

HB

49

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: February 3, 1994

FURTHER REFERRALS:

Date of Committee Action: 3/4/94

The FINANCE Committee considered:

HB 49

HOUSE BILL NO. 49

ABSENTEE BALLOTING BY FAX

"An Act relating to facsimile absentee ballot application and facsimile absentee voting."

RECOMMENDATIONS:

be replaced with CSHB 49 (Fin) | | the same title
 | | a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact Governor

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Ed Meehan</i> <u>Meehan</u>		<i>Mike Stovane</i> <u>Stovane</u>		<input checked="" type="checkbox"/>	
<i>Therriault</i>		<i>Richard J. Foster</i> <u>Foster</u>		<input checked="" type="checkbox"/>	
<i>Lawrence Hanley</i> <u>Hanley</u>	<input checked="" type="checkbox"/>	<i>Richard J. Foster</i> <u>Foster</u>		<input checked="" type="checkbox"/>	
<i>Sean Martin</i> <u>Martin</u>	<input checked="" type="checkbox"/>				

Ed Meehan
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 49 (JUD)

Revision Date: 2/15/94
Title: Absentee Balloting by FAX
Sponsor: Representative Martin
Requestor: _____

Department Affected: Office of the Governor
BRU: Division of Elections
Component: Primary and General
COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	20.0	0	20.0	0	20.0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	3.4	0	0	0	0	0
LAND &	0	0	0	0	0	0
GRANTS,	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL	23.4	0	20.0	0	20.0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING:

1002 Federal	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	23.4	0	20.0	0	20.0	0
1005 GF/Program	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	23.4	0	20.0	0	20.0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY94) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Joseph L. Swanson, Director
Division: Division of Elections

Phone: 465-4611

Date: 2/15/94

Approved by Commissioner: John B. Coghill, Lieutenant Governor
Agency: Office of the Governor

Date: 2/15/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB49 (JUD)

ANALYSIS:

Contractual (20.0)

Long distance telephone charges and installation of four dedicated absentee ballot fax lines. These dedicated telephone lines would be installed in all four regional offices and be operational for four months every election year.

Equipment (3.4)

Purchase of one dedicated fax machine for receiving electronic absentee ballots. One Sharp FO 5400 fax machine with supplies and warranty.

8-LS0359N
Chenoweth
3/3/94

AmL
Reg 2

CS FOR HOUSE BILL NO. 49()

IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MARTIN, Brice

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to absentee voting, to electronic transmission of absentee ballot
2 applications, to delivery of ballots to absentee ballot applicants by electronic
3 transmission, and enacting a definition of the term 'state election' for purposes
4 of absentee voting; and providing for an effective date."

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

6 * Section 1. AS 15.20 is amended by adding a new section to read:

7 Sec. 15.20.066. VOTING BY ELECTRONIC TRANSMISSION. (a) The
8 director shall adopt regulations applicable to the delivery of absentee ballot by
9 electronic transmission in a state election and to the use of electronic transmission
10 absentee voting in a state election by qualified voters. The regulations must

11 (1) require the voter to comply with the same time deadlines as for
12 voting in person on or before the closing hour of the polls;

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

1 (b) An absentee ballot that is completed and returned by the voter by
2 electronic transmission must

3 (1) contain the following statement: "I understand that by using
4 electronic transmission to return my marked ballot, I am voluntarily waiving my right
5 to a secret ballot.", followed by the voter's signature and date of signature; and

6 (2) be accompanied by a statement executed under oath as to the
7 voter's identity; the statement under oath must be witnessed by

8 (A) a commissioned or noncommissioned officer of the armed
9 forces of the United States;

10 (B) an official authorized by federal law or the law of the state
11 in which the absentee ballot is cast to administer an oath; or

12 (C) two United States citizens, 18 yrs or older →

13 * Sec. 2. AS 15.20.081(a) is amended to read:

14 (a) A qualified voter may apply by mail or by electronic transmission to the
15 director for an absentee ballot. The application must [SHALL] include the address or,
16 if the application requests delivery of an absentee ballot by electronic
17 transmission. the telephone electronic transmission number, to which the absentee
18 ballot is to be returned, the applicant's full Alaska residence address, and the
19 applicant's signature. However, a person [PERSONS] residing outside the United
20 States and applying to vote absentee in federal elections in accordance with
21 AS 15.05.011 need not include an Alaska residence address in the application.

22 * Sec. 3. AS 15.20.081(b) is amended to read:

23 (b) An application requesting delivery of [FOR] an absentee ballot to the
24 applicant by mail must be received by the division of elections not less than seven
25 [FOUR] days before the election for which the absentee ballot is sought. An
26 application for an absentee ballot for a state election from a qualified voter
27 requesting delivery of an absentee ballot to the applicant by electronic
28 transmission must be received by the division of elections not less than four days
29 before the election for which the absentee ballot is sought. An [THE] absentee
30 ballot application submitted by mail under this section must permit the person to
31 register to vote under AS 15.07.070 and to request an absentee ballot for each state

1 election held within that calendar year for which the voter is eligible to vote. An
2 absentee ballot application submitted by electronic transmission under this section
3 may not include a provision that permits a person to register to vote under
4 AS 15.07.070.

