuesday of the 10th month of the year. That will put Anchorage out of synch with the rest of the cities and boroughs of Alaska, which hold their local elections in October.

Well, no matter. And maybe no big deal, because back in the old days even the Alaska primary elections were held in the springtime — and everybody survived just fine. The assembly said it voted for the change, four years from now, to get our local elections removed from a slot between the August state primary and the November general elections — and thus give the candidates a shot at having the undivided attention of the voters.

WE'LL GET a chance to see how all of this will work this April 4.

That's the date picked by the state Division of Elections for a rerun of the Brad Bradley-David Finkelstein race for the Alaska House of Representatives from District 13-A in east Anchorage.

Mr. Finkelstein, a Democrat, came out of the election with an unofficial edge.

But after a recount Mr. Bradley, a Republican, a former state senator and a

former member of the Anchorage Assembly, was certified as the winner.

Mr. Finkelstein sued, and a Superior Court judge — acting as a master for the Supreme Court — recommended a new election, contending the recount was laced with errors. Using some kind of a weird formula to allocate proportionate shares of the vote, the court held that Finkelstein had won — but said a new election should be held.

Any scheme that attempts to allot percentages of votes to anybody is a nutty and mysterious way to treat ballots cast by voters, but that's another story.

IN THIS case, as a result of all this court interference under terms of a state law that should be repealed, the 1989 legislative session will be in its 86th day, with only 34 days left to go, before the voters of the district get a chance once again to pick their representative.

Meanwhile, Gov. Steve Cowper — acting under the authority of another state law that ought to be tossed out — has appointed a legislator for the district. He seems to have made a good choice, but the fact remains the seat went to a person who had never run for office and probably was unknown to most of the residents of the district.

But, all those things aside, we will see how an April election works in these days and times.

We may find we like it.

Times - 1/24/89

Bradley asks high court to reconsider Republican argues against new election

By PATTI HARPER and BOB ORTEGA
Times Writers

Republican House candidate Brad Bradley has asked the Alaska Supreme Court to reconsider a Jan. 11 ruling forcing him to square off against Democratic opponent David Finkelstein in a second election April 4.

Initial counts in the race for House District 13. Seat A gave Finkelstein the lead. A recount then gave Bradley, a narrow victory.

Two weeks ago, however, Superior Court Judge Joan Katz recommended a new election, saying the Division of Elections had made so many ballot-counting errors that it was impossible to say who had won.

A final recount ordered by the Alaska Supreme Court (technically gave Finkelstein an eight-vote margin, but since the count was based on a formula, and did not reflect specific ballots, Lt. Gov. Steve McAlpine ordered a new election.

Bradley's motion for reconsideration, filed by attorney David Devine on Friday, argued that the court erred in invalidating 32 absentee ballots that were improperly witnessed.

Bradley's eight-page request for reconsideration asserted that the majority "overlooked or misconceived" certain "propositions of law."

Those propositions include presumptions of the validity of an election and that the ballot of a voter "not morally at fault" for a mistake normally should be declared valid.

The majority opinion of Chief Justice Warren Matthews and Justices Edmond Burke and Allen Compton concluded the 32 absentee ballots should not have been counted because the dates were different for each of the two required witness signatures. If the witnesses signed on different dates they both could not possibly have seen the voter sign the required certificate, which is what the court interprets state law to require.

The purpose of the law "is to insure that the ballot was marked by the voter, and not someone else, in circumstances free from coercion," the justices said.

The two dissenting justices agreed with Katz that though the ballots normally should



David Finkelstein



Brad Bradley

See Bradley, page B-2

Bradley: Republican hopes to avoid new election

Continued from page B-1

not have been counted, the voters and witnesses were given "unclear" direction on the forms they signed. Justices Jay Rabinowitz and Daniel Moore decided that absent any evidence of fraud or coercion, those people should not be disenfranchised.

In his motion, Bradley argued Finkelstein must show there was some sort of actual "fraud, coercion or other impropriety" before any of the ballots may be invalidated.

