

***HB***

***192***

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF  
HB 192

Absentee Ballots/Court Ordered Elections

Received February 22, 1989  
by The Judiciary Committee

Heard March 21, 1989

Committee Substitute adopted March 21, 1989

Passed Out of Committee March 21, 1989  
5 Do Pass  
2 No Recommendation

## TABLE OF CONTENTS

### HB 192: Absentee Ballots/Court Ordered Elections

- Item 1:** HB 192 by The Judiciary Committee  
CSHB 192 (SA)
- Item 2:** Fiscal Note
- Item 3:** Research Request 89.137: Procedures for  
Resolving "Failed" Elections to State Legislatures
- Item 4:** Comments by Division of Elections  
January 31, 1989
- Item 5:** Alaska Statute: Sec. 15.20.081
- Item 6:** Memorandum from Rep. Goll re: HB 192  
March 20, 1989

# HOUSE COMMITTEE REPORT

(7)

Date Referred: February 23, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: \_\_\_\_\_

The STATE AFFAIRS Committee considered:

HB 192

HOUSE BILL NO. 192 [ABSENTEE BALLOTS/COURT ORDERED ELECTIONS]  
"An Act relating to absentee ballots, to certain court orders regarding elections, and to the governor's power to appoint legislators; and providing for an effective date."

### RECOMMENDS:

- replacing with CS HB 192 (SA)  the same title
- the attached amendment(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):

- fiscal impact
- zero fiscal note
- zero with analysis

### APPROVES PREVIOUS:

- fiscal note(s) published: \_\_\_\_\_
- zero fiscal notes(s) published: \_\_\_\_\_

### SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

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### SIGNING OTHER THAN DO PASS: (Do Not Pass, No Recommendation, Amend)

[Signature] (No Rec)

[Signature] (No Rec)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]  
Chairman's signature

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 HOUSE BILL NO. 192  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to absentee ballots, to certain  
7 court orders regarding elections, and to the gover-  
8 nor's power to appoint legislators; and providing for  
9 an effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 \* Section 1. AS 15.20.081(d) is amended to read:

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

28 \* Sec. 2. AS 15.20.510 is amended by adding a new subsection to read:

29 (b) If the court concludes that it is not possible to determine

1 whether certain ballots, parts of ballots, or marks for candidates on  
2 ballots are valid or to which candidate or division on the question or  
3 proposition the vote should be attributed, and that these ballots, if  
4 counted, could change the outcome of an election, the court shall  
5 enter judgment setting aside the action of the director on recount and  
6 ordering a new election. The director shall schedule a special elec-  
7 tion to be held not more than 90 days after the date of the court's  
8 order and the director shall supervise the election in the general  
9 manner prescribed by this title. If an order for a new election under  
10 this subsection results in the office of a legislator being unfilled,  
11 the governor shall appoint a person qualified to hold the office to  
serve in that office until the results of the new election are cer-  
tified and the successor takes office. >

14 \* Sec. 3. AS 15.20.560 is amended to read:

15 Sec. 15.20.560. JUDGMENT OF COURT. The judge shall pronounce  
16 judgment on which candidate was elected or nominated and whether the  
17 question or proposition was accepted or rejected. The director shall  
18 issue a new election certificate to correctly reflect the judgment of  
19 the court. If the court decides that the election resulted in a tie  
20 vote, the director shall immediately proceed to determine the election  
21 by lot as is provided by law. If the court decides that no candidate  
22 was duly elected or nominated, the judgment shall be that the con-  
23 tested election be set aside and that a new election be held. The  
24 director shall schedule a special election to be held not more than 90  
25 days after the date of the court's order and the director shall super-  
26 vises the election in the general manner prescribed by this title. If  
27 an order for a new election under this subsection results in the  
28 office of a legislator being unfilled, the governor shall appoint a  
29 person qualified to hold the office to serve in that office until the

conform  
Amended

Log book  
copy in 5007

APP

Leg need to confirm?  
body to which the

1 results of the new election are certified and the successor takes  
2 office. The provisions of this section and AS 15.20.540 and 15.20.550  
3 are not intended to limit or interfere with the power of the legisla-  
4 ture to judge the election and qualifications of its members.  
5 \* Sec. 4 This Act takes effect January 1, 1990.