5 * Sec. 4. AS 15.20.081(c) is amended to read:

6 (c) After receipt of an application [BY MAIL], the director shall send the
7 absentee ballot and other absentee voting material to the applicant by priority mail.
8 However, if the application requests that an absentee ballot for a state election be
9 sent by electronic transmission, the director shall send the absentee ballot and
10 other absentee voting material to the applicant by electronic transmission. The
11 absentee ballot and other absentee voting [THE MOST EXPEDITIOUS MAIL
12 SERVICE. THE] material shall be sent as soon as they are ready for distribution. If
13 the absentee ballot and other absentee voting material are mailed to the applicant,
14 the [THE] return envelope sent with the ballot and other materials shall be addressed
15 to the election supervisor in the district in which the voter is a resident.

16 * Sec. 5. AS 15.20.081(e) is amended to read:

17 (e) An absentee ballot must be marked on or before the date of the election.
18 Except as provided in (h) of this section, a voter who returns the absentee ballot by
19 mail, whether provided to the voter by mail or by electronic transmission, shall use
20 a mail service at least equal to first class and mail the ballot not later than the day of
21 the election to the election supervisor for the election district in which the voter seeks
22 to vote. Except as provided in AS 15.20.480, the ballot may not be counted unless it
23 is received by the close of business on the 10th day after the election. If the ballot is
24 postmarked, it must be postmarked on or before election day. After the day of the
25 election, [NO] ballots may not [SHALL] be accepted unless received by mail.

26 * Sec. 6. AS 15.20.081(g) is amended to read:

27 (g) The director shall maintain a record of the name of each voter to whom
28 an absentee ballot is sent under this section [BY MAIL]. The record must list the
29 date on which the ballot is mailed or provided by electronic transmission and the
30 date on which the ballot is received by the election supervisor and the dates on which
31 the ballot was executed and postmarked.

1 * Sec. 7. AS 15.20.082 is amended by adding a new subsection to read:

2 (e) The provisions of AS 15.20.066 and 15.20.081 relating to electronic
3 transmission absentee voting do not apply to the procedures established in this section.

4 * Sec. 8. AS 15.20.211(b) is amended to read:

5 (b) If a voter requested an absentee ballot [BY MAIL] and the proper absentee
6 ballot was not sent to the voter, the votes cast by the voter on the ballot received
7 which are for write-in candidates the voter could have voted for if the voter had
8 received and voted the proper absentee ballot shall be counted.

9 * Sec. 9. AS 15.20 is amended by adding a new section to read:

10 Sec. 15.20.225. DEFINITION OF "STATE ELECTION." In AS 15.20.010 -
11 15.20.225, "state election" means a primary, general, or special election a purpose of
12 which is to

13 (1) select, nominate, or elect a governor and lieutenant governor, an
14 acting governor, a state senator, or a state representative;

15 (2) select, nominate, or elect delegates to a constitutional convention;

16 (3) approve or reject an initiative submitted under art. XI of the state
17 constitution and AS 15.45.190 - 15.45.200 or a referendum submitted under art. XI of
18 the state constitution and AS 15.45.420 - 15.45.440;

19 (4) recall an official identified in (1) of this section when authorized
20 by art. XI of the state constitution and AS 15.45.650 - 15.45.690;

21 (5) approve or reject a proposed constitutional amendment submitted
22 under AS 15.50; or

23 (6) ratify or reject a state general obligation bond when authorized by
24 AS 37.15.

25 * Sec. 10. ABSENTEE VOTING DURING PRIMARY, GENERAL, AND SPECIAL
26 STATE ELECTIONS DURING 1994. Notwithstanding AS 15.20.066(a), added by sec. 1 of
27 this Act,

28 (1) in the primary or a special state election held during 1994, a person may
29 not cast an absentee ballot by electronic transmission; and

30 (2) in the general election held during 1994, a person may not cast an absentee
31 ballot by electronic transmission unless the person casting the absentee ballot is a qualified

1 voter in this state who marks the ballot outside the state.

2 * Sec. 11. This Act takes effect immediately under AS 01.10.070(c).

Committee Substitute for CSHB49 (IJD)

- 1) Deletes Section 1. *Legislative Findings and Purpose.*
- 2) Renumbers sections appropriately upon Section 1 deletion.
- 3) Deletes all specific references to absentee voters outside of Alaska in the U.S. or outside of the U.S., so as to accommodate the new intent of the bill which is to allow absentee voting by electronic transmission during primary, general, and special elections to all Alaskan absentee voters, whether in: Alaska, the United States, or another country, starting in 1995 (*See 8).
- 4) Adds on page 2, lines 25-29, that an application for an absentee ballot requested by a voter by electronic transmission must be received not less than four (4) days before the election.
- 5) Adds a waiver requirement on page 2, lines 3-5, requiring the absentee voter who votes by electronic transmission to sign a statement waving the right to a secret ballot.
- 6) Changes renumbered Section 1, page 2, line 10-11, so that an official authorized by federal or state law, in the state the ballot is cast, may administer the required oath of identity to the absentee voter.
- 7) Adds a new renumbered Section 9 which defines "State Election" (thereby discluding local elections that might be run by the Division of Elections such as an REAA school board election or a local option election).
- 8) Adds a new renumbered Section 10 which prohibits the electronic transmission of absentee ballots during the Primary Election in 1994, and which only allows ballots from outside of Alaska to be sent by electronic transmission during the General Election in 1994.
- 9) Adds a new renumbered Section 11 which is an immediate effective date (barring the stipulations for the 1994 Primary and General Elections).