There is no evidence "when

even hinted at some wrongful conduct by these voters or anyone else," the brief states.

"Thirty-two qualified people cast ballots in order to have some say in their government," Bradley argued.

"These voters are being disenfranchised for noncompliance with a technical rule which was never made known to the voters," he said.

"Neither the absentee ballot envelope nor the absentee ballot instructions advised the voters that witnesses had to sign on the same day."

The requirement that two people witness the marking of a ballot may actually provide a greater opportunity for coercion of voters, Bradley said.

"Two witnesses could gang-up to coerce a voter more effectively than one," he said.

Don Clocksin, an attorney for Finkelstein, said showing fraud or misconduct was not required in a recount appeal such as Finkelstein filed with the Supreme Court. They needed only to show that there were mistakes in the counting of ballots, he said.

He predicted the court will re-

ject Bradley's request. The court rarely reconsiders its decisions.

"It seems an act of desperation, an effort to change at least one vote on the Supreme Court without any new arguments," Clocksin said of the motion for reconsideration. "He made his best shot and he lost, and I don't know how many times he gets to reargue it."

Clocksin said, "Some of the arguments made by Bradley's lawyer really should be addressed to the legislature because they argued that the law

should be different than it is."

He said Bradley essentially is arguing that two witness signatures should not be required.

"I hope Mr. Bradley works with the legislature, of which Mr. Finkelstein expects to be a part, to correct any errors he believes exist in the election laws," Clocksin said.

"I think the bottom line here is that no one, repeat no one, knows which candidate got more votes, and that's why we're having a new election," he said.

Bradley, Finkelstein face off again April 4

By PATTI HARPER
Times Writer

A new election to decide whether Republican Brad Bradley or Democrat David Finkelstein will represent an Anchorage State House district will be held April 4, Lt. Gov. Stephen McAlpine said.

"That is the date unless the U.S. Department of Justice or some court orders us otherwise," he said Wednesday. Some news reports that the election would be held later in April were premature and incorrect, he said.

Finkelstein was originally declared the winner of the District 13 race after the Nov. 8 election. But Bradley came out on top after a recount in early December. A recent Alaska Supreme Court analysis of disputed ballot issues resulted in an order for a new election.

Democrat Ann Spohnholz was appointed by Gov. Cowper Wednesday to represent the Mountain View and East Anchorage district until the new election is held.

See Runoff, page A-10

Times - 1/19/89

Runoff: Election

Continued from page A-1

McAlpine said the April date leaves enough time for the Division of Elections to prepare emergency regulations for the election and have those regulations approved by the U.S. Department of Justice.

The Department of Justice requires 60 days for its review. McAlpine said he will request an expedited review, but he was skeptical of chances for a decision coming early enough to set an earlier election date. The state must give the public at

least 40 days advance notice of an election, he said.

Elections officials will send the proposed regulations to federal officials for review sometime within the next week, he said. They will ask that some of the things required for normal elections not be done for this special run-off.

For instance, McAlpine said absentee voter stations will not be opened statewide, and overseas voters will have to request absentee ballots instead of having them mailed automatically.

Candidate says system worked

Although all the facts in Saturday's editorial about the Bradley-Finkelstein election are correct, I would like to take exception with your conclusion. I don't believe that the system failed, or that the Division of Elections made major errors. In fact, the Supreme Court found that in almost all cases, the Division of Elections conducted the election perfectly.

What the Supreme Court did say was that one ballot (out of 7,000!) wasn't counted correctly, and the instructions for absentee ballot witnesses need to be improved. The election was close enough that even these small changes were enough to make a difference.

I don't believe that any blame needs to be placed in this election. I was ahead by 3 votes when the election was certified, behind by 3.9 after the recount, ahead by 1.17 after Judge Katz's review, and ahead by 1.17 after the Supreme Court decision. Obviously, even the slightest reinterpretation of vote totals was enough to affect the outcome.

ADU 1/12/69

— David Finkelstein

Courts have no right to deprive citizens of representation

It was with a sense of alarm that I heard the courts had vacated the election in the Bradley-Finkelstein affair.