Amendment

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PROCESSING

FISCAL NOTE

REQUEST:

Revision Date: 3/20/89  
Title: Absentee Ballots, certain court orders re: elections, and to the governor's  
Sponsor: power to appoint legislators  
Requestor: The Judiciary Committee  
SPONSOR: The Judiciary Committee

Agency Affected: Office of the Governor  
BRU: Elections  
Components: I - Elections  
II - Primary & General

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)

Prepared by: Linda Edgeworth Phone: 465-4611  
Division: Division of Elections Date: \_\_\_\_\_  
Approved by Commissioner: *Linda Edgeworth* Date: 3/20/89  
Agency: Division of Elections

Distribution (by preparer):

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



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Item 3  
RECEIVED

JAN 2 1989

P.O. Box Y, State Capitol  
Juneau, Alaska 99811-3100  
Mail Stop 3100  
(907) 465-3991

January 24, 1989

MEMORANDUM

TO: Representative Peter Goll

FROM: Karen Oakley *ko*  
Legislative Analyst

RE: Procedures for Resolving "Failed" Elections to State Legislatures  
Research Request 89.137

You asked what constitutional and statutory provisions guided the procedures that were followed in resolving the extremely close race for House District 13, Seat A. In that election, the results of a recount were appealed to the Alaska Supreme Court, which set aside the results and ordered a new election. The temporary vacancy thereby created in the House was recently filled by appointment by the Governor. You asked why this case was handled as it was and how a similar case would be handled in other states.

This memo explains the constitutional and statutory provisions that guided the procedures followed in the most recent election for representative for House District 13, Seat A. A second memorandum to follow next week will describe how a similar situation would have been handled in other states.

THE 1988 ELECTION FOR THE REPRESENTATIVE FOR HOUSE DISTRICT 13, SEAT A

House District 13, which includes east Anchorage, is served by two representatives, both elected at large. In the 1988 General Election, Democrat David Finkelstein and Republican W.E. "Brad" Bradley vied for Seat 13-A in what turned out to be a very close election. A brief chronology of subsequent events follows:

- After the General Election, the Division of Elections certified Finkelstein as the winner based on counts of 3,549 votes for Finkelstein and 3,546 votes for Bradley, a three vote margin.
- At Bradley's request, a recount was conducted. The Division of Elections then certified Bradley as the winner based on counts of 3,563 votes for Bradley and 3,554 votes for Finkelstein, a nine vote margin.
- Upon certification of Bradley as the winner, Finkelstein filed an appeal with the Alaska Supreme Court.

- The Alaska Supreme Court referred the appeal to Superior Court Judge Joan Katz as a Special Master. 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.
- The Alaska Supreme Court reviewed the findings of Judge Katz. They remanded the case to the director of the Division of Elections with specific instructions regarding the counting of certain of the challenged ballots.<sup>1</sup> Nine absentee votes, which were found to be illegally cast and which had not been commingled, were to be deducted from the totals of the candidates for whom they were cast. After deducting these nine votes, a provisional winner was to be declared. The director was then to deduct, based on a proportionate formula, 51 illegally counted but commingled ballots from the totals of the candidates. If the provisional winner remained the winner after deduction of these 51 ballots, the director was to certify the provisional winner as the winner. If the provisional winner did not remain the winner, the director was ordered to promptly hold a new election.
- The director of the Division of Elections recounted the ballots as ordered by the court. After the first step in the recount process, Bradley was declared the provisional winner; after the second step, Finkelstein was the winner. Because the provisional result was overturned, a new election was ordered. Due to federal election requirements, a new election cannot be held any sooner than late March or early April.
- On January 17, 1989, Governor Steve Cowper appointed Democrat Ann Spohnholz to the House District 13-A seat until a new election can be held and a winner declared.
- On January 18, 1989, the House voted 27 to 12 that the Governor's appointee was qualified to be seated pending a new election.

#### CONSTITUTIONAL AND STATUTORY PROVISIONS

This section discusses the constitutional and statutory provisions which determined the procedures followed in the present case involving the House District 13-A seat. Two topics are of concern: What procedure is followed when the results of a recount in a legislative race are appealed? What procedure is followed when there is a vacancy in the legislature because the results of an election have been set aside by court order?

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<sup>1</sup>A copy of the court order is attached.

### Appeal of a Recount of a Legislative Election

Because Finkelstein won the General Election by a margin of only three votes, Bradley was authorized, pursuant to AS 15.20.430, to request that the Division of Elections conduct a recount. When the results of that recount showed that Bradley was the winner, Finkelstein had two options for appealing certification of the recount result: Pursuant to AS 15.20.510, he could appeal to the Alaska Supreme Court, or, pursuant to AS 15.20.520, he could appeal to the Alaska House of Representatives.