A M E N D M E N T (1)

OFFERED IN THE HOUSE
TO: CSHB 49(JUD)

BY REPRESENTATIVE MARTIN

Page 2, line 7, after "state":

Insert "primary, general, or special"

Page 2, line 23, after the first occurrence of "electronic transmission":

Insert "in a state election"

Page 2, line 23, after "voting":

Insert "in a state election"

Page 3, line 8, after "States":

Insert "applying for an absentee ballot for a state election"

Page 3, line 20, after "application":

Insert "for an absentee ballot for a state election"

Page 4, line 2, after "ballot":

Insert "for a state election"

Page 4, line 4, after "application":

Insert "for a state election ballot"

Page 5, following line 9:

Insert a new bill section to read:

** Sec. 10. AS 15.20 is amended by adding a new section to read:

Sec. 15.20.225. DEFINITION OF "STATE ELECTION." In AS 15.20.010 -

15.20.225, "state election" means a primary, general, or special election a purpose of which is to

- (1) select, nominate, or elect a governor and lieutenant governor, an acting governor, a state senator, or a state representative;
- (2) select, nominate, or elect delegates to a constitutional convention;
- (3) approve or reject an initiative submitted under art. XI of the state constitution and AS 15.45.190 - 15.45.200 or a referendum submitted under art. XI of the state constitution and AS 15.45.420 - 15.45.440;
- (4) recall an official identified in (1) of this section when authorized by art. XI of the state constitution and AS 15.45.650 - 15.45.690;
- (5) approve or reject a proposed constitutional amendment submitted under AS 15.50; or
- (6) ratify or reject a state general obligation bond when authorized by AS 37.15."

ELECTIVE DISTRICT 14
ELMENDORF A.F.B.
EAST ANCHORAGE
GOVERNMENT HILL

REP. TERRY MARTIN



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Alaska House of Representatives

SPONSOR SUMMARY

CSHB 49 (JUD)

An Act relating to absentee voting by electronic transmission.

Per a request by the Secretary of Defense, Federal Voting Assistance Program Director Phyllis J. Taylor, I requested LAA Legal Services to draft HB 49. With new committee changes resulting in CSHB 49 (JUD), the intent is to allow residents of Alaska, outside the U.S., the opportunity to vote by electronic transmission (fax) if a potential exists that their mailed application and ballot will be late.

Need for Legislation

In consideration of the 1990 Desert Storm conflict, the difficulty in sending and receiving ballots from outside the U.S. has escalated through failures in our postal system, electoral regulation changes and misunderstanding by voters. With regards to the military, reports reveal that there are 26,281 Alaska residents serving in the Armed Forces alone, with over 19,000 spouses and dependents of voting age, and almost 5,750 residents not affiliated with the federal government, but eligible to vote in Alaska. These figures do not include all other Alaskan residents who vote out of state by absentee. In total, a good proportion of these absentee voters are outside of the United States and find the absentee voting process to have problems when mail service is the only means to apply and vote in an Alaskan election.

The national trend is to expand voting practices and allow those individuals voting absentee the most expeditious means by which they can cast their ballot. In terms of Alaska's requirements, there is a 36-45 day ballot transmission time. Ballots are mailed 21-30 days before the election. Marked ballots mailed by voters within the United States will be counted if postmarked by the day of the election and if received by the Division of Elections by the tenth day following the election. Ballots returned by voters outside the United States must be received by the Division of Elections by the fifteenth day following the election. Alaska also provides a Special Write-in Absentee Ballot, which is available 60 days before the election.

In the 1988 presidential election, 200,000 military personnel who tried to vote absentee were unable to do so because they didn't receive their ballot on time or at all. Presently, seven (7) states allow the electronic transmission of absentee ballots: California, Hawaii, Louisiana, Montana, North Dakota, Utah, and Washington. In the 1992 presidential election, 140 individuals voted by electronic transmission. In addition, 699 election offices in 49 states utilized fax machines to distribute information and material.

The purpose of CSHB 49 (JUD) is to decrease lost, delayed, or denied absentee ballots from overseas (and in the U.S., in specific cases). The use of electronic transmission maintains confidentiality, while at the same time, is fast and efficient. In essence, it expands the use of alternative voting procedures which might otherwise disenfranchise an Alaskan resident voting absentee. In other states, such as Montana, the use of facsimile machines for absentee voting has been integrated into statute. Through a set of specific guidelines and a regulated procedure established in CSHB 49 (JUD), those voters outside of the United States, unable to return to Alaska during a federal or state election, would also be afforded the opportunity to cast their vote via electronic transmission.