I am less disturbed by the thought that the court would look at an election or even that the court would go so far as to tell the Division of Elections that this or that ballot should not be counted than I am that the legislature met without all the areas of the state being represented. This is wrong.

The court in its zeal left several thousand people unrepresented. The judges should be tried for such an action.

When John F. Kennedy became president of the United States by carrying the state of Illinois by 8,000 votes when 13,000 illegal ballots had been counted in Chicago, the thought of leaving our nation without a president was not even considered.

When the court ruled that the election should stand because no



one could prove how many votes had been stolen by which party, a few of us choked. I feel to this day that Kennedy did not truly win a majority, but it was better that he be my president than the office be left vacant.

It should be possible to arrest a legislator for major crimes such as murder, but only the body to which he or she was elected should have the right to remove that person from his elected office.

The people should never be left without their legal voice as a result of the action of another

branch of government.

The special privileges given elected officials under both the federal law and in Alaska's Constitution are not given because our elected officials are in themselves so great, it's that the voice of the people shall not be muzzled however inane their voice shall sound. The reason a legislator may not be stopped on his way to and from the chambers or that he or she may not be removed by any but a body of their fellow legislators for acts committed is to ensure that the representatives of the people are not silenced by police, the executive body or the judiciary.

It was not always this protected. In the freewheeling days of Boss Tweed in New York, his police would stop opposition members on their way to the council chambers, and the Boss' tame judges would hold them long enough to avoid a vote or even to avoid embarrassing de-

bate. If, when freed, they spoke out in protest of the arrest and treatment, the courts served as a deterrent to future members who might act so rationally.

Now while the excesses of men like Boss Tweed are today at least partly controlled, the purpose behind the safeguards in our laws and in the state constitution are still valid.

The peoples' voice shall not be silenced, and in a representative form of government, what more complete a silence can there be than that of leaving the seat empty.

For any court to rule that neither candidate has won is a dangerous precedent to allow any judge or any body of judges to set.

Halibut Cove charter boat skipper Clem Tillion is a former president of the Alaska Senate.

Times

1/15/89

The court rules: a failed election

Daily News 1/14/89

As the Alaska Legislature moves into its second week, Anchorage's House District 13A remains without representation. The more than 7,000 voters who cast ballots in the November election between Republican Brad Bradley and Democrat David Finkelstein have been told, "Sorry, your votes don't count. We'll have to do it again."

Meanwhile, Gov. Steve Cowper is expected to appoint an interim representative. With the district facing a minimum of two months without elected representation, circumstances demand a quick method of filling the void, and perhaps the best solution is to let the governor choose someone.

No, the quarrel isn't with the governor's authority, nor with the Supreme Court's ruling that required a new election, given the situation the justices had to deal with. The quarrel is with an elections system that let things get this far.

Close elections are a fact of life in Alaska. A handful of votes have determined more than one election in the past. Thus, it behooves the people who run state elections — the Division of Elections and Lt. Gov. Steve McAlpine, who supervises the division — to have the resources, regulations and equipment to deal with tight races.

In the counts and recounts of the Bradley-Finkelstein race, a number of problems were discovered.

One was ballots that had been mismarked or marked for both candidates. Some of the mismarkings stemmed from troubles with the machines that punch the ballots.

Another was deficient voter instructions included with absentee ballots. The Supreme Court concluded that the instructions failed to explicitly state that the vote must be cast in the presence of two witnesses.

Voters deserve machinery and election guidelines that prevent such miscounts. When problems arise, elections staff must have the training to handle them properly. Voters deserve a system that produces accurate, conclusive and timely vote counts.

The system failed this time. The voters who went to the polls in November have been, in effect, disenfranchised. A fundamental tenant of democracy went unfulfilled. The Division of Elections, the lieutenant governor, and, if necessary, state legislators should begin work now to assure it doesn't happen again.

McAlpine orders vote for District 13A

By SHEILA TOOMEY
Daily News Reporter

Lt. Gov. Steve McAlpine on Thursday ordered a new election for House seat 13A, after a recount of 60 disputed votes failed to establish a clear winner in the contest between Republican Brad Bradley and Democrat David Finkelstein.