The authority for appeal of a recount to the House is found in Article II, Section 12 of the Alaska Constitution, which states that the houses of each legislature are the judge of the election and qualification of its members. There is no similar constitutional right to appeal a recount of a legislative election to the courts; that right is found only in statute. Presumably, the 1960 legislature, which passed both AS 15.20.510 and AS 15.20.520, wished to provide two options for candidates and other citizens to appeal results of a recount.

Finkelstein chose to appeal to the Alaska Supreme Court. AS 15.20.510 specifies the duties and powers of the court in considering the appeal of a recount as follows:

. . . 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 . . . the vote should be attributed. The court shall enter judgement either setting aside, modifying, or affirming the action of the director on the recount.

The court order of January 11, 1989, which remanded the case back to the Division of Elections with specific instructions, essentially "set aside" the prior certification of the recount by the director.

### Procedure for Filling Legislative Vacancies Due to a "Failed" Election

Article II, Section 4 of the Alaska Constitution addresses vacancies in the legislature. It provides:

A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment.

Representative Goll  
January 24, 1989  
Page 4

Alaska Statutes 15.40.320 - 15.40.470 set forth the procedures to be followed when filling certain types of legislative vacancies. For the purposes of the Election Code, "vacancy" is defined in AS 15.60.010(34). This statute provides that a

'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.

The type of vacancy that was created in the House of Representatives when the court set aside the results of the recount for House District 13, Seat A does not appear to be covered by the Election Code. Since no provision is made in law for filling this type of legislative vacancy, the constitution provides that the governor shall fill the vacancy by appointment.

For the types of legislative vacancies specified in AS 15.60.010(34), confirmation by a majority of the members of the political party of the predecessor in the same house as the predecessor is required pursuant to AS 15.40.330(a). In the present case, confirmation by the full house was apparently not required by statute. Article II, Section 12 of the Alaska Constitution provides, however, that

. . . Each [house] is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members. . .

Thus, the vote of the house "confirming" the Governor's appointment of Ann Spohnholz to fill the vacancy until another election can be held was within the prerogative of the house to be "judge of the election and qualifications of its members."

I hope you find this information useful. If you need additional information, please let me know.

Attachment

# STATE OF ALASKA

## OFFICE OF THE GOVERNOR

Item 4  
DIVISION OF ELECTIONS  
P.O. BOX AF  
JUNEAU, ALASKA 99811-0105  
PHONE (907) 465-4611

January 31, 1989

The Honorable Peter Goll  
Alaska State Representative  
P. O. Box AV  
Juneau, Alaska 99811

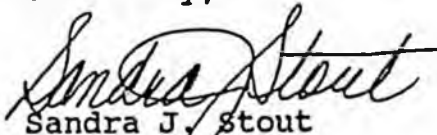
Dear Representative Goll:

The work draft of a bill related to absentee ballots, court ordered elections, and the governor's power to appoint legislators was presented to the Division of Elections for our review and recommendations, in order that they might be considered prior to the bill being introduced. I appreciate the opportunity afforded us to participate in this process.

The scope of our comments is limited to the provisions of the draft bill relating directly to our responsibilities for implementation and general administration of the election process. We offer no suggestions or comments relative to the power of the legislature to judge the election or qualifications of its members, actions taken by the courts, or authority of the Governor to fill vacancies by appointment, as these issues are beyond the scope of our authority or expertise.

I hope that the comments enclosed are helpful to you and your committee. Please feel free to contact me if I or a member of my staff can be of further assistance.

Sincerely,

  
Sandra J. Stout  
Director

Enclosures

COMMENTS ON WORK DRAFT  
6-0512A (COOK)  
BY GOLL

Division of Elections  
Sandra J. Stout  
Director

January 31, 1989

"An Act relating to absentee ballots, to certain court orders regarding elections, and to the governor's power to appoint legislators."

The draft bill attempts to address the issues that were raised during the suit brought before the Supreme Court relative to the 1988 General Election for House District 13, Seat A.

Sections 1 and 2 deal with the Supreme Court's ruling in Finkelstein v. Stout, et. al., regarding ballots witnessed by two witnesses who each signed on a different date. The court ruled that these ballots should not have been counted. These sections are designed to clarify that the voter's certificate is to be signed in the presence of the witnesses, and that the witnesses sign their attestation at the same time and place. As indicated in testimony presented at the House Judiciary hearing on January 25, 1989, we believe that a statutory remedy is not necessary to satisfy the requirements of the court's ruling. We suggest that the remedy could be accomplished administratively through a re-design of the forms used for by mail voting, and through clarification of the instructions provided to voters and the witnesses as part of the by mail ballot packet. Attached are samples of the kinds of modifications which could be made which would satisfy the court's ruling.