PRIMARY CHANGES IN THE LAW:

1. CSHB 49 (JUD) categorizes three types of absentee voter and the corresponding requirements to vote absentee:

(1) **OUTSIDE THE U.S.** - Will be allowed to request an application and upon receipt from the Division of Elections (by mail), may send by electronic transmission the completed application. The division will then fax by electronic transmission the ballot and the absentee voter may return the marked ballot by fax to the division, but it must be returned by the close of the polls in the evening of the election.

(2) **OUTSIDE OF ALASKA (IN U.S.)** - Will be faxed a ballot on the occurrence that an application for an absentee ballot is received less than 7 days prior to the election by the Division of Elections. The director will determine if the ballot may be faxed. If faxing the ballot is allowed, upon receipt and completion the absentee-voter must send the marked ballot to the Division of Elections by mail and it must be postmarked by the day of the election.

(3) **IN ALASKA** - No change. The absentee voter will be allowed to participate through the in-state absentee voter process which is very accommodating as the law exists today (e.g., the division provides in-person absentee voting at absentee voting stations throughout Alaska).

2. The bill requires the absentee voter, upon completion of the ballot, to accompany it with a statement, under oath, witnessed by: a commissioned or non-commissioned officer of the Armed Forces of the U.S.; an official authorized by federal law or Alaskan law to administer an oath; or two United States citizens.

3. Finally, as noted, the bill changes the time period for the request of the delivery of an absentee ballot application from four (4) days prior to the election to seven (7) prior to the election.

The remainder of the changes are for clarity between mailing and faxing absentee applications and ballots.

ELECTIVE DISTRICT 14
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Alaska House of Representatives

SECTIONAL ANALYSIS

CSHB 49 (JUD)

An Act relating to absentee voting by electronic transmission.

Section 1. (1) References the untimely delivery and receipt of absentee ballots due to mailing and distance delivery problems.

(2) Confirms that international postal service can be unreliable, other than for military personnel.

(3) Notes that the use of electronic transmission would be an expeditious method of sending absentee ballots.

(4) Promotes the use of electronic transmission in Alaska and clarifies the purpose of CSHB49(JUD) as allowing:

- (b) (1) Voters outside of the United States to receive an absentee ballot by electronic transmission providing adequate security and secrecy exists.
- (2) Voters outside the state, in the U.S., under time constraints, to have a ballot delivered providing adequate security and secrecy exists.
- (c) Maintains that the in-state absentee voting process will not be altered.

Section 2. Adds a new section on voting by electronic transmission:

- (a) Allows for transmission of ballot to absentee voter outside of U.S.
 - (1) Requires the voter to continue complying with time deadlines.
 - (2) Ensures accuracy and secrecy.

- (b) Requires statement of identification under oath, witnessed by:
- (1) Commissioned/non-commissioned officer of the Armed Forces in the U.S.
 - (2) Official of federal government or Alaska that can administer oaths.
 - (3) Two United States citizens.

Section 3. Allows an absentee voter outside of the U.S. to apply for an absentee ballot by electronic transmission and requires the inclusion of the fax number in use.

Section 4. Requires the request for the delivery of an absentee ballot to be received or faxed not less than seven (7) days before the election. Prohibits the use of electronic transmission for voter registration.

Section 5. States that the director of elections shall send the absentee ballot/materials by priority mail, unless the absentee voter resides outside of the U.S. and requests the delivery by electronic transmission. In addition, if an individual outside of Alaska, but residing inside the U.S., mails the request in the allotted time and the director concludes that the ballot's distribution may be delayed through mail, the use of electronic transmission may be utilized by elections, but the marked ballot must be returned by mail and postmarked by the day of the election.

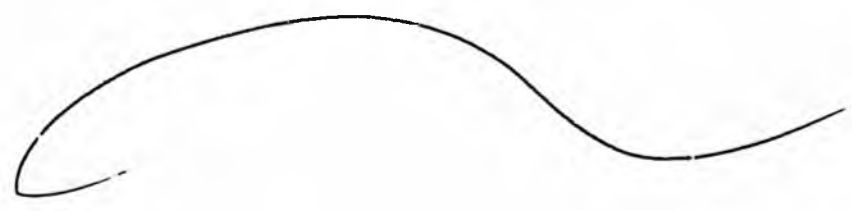
Section 6. Requires the absentee ballot, whether mailed or faxed, to be postmarked (or faxed), by the close of the election day.

Section 7. Adds that those who use electronic transmission must also be included on the division's absentee list of voters in the state.

Section 8. States that the use of electronic transmission is not applicable in the use of the federal write-in absentee ballot for overseas voters (which involves a blank ballot with the list of candidates if certification has not occurred).

Section 9. Allows the absentee voter to write-in candidates on the ballot if the wrong ballot is sent, but the candidates written in must be eligible.

Correspondance



DIVISION OF LEGAL SERVICES

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(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 21, 1994

SUBJECT: CSHB 49 (State Affairs), relating to absentee voting and voting application by electronic transmission (Work Order No. 8LS-0359R)

TO: Representative Terry Martin

FROM: Jack Chenoweth
Legislative Counsel

I have had two inquiries from Tom Anderson of your office.