The final recount, ordered by the Alaska Supreme Court, put Finkelstein eight votes ahead, but because his lead was based on a mathematical formula, and not on counting actual ballots, he could not legally be declared the winner.

Since Bradley also could not be declared the winner, a ruling by the Supreme Court Wednesday required that a new election be held.

Finkelstein won election night tabulations, but Bradley asked for a recount, setting off a mathematical marathon leading to the court decision that leaves the district without a representative.

Gov. Steve Cowper plans to appoint an interim representative from the district within a week, said press aide David Ramseur. Cowper met with legislators Thursday and his office was already "compiling a list of poten-

tial appointees," Ramseur said.

The seat is legally vacant and does not belong to any party, he said, so Cowper is free to appoint anyone who is a resident of the district.

McAlpine warned that the earliest a new election can be held is in "a minimum — and I think that's the important word — a minimum of 60 to 75 days." If the race is close enough for a recount or court challenge, it could take considerably longer to seat an elected District 13A representative.

McAlpine said he may decide to postpone the election until after the current 120-day legislative session is over, to ensure the people of the district get effective representation during the crucial last few weeks.

"Somewhere around the fifth of May, some poor guy is going to end up sitting down in the legislature when the bills are flying by. If someone would get sworn in in the last 10 days of the session, that would not serve the district well."

In 1977, when a western Alaska House race between Nels Anderson Jr. and Joe McGill had to be done over, an interim representative, appointed by then Gov. Jay Ham-



The Associated Press

Lt. Gov. Steve McAlpine explains the results of the ballot recount.

mond, served until March 11. Finkelstein, who got the news of his sort of victory in Anchorage, urged that the election be held as soon as possible. He estimated that only about 50 percent of the voters who cast ballots in November would be likely to turn out, mak-

ing any prediction about a winner impossible.

Bradley was in Juneau Thursday, where he predicted to The Associated Press that he would win the re-match.

In November, Finkelstein won all the District 13A precincts ex-

cept Elmendorf Air Force Base, which cast enough votes for Bradley to all but wipe out Finkelstein's lead.

In the history of recounts and recounts, Finkelstein won the first. Bradley then asked for a recount and won that. Finkelstein went to Superior Court and won that, by 17 votes. But no one won the count that counted, the last one.

Following the Supreme Court's directive, the Division of Elections started with a final vote count, which gave Bradley an eight vote lead over Finkelstein, 3,562 to 3,554. Then they subtracted two sets of illegal votes from those totals.

Subtracting nine ballots that made up the first set resulted in seven votes being subtracted from Bradley and two from Finkelstein. That left Bradley with a three vote lead, making him the provisional winner.

Next, 51 votes were subtracted from the two totals. These votes — all absentee or challenged ballots — were disqualified on the basis of the envelopes they came in. Because the actual ballots had long

RECOUNT: Election ordered

(Continued from Page C-1)

since been mixed in with the more than 6,000 ballots cast in the original election, they were subtracted using a proportional formula.

In this step, Bradley lost 28 votes and Finkelstein 16, putting Finkelstein ahead by eight.

So why wasn't Finkelstein declared the winner? Because declaring a winner on the basis of a formula as opposed to known, counted votes is not acceptable, according to the Supreme Court. That left District 13A with a winnerless race and a need for a new election.

After announcing the re-match, McAlpine listed some of the things his office has to do before the reballoting can take place.

First, he has to get permission from the Alaska courts "to not have to comply with every single state law" governing general elections, such as issuing a voter pamphlet and opening ab-

solute voting booths around the state.

Then, because Alaska is on a federal list of states that once practiced voter discrimination, the procedural details of the special election must be approved by the U.S. Department of Justice, which has 60 days to issue a decision.

The race will be strictly between Finkelstein and Bradley, McAlpine said. Only the voting has been reopened, not the filing period. And normal registration rules will apply, which means anyone who hopes to vote in the special election must be registered in the district 30 days ahead of time.