Our major concern with the wording of Section 1 in the work draft, is that while the requirements are made very clear, they also create a potential "mine field" of opportunities for voters or their witnesses to err in completing their forms, resulting in the voters' ballots not being counted. Requiring that we provide three different places where different individuals must write in a date, may cause more confusion, rather than less, on the part of voters and their witnesses. As brought out in the Supreme Court testimony, by displaying three different lines on which dates can be written, it could be construed or interpreted by the voters

and their "civilian" witnesses that different dates are actually permissible.

If the legislature deems it advisable to provide clarification in statutes in addition to administrative remedies already contemplated, we would suggest simplification within the work draft wording of Section 1 as follows:

Section 1. 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.

Based on this suggested wording, the Division, would also recommend that Section 2 relating to AS 15.20.203(b) be eliminated as subsection (2) sufficiently addresses the

issue of deficient witnessing as grounds for not counting a ballot cast by mail.

Sections 3 and 4 provide for the conduct of new elections should an election be set aside by the court. We note that the general wording of Section 3 relative to court action in recount appeals is carried forward in Section 4 to provide conformity relative to court ordered elections as a result of election contests.

The Division of Elections raises no objection to the general content of these sections except the stipulation that the new election be held within 30 days of the election order. In practical terms this time frame would be virtually impossible to implement. One of the major factors is the requirement that Alaska request preclearance from the United States Department of Justice prior to enforcing any change in election procedure under Section 5 of the Voting Rights Act of 1965, (42 U.S.C. 1973, et seq.). Special elections are considered changes in normal procedure, and are therefore subject to this preclearance requirement. The U. S. Department of Justice is allowed 60 days for their review. While expedited preclearance can be requested, granting of special handling is granted at the discretion of the Department. Therefore, every attempt should be made to accommodate the 60 day period. That means that the period of time between the order calling for a new election and election day is usually somewhat longer than 60 days because decisions regarding any special procedures which will be necessary in the conduct of the special election must also be addressed in the preclearance request.

The Division would recommend that the selection of the actual date remain somewhat discretionary in order that the Director can adequately review the scope of the court's order, seek legal counsel regarding any special procedures which may be necessary, and to determine the time necessary to provide adequate public notice, prepare and distribute election materials, and to appoint and train election personnel.

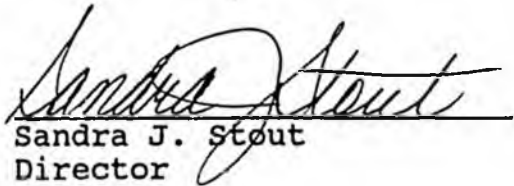
The Division would recommend the following relative to the scheduling of the new election:

The director shall promptly schedule a special election to be held not more than 90 days after the date of the court's order, and the director shall supervise the election in the general manner prescribed by this title.

Finally, with regard to an effective date for this bill if it is introduced, we note that the Division anticipates that many of our forms will have to be revised. Our current stock of supplies and forms were ordered prior to the 1988 statewide elections in quantities expected to last through December of 1989, at which time we would begin design and ordering for the next major election cycle. Because no statewide elections are anticipated for this year, and in order to avoid the expense of total replacement of current stock at this time, consideration might be given to postponing the effective date for Section 1 until January 1, 1990.

DATE:

January 31 1989

  
Sandra J. Stout  
Director

Items

denied, 441 U.S.  
60 L. Ed. 2d 376

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.061, 15.20.071,

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AS 15.20.048(b);

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

Effect of amendments. — The 1986 amendment in subsection (c) in the second sentence deleted "the back of" preceding "the envelope" and substituted "witness and date the signature of the voter" for "sign as attesting witness and date his signature," added the third sentence, in the fourth sentence substituted "the" for

"his" preceding "personal representative," in the present last sentence deleted "within three days from the date it is obtained but" following "election official," and deleted the former last sentence, concerning the untimely return of an absentee ballot.

NOTES TO DECISIONS

Former sections governing absentee ballot voting construed. — See Hammond v. Hickel, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588

P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Sec. 15.20.080. Date for application in person. [Repealed, § 231 ch 100 SLA 1980. For current law, see AS 15.20.061.]