I

The first asks me to revisit those portions of the original bill (HB 49) and the State Affairs Committee's Substitute (CSHB 49 (STA)) on the matter of amendment of AS 15.20.081(b). That provision currently states:

(b) An application for an absentee ballot by mail must be received by the division of elections not less than four days before the election for which the absentee ballot is sought. The absentee ballot application must 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.

Under current law, that requirement--which I take to be a reference to the fourth day before an election, that is, the Friday immediately preceding the election--is a "drop dead" date for processing absentee voting applications. Under current law, those may be received only by mail. Under the original version of the bill, the "drop dead" date for receipt of **mailed** absentee ballot applications was not changed. Instead, what was first proposed was the addition of a two-day-before-the-election "drop dead" date for responding to absentee ballot applications received by fax.

The State Affairs Committee referred this bill to a subcommittee. I recall a meeting with the subcommittee representative, former Elections Director Charlot Thickstun,

others of her staff, and Mr. Anderson to review the bill. My notes indicate that Ms. Thickstun urged that the four day "drop dead" date be made over into a seven-day-in-advance "drop dead" date, and a version of a committee substitute was prepared that, among other things, did that. At some point thereafter, I was asked to eliminate the reference to "received by the division" and substitute "postmarked." The seven day reference inserted into the earlier draft was not changed.

With those changes, insofar as it applies to absentee applications made by mail, AS 15.20.081(b) is no longer a "drop dead" provision.^{1/} Mailed absentee ballot applications may come in to the division's offices as late as the day of election and still receive attention. This outcome is consistent with, and somewhat tempered by, the additional provision inserted in AS 15.20.081(c) directing the director to make reasonable effort to contact the prospective absentee voter by phone to ascertain whether the ballot should be provided by mail or fax.

Nothing in the changes made by the State Affairs Committee Substitute is cast in stone. If the current director wants to suggest additional changes in light of experience, hear him out. It may be sufficient to go back to the "drop dead" deadline approach of receipt within X number of days before the election.

II

The second question arises in conjunction with language of the bill permitting casting of faxed ballots, the likelihood that the nature of the handling of transmitted faxed ballots would not provide the same level of assurance of the voter's privacy interest in the ballot, and the possibility that ballots cast by fax would contravene the right of privacy recognized in article I, section 22 of the state constitution.^{2/} Since faxed balloting relies on an emerging technology, our response to the criticism was to include language directing that, by regulation, the director act to

... ensure the accuracy and, to the greatest degree possible, the integrity and secrecy of the ballot process.

^{1/} But faxed absentee voter applications, which could only be submitted by qualified voters residing outside the United States, would have to be received by the Division of Elections no later than seven days before the election. See the second sentence of AS 15.20.081(b), in sec. 4, CSHB 49 (STA).

^{2/} The constitutional provision states:

RIGHT OF PRIVACY. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

Representative Terry Martin
January 21, 1994
Page 3

Implicit in that statement, I think, is an honest recognition that a high degree of integrity and secrecy could be provided in the handling of faxed ballots, but there would not be an absolute.

The decision to rely on the regulation follows the model of the relevant Montana statute, § 13-13-278(1) which, after directing the Secretary of State to adopt reasonable rules under the general rulemaking power, says:

. . . The rules must maintain the accuracy, integrity, and secrecy of the ballot process

Montana's Constitution, like Alaska's contains an explicit right of privacy.^{3/} Now, as I remarked in the conclusion of my February 15, 1993, memo to Representative Kott, a copy of which was sent to you, in most meetings involving the election process voting is a fundamental right. If there is a right of privacy argument to be made with respect to the integrity and secrecy of faxed voting, then, as I read the language of the Montana Constitution, the more stringent "compelling state interest" test must be applied; similarly, in Alaska, by court decision, the test applicable to measure whether a law that impinges on the constitutionally guaranteed right of privacy is justified is one that requires a showing of a legitimate and compelling government interest. Messerli v. State, 626 P.2d 81 (Alaska 1980).^{4/}

My point is this: Montana has enacted a faxed voting provision and directed the official who administers its elections to develop rules to implement the procedure and, so far as I have been able to determine, the enactment has not brought a successful privacy-based challenge.

Other states that, one year ago, provided for faxed voting were Louisiana, North Dakota, Utah, and Washington. Two of the four, Louisiana and Washington, have constitutional rights of privacy, though neither is as clear and stringent as the Montana provision earlier cited.

JBC:pl
94-059.plm

^{3/} See article I, section 10 of the Montana Constitution:

RIGHT OF PRIVACY. "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without a compelling state interest.

^{4/} Concededly, the Messerli test may be dated; other cases concerning privacy consider whether the party seeking to assert the right exhibits a subjective expectation of privacy "that society is prepared to recognize as reasonable." State v. Glass, 583 P.2d 872, 875 (Alaska 1978).