McAlpine was reluctant to estimate how much the special election will cost. Probably somewhere between \$100,000 and \$200,000, he said when pushed for a number. "It will be done by the cheapest, most effective method," he said.

See Page C3, RECOUNT

Appointment will be made within week

TIMES STAFF and ASSOCIATED PRESS

Gov. Steve Cowper will appoint someone to represent District 13-A "as soon as possible" until a spring election is held, but it could take as long as a week before the appointment is made, said a spokesman from the governors office.

In the election, to be held in mid-March at the earliest, Anchorage voters will get another chance to decide whether Republican Brad Bradley or Democrat David Finkelstein will represent them in the House of Representatives.

Cowper spokesman David Ramseur said the governor is asking legislators for names of possible appointees and that Cowper had one or two ideas of his own on people to appoint.

McAlpine, the state's top elections official, said a new election in the disputed District 13-A race was necessary because of a state Supreme Court order issued Wednesday.

The court ordered a recalculation of the Nov. 8 general election results after Finkelstein challenged the Elections Division's recount of the close contest. Because the recalculation indicated a change in the outcome, with Finkelstein holding an eight-vote edge, a new election was ordered.

Finkelstein had not yet recommended to Cowper, also a Democrat, who should fill the seat temporarily.

"It's an amusing situation," Finkelstein said. "I'd like to have my wife appointed and Bradley would like to have his wife appointed, but I don't think either one is appropriate because of their ties to the campaign. The best person is someone not tied to the campaign," he said.

McAlpine said the election cannot be held for at least 60 days because the Law Department is required to review the election procedure during that period.

The initial election results showed Finkelstein with a three-vote victory, but a recount gave Bradley the election by nine votes. After Finkelstein filed his challenge, the Supreme Court last week stayed Bradley's swearing-in pending resolution of the case.

The court ordered Wednesday that about 60 See Cowper, page B-5

Cowper: Taking suggestions

Continued from page B-1

challenged votes be reconsidered, most under a complex formula used to determine whether errors might have affected the outcome of an election. The court said if the formula showed a different outcome, that a new election be held.

Justices Jay Rabinowitz and Daniel Moore were the dissenters in the 3-2 decision. They argued that

Bradley should be certified as the winner of the Nov. 8 election.

Bradley said after the news conference that the court's order was "rather nit-picking and after the fact." He said he was confident he would win in another election, however.

Finkelstein said he was pleased that a new election would be held.

House Democrats met immediately following McAlpine's announcement.

Court requires recount

Disputed ballots to be reconsidered

By SHEILA TOOMEY
Daily News reporter

The Alaska Supreme Court Wednesday handed the disputed Bradley-Finkelstein House race back to the Division of Elections

with instructions to count 60 votes slightly differently and figure out if there's a winner or if a new election is necessary.

Lt. Gov. Steve McAlpine said Wednesday that his office expects to have the latest, and perhaps last, recount of the District 13A vote finished today.

The ballots and absentee voter envelopes in dispute were locked in the Supreme Court chambers and not accessible Wednesday night, McAlpine said. An elections official, accompanied by security personnel, will retrieve them today and the recalculations ordered by the high court should be done fairly quickly, he said.

David Finkelstein, the Democratic contender in a race that has turned into a marathon, said he knows where the disputed votes will go and predicted a new election will be ordered.

Republican Brad Bradley could not be reached for comment. His attorney, David Devine, said he does not remember how nine of the disputed ballots were voted so could not predict an outcome.

So far, each candidate has been a winner at least once. Finkelstein won the first count, right after the Nov. 8 election, by



Finkelstein



Bradley

DISPUTE: Court orders another count in House election

Continued from Page E-1

three votes. Bradley won the first recount, by nine votes. Finkelstein won a decision from Superior Court Judge Joan Katz, sitting as a special master for the Supreme Court. She put him 17 votes ahead and ordered a new election, saying the original one was too flawed to figure out who won.