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 post-marked 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 the voter's 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. (§ 87 ch 100 SLA 1980; am § 63 ch 6 SLA 1984; am §§ 9 — 11 ch 85 SLA 1986)

**Effect of amendments** — The 1984 amendment made a series of technical and internal reference changes in subsection (d).

The 1986 amendment in subsection (b) in the first sentence deleted "more than six months nor" following "postmarked not" and substituted "ten" for "seven" and added the second sentence; in subsection (e) deleted "and attested" following "marked" in the first sentence, in the sec-

ond sentence substituted "Except as provided in (h) of this section, a" for "If the" and "a mail service at least equal to first class" for "the most expeditious mail service" and "for the" for "in his," inserted "who" preceding "returns," deleted "he" following "ballot by mail" and added "in which the voter seeks to vote" at the end of the sentence, and added the third and last sentences of the subsection; and added subsection (h).

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101 SLA

- (2) a clerk or deputy clerk of a court of the State of Alaska or of the United States;
- (3) a notary public;
- (4) a United States postmaster; or
- (5) a commissioned officer under AS 09.63.050(4). (§ 1 ch 37 SLA 1981)

Collateral references. — 58 Am. Jur. 2d, Oath and Affirmation, §§ 6 — 10. 67 C.J.S., Oaths and Affirmations, §§ 5 — 7.

Disqualification of attorney, otherwise qualified, to take oath or acknowledgment from client, 21 ALR3d 483.

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477 (File No.

**Sec. 09.63.020. Certification of documents.** (a) A matter required or authorized to be supported, evidenced, established, or proven by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making it (other than a deposition, an acknowledgment, an oath of office, or an oath required to be taken before a specified official other than a notary public) may be supported, evidenced, established or proven by the person certifying in writing "under penalty of perjury" that the matter is true. The certification shall state the date and place of execution, the fact that a notary public or other official empowered to administer oaths is unavailable, and the following:

"I certify under penalty of perjury that the foregoing is true."

(b) A person who makes a false sworn certification which the person does not believe to be true under penalty of perjury is guilty of perjury. (§ 1 ch 37 SLA 1981)

Collateral references. — 1 Am. Jur. 2d, Acknowledgments, §§ 32 — 79. 1 C.J.S., Acknowledgments, §§ 83 — 145.

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**Sec. 09.63.030. Notarization.** (a) When a document is required by law to be notarized, the person who executes the document shall sign and swear to or affirm it before an officer authorized by law to take the person's oath or affirmation and the officer shall certify on the document that it was signed and sworn to or affirmed before the officer.

(b) The certificate required by this section may be in substantially the following form:

Subscribed and sworn to or affirmed before me at \_\_\_\_\_  
on \_\_\_\_\_.

(date)

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Signature of Officer

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STATE OF ALASKA  
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

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

FROM: Representative Peter Goll

RE: HB 192, relating to absentee ballots, court  
ordered elections, and the governor's power to  
appoint legislators.

DATE: March 20, 1989

I requested that this bill be drafted in the aftermath of the Supreme Court's ruling in Finkelstein v. Stout, et. al.. One of the issues decided by the court was that ballots witnessed by two witnesses who signed on different dates should not have been counted.

Section 1 clarifies the procedure required for the witnessing of absentee ballots by two witnesses when a person qualified to administer oaths is not available. The new language requires that the voter's certificate be signed in the presence of two witnesses, and that the witnesses sign their attestation at the same time and place.

Section 2 of the bill adds a new subsection to existing law dealing with appeal from the decision of the Director of the Division of Elections after a recount. Present law provides that the "court shall enter judgment either setting aside, modifying, or affirming the action of the director on recount." The new section provides that if the court finds that it is not possible to ascertain whether certain ballots are valid or to which candidate or proposition the vote should be attributed, and the ballots, if counted, could change the outcome of the election, the court shall set aside the recount results and order a new election.

The court has had implied authority to order a new election when it "sets aside" an election. This bill merely provides statutory authority for such an action in both sections 2 and 3. Those sections also require that the election be held within 90 days from the date of the court's order.

Representative H.A. "Red" Boucher  
Page 2  
March 20, 1989

Finally, sections 2 and 3 effectuate Art. II, Sec. 4 of the Alaska Constitution which provides:

"A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment."

AS 15.40.320 - 15.40.470 set out the procedures to be followed when filling certain types of legislative vacancies. The type of vacancy which occurred when the Bradley - Finkelstein election was vacated is not presently covered by statute and this bill merely addresses that type of vacancy by providing that the governor shall appoint a qualified person to serve until the results of a new election are certified and the successor takes office.