155 SOUTH SEWARD STREET
JUNEAU, ALASKA 99801

January 27, 1994

Mr. Tom Anderson
The Office of Representative Terry Martin
Alaska State Legislature
State Capitol
Juneau, Alaska 99811

Dear Tom:

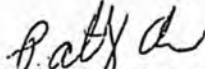
It was a pleasure to have the opportunity to meet with you about CS for House Bill No. 49 (STA).

Concern had apparently been raised that House Bill 49 would apply to municipal elections as well as state elections. In reviewing the bill, it applies only to Title 15, which is the State Election Code. Municipal election requirements are contained in Title 29 of Alaska Statutes. Municipalities generally adopt their own election ordinances and may pattern their election codes after State Statutes, however, there are no requirements for municipalities to adopt the State Code.

The City and Borough of Juneau revised its own election code about two years ago and now allows voters to request an absentee ballot by facsimile. The facsimile application must be received no later than five days before the date of the election. Our experience with the facsimile application is that it works well and voters have been pleased to have it as an option. At the time that the Assembly considered revisions to the City and Borough's election code, the facsimile transaction of ballots to the voters and of ballots returned from the voters was considered but not adopted.

If I may be of assistance or provide additional information, please do not hesitate to contact me.

Sincerely,


Patty Ann Polley, CMC
Municipal Clerk

PAP:etp

SECRETARY OF STATE
STATE OF MONTANA



Mike Cooney
Secretary of State

Montana State Capitol
PO Box 202801
Helena, MT 59620-2801

FAX COVER SHEET AND 2 PAGES

TO: Tom Anderson
Office of Representative Terry Martin

FAX #: (907) 465-2294

FROM: Angela Fultz, Elections Director
Montana Secretary of State's Office
Fax # 406-444-3976

DATE: January 25, 1994

NOTE: Hope this helps! Let me know
if we can provide you with
anything further!
A.

If problems please call 406-444-5376.

Reception: (406) 444-2034 - Business Services Bureau: 444-3665 - Elections Bureau: 444-4732
Administrative Rules Bureau: 444-2055 - Records Management Bureau (1320 Bozeman Avenue): 444-2716
Fax: 444-3976

ELECTIONS

44.3.1504

Sub-Chapter 15

Facsimile Voting for Electors of the
United States Service

44.3.1501 FACSIMILE MACHINE ACCESS (1) A county election administrator desiring to offer this service, must use a facsimile machine that is secure from unauthorized access. Access to the facsimile machine must be limited by the following means:

(a) It is physically located in the office of the election administrator; or

(b) It has the technological ability to store the ballots that are faxed and that ballots stored in such manner can only be accessed by the election administrator or specially appointed deputies. (History: Sec. 13-13-278, MCA; IMP, Sec. 13-13-277, MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92.)

44.3.1502 HANDLING OF FACSIMILE BALLOTS (1) Facsimile ballots for electors in the United States service shall be handled in the same manner as absentee ballots when the facsimile balloting rules do not specify procedure. (History: Sec. 13-13-278, MCA; IMP, Sec. 13-13-277, MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92.)

44.3.1503 BALLOT TRANSMISSION (1) Upon request for a facsimile ballot, an election administrator who has received a valid application from an elector in the United States service shall send by facsimile transmission a transmission slip and ballot containing the following information:

(a) The transmission slip shall include instructions to the elector and a notice that the elector's ballot will not be secret in that it will be received by the election administrator and the elector's votes will be transcribed to the original ballot by a panel of no less than two election judges;

(b) Original transmission slip and original ballot shall be retained in a secure absentee envelope. (History: Sec. 13-13-278, MCA; IMP, Sec. 13-13-277, MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92.)

44.3.1504 RECEIVING BALLOTS (1) The election administrator shall receive all facsimile ballots. As the ballots are printed out by the machine they shall be checked by the election administrator to ensure that they are:

(a) readable in that the transmission has not made it unable for the election judges to determine the elector's intentions; and

(b) the elector has signed an affirmation. (History: Sec. 13-13-278, MCA; IMP, Sec. 13-13-277, MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92.)

44.3.1505

SECRETARY OF STATE

44.3.1505 BALLOT LOG (1) The election administrator shall keep an official log of all ballots transmitted and received via a facsimile device. (History: Sec. 13-13-278, MCA; IMP, Sec. 13-13-277, MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92.)

44.3.1506 ELECTOR AFFIRMATION (1) If the affirmation is missing or the ballot unreadable, the election administrator shall attempt to notify the elector of this problem. (History: Sec. 13-13-278, MCA; IMP, Sec. 13-13-277, MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92.)

44.3.1507 BALLOT ACCEPTANCE (1) If the returned faxed ballot is acceptable, the election administrator shall log in the receipt of the ballot and place it in the secure absentee envelope with the original ballot until the ballots are ready to be transcribed. (History: Sec. 13-13-278, MCA; IMP, Sec. 13-13-277, MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92.)

44.3.1508 TRANSCRIPTION OF BALLOTS (1) On or before election day, the election administrator shall have the ballots transcribed using the procedure prescribed for assistance to handicapped voters.

(2) No less than two election judges shall participate in the transcription process to transfer the electors vote from the faxed ballot to the standard ballot used in the precinct.