Meanwhile, the 13A seat in the state House of Representatives remains vacant as the legislative session moves toward the end of its first week.

Should a new election be ordered, Gov. Steve Cowper is expected to name an interim representative, with House approval. Finkelstein said he has asked Cowper not to appoint him.

"It's not my seat. It's not Mr. Bradley's seat," he said. "It should be someone not connected to either of us."

Following the instructions issued by the Supreme Court Wednesday, three outcomes are now possible: either Finkelstein or Bradley could be declared the winner, or a new election could be ordered. Finkelstein said it is very unlikely he will pick up enough votes to win outright.

When the Supreme Court finished its count Wednesday, the candidates were eight votes apart, with Bradley leading 3,562 to 3,554. But the court declared 60 of these votes invalid and ordered them subtracted from the totals in a two-step process.

Step 1 involves counting nine ballots that have

declared illegal and simply subtracting them. At this point a provisional winner will be named, the court said.

Step 2 involves 51 envelopes that once contained absentee ballots. For a variety of reasons, the votes submitted in these envelopes have been declared invalid and they must also be subtracted.

Unfortunately, these ballots were long ago mixed with all the other ballots, so it is impossible to know for certain how many should be subtracted from each candidate.

As in past disputed elections, the court ordered these ballots assigned to the candidates in proportion to the number of known absentee ballots they received. Because Bradley received

many more absentee votes than Finkelstein, it is expected that Bradley will lose more of these disputed votes, as he did in the recounts completed to date.

If the provisional winner is still ahead after Step 2, then that candidate should be declared the winner, the court ruled.

If the proportional subtraction changes the provisional outcome, a new election should be held, the court said. In the past, the court has held that declaring a winner on the basis of unknown votes would be inappropriate.

Because applying a proportion is likely to result in numbers that include fractions, it is possible that Bradley or Finkelstein could come out ahead by less than a vote.

Anchorage Daily News • Thursday, January 12, 1989 E-3

Times 4/10/89

Intrusion by the courts

THE ALASKA Supreme Court treads on mushy constitutional tundra when it tells the legislature, as it did last week, to deny a seat in the House of Representatives to either of two candidates claiming election from an Anchorage district, pending the high court's determination of who actually won the race.

At the risk of meddling in affairs of the judiciary, let's express an opinion that this is a matter which is no business of the courts or the judges.

The courts might be called upon to settle a legal dispute — there's no argument about that.

But neither prior to nor after such a decision has the court the constitutional right to order the legislature not to seat whoever it wants to admit as a member.

THE AUTHORITY is clearly spelled out in the Alaska Constitution.

Says Section 12 of Article II of that guiding document:

"The houses of each legislature shall adopt uniform rules of procedure. Each house may choose its officers and employees. Each is the judge of the election and qualifications of its members . . ."

The House and Senate, in other words, are the judge and jury of those who will be legislators. The constitutional language couldn't be more specific. In an election dispute of this nature, the legislative body involved has the final say.

Not a judge of the Superior Court.

Not the justices of the Supreme Court.

They have no authority, as we read this constitutional provision, to even suggest — much less issue a formal stay, as they did last Saturday — to the Alaska House that it should not swear in Republican Brad Bradley as the new representative of an

East Anchorage district.

Mr. Bradley, a former state senator and most recently a member of the Anchorage Assembly, was certified after a recount as the victor in his race last November with Democrat David Finkelstein. Mr. Finkelstein filed suit, and Superior Court Judge Joan Katz did her own thing with the ballots and declared the Democratic contender as the winner, using some kind of a percentage formula to allocate a share of certain votes that she found questionable.

WE DON'T question Judge Katz' sincere attempt to sort through a bunch of challenged ballots to come up with a decision.

But that's a process that already had been handled by the state election judges.

And the ultimate decision — despite whatever the results might be, in the eyes of whoever last looked at the ballots — belonged to the members of the House, not to the justices of the Supreme Court.

The legislature — not the court — is the judge of its members.

The House, had it been so inclined, could have told Mr. Bradley yesterday to step aside on its own determination that he had not won the election. And it could have called Mr. Finkelstein forward to be sworn in as the new representative from Anchorage.