(3) There shall be noted next to the electors name in the precinct register "Fax Ballot".

(4) A faxed ballot code number shall be written on the original transcribed ballot and the facsimile ballot.

(5) The election judges who transcribed the ballot shall sign in the log next to the name of the elector. (History: Sec. 13-13-278, MCA; IMP, Sec. 13-13-277, MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92.)

44.3.1509 ELECTION JUDGES AND BALLOT SECRECY (1) No one participating in the fax ballot process may reveal any information about the elector's ballot. (History: Sec. 13-13-278, MCA; IMP, Sec. 13-13-277, MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92.)

Sub-Chapter 16 reserved

Back up



INSIDE THE BELTWAY

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Take care when tangling on the Senate floor with Robert Byrd.

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So it won't cost nearly as much as we predicted. Of course, that's what they said about the Hubble, and the S&L bailout, and ...

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SUBMITTED BY: REP. MARTIN
REF: HB49
1/25/93

December 1992

Voting Information News Vol. 2 No. 12

A roundup of voting news from the Federal Voting Assistance Program (FVAP) ✓ ✓ For voters, potential voters and those who assist voters.

In November 3 election

Electronic Transmission of Voting Materials

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Voters using this alternate method should always consult Chapter 3 of the *Guide* as well as *Appendix I* to see if their State allows for the electronic transmission of materials and insure that the proper procedure is followed when faxing.

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Increased participation reflects nat'l trend

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In Minnesota's 2nd Congressional district, less than 600 votes separated Republican Cal Ludeman from Democrat David Minge, out of a total of 263,000 votes cast. Ludeman conceded defeat on November 12.

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Even more interesting is that not only will these absentee voters determine the outcome of the James-Krenzer race, they will also determine which party will have the majority in the Senate. Both Republicans and Democrats currently have ten seats each in the twenty-one member Nevada Senate, making participation by all 122 absentee voters even more critical.

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Official canvassing (counting) for this race will be completed on November 18. At that time the losing candidate can accept the official results or choose to file a petition with the State. In the latter case, a presiding judge, a referee and two members of the elections commission will conduct an official recount.

Absentee ballots accounted for 32% of the total 24,448 votes cast in the race for the 38th State senate seat in Texas. Challenger Jim Solis, a Democrat, edged out Republican incumbent Ken Sluriet by 34 votes. The 7,838 absentee ballots out of a total 24,448 votes cast proved that absentee voting again played a significant role.

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The News and Observer (Raleigh, NC)

Local/State

Thursday, October 18, 1990

Page B-1
B-2

Fax to send ballots back from desert

Troops can transmit their absentee votes

By JOHN DAY
Staff writer

Thousands of voters will face heat, sand and scorpions on election day, but their ballots will count as part of an unusual voting scheme set up for U.S. troops stationed in the Persian Gulf.

Soldiers, Marines, sailors and airmen in the region who want to vote will be able to apply for absentee ballots — and even vote on Nov. 6 — via facsimile machines.

"This is an emergency ballot process that's been developed to make sure the troops get to vote," said W. Edward Weems Jr. president of Election Technology Co. of Raleigh, which is handling the fax voting for all U.S. personnel taking part in Operation Desert Shield.

Although many troops from North Carolina military bases have been sent to Saudi Arabia, voting officials say it's impossible to tell how many of them are registered North Carolina voters.

Meanwhile, the campaigns of the two candidates for U.S. Senate — Republican Sen. Jesse A. Helms and Democratic challenger Harvey B. Gantt — say they are doing nothing special to rope in the desert vote, even as pollsters are saying the race is a dead heat.

"Maybe that's what we ought to do," said Susan Jetton, Mr. Gantt's press secretary. "But we're doing nothing other than speaking generally to audiences which include wives, mothers and fathers and loved ones, and hop-

Fax to send votes back from gulf

Continued from page 1B

ing that they spread the word. (Troops) are not a specified thing."

Beth Burrus, spokesman for the Helms campaign, responded to a reporter's question via facsimile machine:

"We are appealing to the troops on issues such as Senator Helms' support of a strong national defense and Harvey Gantt's wanting to cut defense's \$300 billion."

Political observers said it was impossible to tell if the absence of thousands of North Carolina-based military personnel, including reservists and National Guardsmen, would have any effect on the state's elections.

"Servicemen overseas have always voted in larger numbers than those stationed at home, and I have no idea why except it's something to do that breaks up the monotony," said Alex K. Brock, director of the State Board of Elections. "But I wouldn't think it would have much of an effect."

Under the fax voting system, military voters can apply for absentee ballots with facsimiles sent to their local elections hoards. After voting, they may either mail the ballots in or — in states that permit it — send them via a fax machine.

Mr. Weems' firm is coordinating the transmitting and receiving of ballots from its Raleigh office. About 20 states have signed up for fax balloting. Mr. Weems said he expected the volume of ballots to increase soon.

"There's just been a few hundred coming in so far, but we expect thousands more as it gets closer to election day," he said.

The Department of Defense also has provided absentee-ballot applications for troops. Soldiers stationed in the Eastern Province of Saudi Arabia said Wednesday by telephone that applications were being distributed by voting assistance officers assigned to each military unit.