What it might more properly have done is declare the seat still vacant and directed the state elections office to conduct a new election in the district.

But that is the legislature's business, not the courts.

Our constitution, we suggest, says as much in language so plain that it's surprising the high court would even bother to get involved.

Court may call re-vote

By PATTI HARPER
Times Writer 1/6/89

The Alaska Supreme Court was meeting at press time today to decide whether it should order a new election in the District 13 State House race between Republican Brad Bradley and Democrat David Finkelstein.

The state's attorney in the case, John Rubini, wants the court to uphold the election results. But he asked the five justices to order that the declared winner, Brad Bradley, not be sworn in next week if they cannot reach a decision today.

Bradley's attorney, David Devine, said he opposes that idea. It would leave voters in the East Anchorage district without representation, he said. "I don't think Mr. Bradley should be kept from taking office," unless there is a decision ordering a new election, he said.

Anchorage Superior Court Judge Joan Katz recommended to the court late Thursday that the election be re-run. She was acting as a special master to clarify the vote counting issues in Finkelstein's legal challenge to Bradley's apparent nine-vote win.

Katz agreed with Finkelstein that a number of ballots were improperly counted. She calculated that vote totals should be adjusted in a way that reverses the outcome and puts Finkelstein ahead by 1.17 votes.

All attorneys agreed today that she made an error and the actual difference between the two candidates using her decisions is .41, less than one vote.

Since there is no way to identify which of the thousands of ballots counted were the ones improperly cast, the calculations cannot reflect actual votes.

All parties had agreed that if the challenge had this result a new election should be called, Katz noted.

"We haven't even thought of that," Division of Elections spokesperson Linda Edgeworth said about the logistics of holding a new election.

The state wants the Supreme Court to decide elections officials properly declared Bradley the winner.

See Re-election, page A-8

Re-election: Court considers election to settle disputed race

(Continued from page A-1)

Any new election would take at least 60 days to satisfy election law requirements, said John Rubini, an attorney representing the state. That's half of the 120-day legislative session.

Falgeworth said this morning that it might be possible to trim that timeline to 40 days.

Gov. Steve Cowper would have the responsibility to appoint someone to represent the district until the ultimate winner is de-

clared, Rubini said.

Speaker-elect of the House, Sam Cotten, D-Eagle River, said this morning that he's already been contacted by the governor's office for suggested appointees. Cotten said he didn't have any names for Cowper.

"We certainly won't seat Bradley or Finkelstein (when the legislature convenes Monday) if the court has called for a new election," Cotten said. "We're going to follow what the court directs."

Cotten said the court decision

won't affect the organizational structure of the House even though Bradley would be minority member if seated while Finkelstein would join the majority coalition.

Finkelstein was the first apparent winner in the hard-fought race to represent the East Anchorage district, which includes Mountain View and Elmendorf Air Force Base. He was initially certified the victor after the Nov. 8 polling.

But a recount in early December left Bradley ahead 3,563 to

3,346.

Finkelstein appealed to the high court, challenging more than 70 votes for a variety of reasons.

Katz agreed with Finkelstein that three of the votes credited to Bradley should be thrown out because the ballots were not clearly punched, the marks falling between the two candidates' names.

Today, attorneys in the case agreed that one of those votes was not counted and so should not have been deducted from

Bradley's total.

Katz also agreed with Finkelstein that nine other ballots were improperly counted.

The division had already decided another 26 absentee ballots were improperly cast. Since some of those votes could be determined, the candidates were each docked a portion of a vote for each vote thrown out. The proportions were based on the percentage of the total absentee vote each candidate had received.

Since Bradley got more of that

vote, he was docked more. That is what left Finkelstein ahead in Katz's calculations.

Bradley was docked about 62 votes for for every vote thrown out, while Finkelstein was docked about 36.

Devine argued to the high court this morning that Katz was wrong to accept Finkelstein's arguments.

Devine said he believes the court will declare Bradley the legitimate winner.