"I saw the boxes of ballots as they were unloaded, and they filled a hallway," said Maj. Baxter Ennis, a spokesman for the Army's 82nd Airborne Division. "There were 10,000 or 15,000 at least."

He said interest in the election was fairly strong among troopers of the 82nd, normally based at Fort Bragg.

"There are some who are very intensely interested in the election and there are others who wouldn't vote if they lived next door to a polling place," Maj. Ennis said. "But I'd say most people will take the opportunity to vote."

1st Lt. Charles Hoskinson of Greenville, a member of the Raleigh-based 382nd Public Affairs Detachment of the N.C. National Guard, said he had voted via absentee ballot in Saudi Arabia.

"I already had requested a ballot from the Pitt County elections board, they sent it to me. I voted and I've already sent it it," he said.



SUBMITTED BY: REP. MARTIN
REF: HB49
1/25/93

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NUMBER:

DATE:

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November 5, 1992

Electoral Cliff Hanger in Nevada's Eighth State Senatorial District

Nevada is counting on absentee ballots from 122 members of the Armed Forces and citizens overseas to determine the outcome of the State senate race in the eighth district which includes Las Vegas. At last count, twenty-four votes separated Republican Mark James with 20,709 votes from Democrat Sandi Krenzer who was trailing with 20,685 ballots cast in her favor.

Voted ballots must be received by 5:00pm on November 17.

Not only will these voters determine the outcome of the James-Krenzer race, they will also determine which party has the majority in the State Senate. Both Republicans and Democrats currently have ten seats each in the twenty-one member Senate.

Regardless of the final results, this electoral cliff hanger in Nevada once again proves that every vote can make a difference in determining the outcome of any election.

Additional questions which cannot be answered locally can be addressed to the Director, FVAP, Office of the Secretary of Defense, Rm. 1B457, The Pentagon, Washington, DC 20301-1155.

End

Democracy Counts ...On Your Vote!

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If bureaucracy doesn't get in the way, some six million military and civilian voters stationed overseas may cast their next presidential votes by fax.

That high-tech forecast comes from Henry Valentino, director of the Defense Department's Federal Voting Assistance Program. He says that ultimately, the fax may be the only way to ensure fair absentee voting. "There is court precedence for [accepting] digitized [faxed] signatures," he says. "It seems like the next logical step, but it may not happen until 1996. It took us four years to get ballots in embassies."

Currently Valentino concedes, a combination of application deadlines and foreign postal service routinely conspire to subvert long-distance democracy.

"[T]here's a problem, primarily in the transit time needed for absentee ballots," Valentino says. . . .

Valentino's efforts to better the system have included making federal write-in ballots available at embassies and establishing the DoD Voting Information Center, a hotline through which voters can access campaign messages. The DoD service, which uses the military Autovon network and civilian long distance lines, has proven popular since its debut in August '88. In its first 72 days, the Voting Information Center logged 20,000 calls from potential voters and frequent messages from at least one presidential candidate.

"[Then Vice President] Bush recorded personal messages for the election. He changed his message weekly the month before the election and daily election week," Valentino says. "Dukakis made one message and never changed it."

Military o'seas count may

15

change congressional seats

By William Matthews
Times staff writer

WASHINGTON — Thanks to a change in the way the 1990 Census will be taken, military personnel stationed overseas will contribute to a swing in the nation's geographic balance of political power.

According to demographers, the 1990 Census probably will mean a big gain in the House of Representatives for California and the loss of seats in a host of eastern states.

For the first time in 20 years, military personnel stationed abroad will be counted in data used for apportionment purposes — meaning that even though they live overseas, service members will be counted as residents of congressional districts in the United States.

But they will not necessarily be counted as residents of their home towns or the states where they license their cars and pay their taxes. The Census Bureau has decided that for apportionment purposes, military personnel and civilian Defense Department employees will be counted as residents of the last place they lived in the United States for six months or longer before being sent overseas.

The change was made in response to concerns expressed by Congress that up to 1.6 million members of the military, their dependents and civilian Defense Department employees were being left out of apportionment.

Compared to other factors that cause population shifts among the states — shifts in industry, migration and immigration, births and the like — counting military personnel who are stationed overseas makes only a minor difference, said Kimball Brace president of Election Data Services Inc., a consulting firm that specializes in redistricting.

But in a few states, the inclusion of the military stationed abroad will probably make enough difference to determine the gain or loss of "a couple of seats," he said.

Officials at the U.S. Census Bureau said they were unable to predict with certainty which states would lose seats, but they said southern "Sun Belt" states are the likely gainers.

Analysts at Election Data Services tend to agree. In addition to California's big gain, the company predicts Florida will pick up three or four seats, Texas will add three, and Virginia, Arizona, Georgia and North Carolina will each gain one seat.

In addition to having a large military presence, the states expected to gain congressional seats have had strong population growth in the past decade. The states likely to lose congressional seats are those with small military populations and little or no popu-

lation growth.

Because the number of House seats is fixed at 435, what one states gains, another state must lose.

Election Data Services predicts New York will lead the losers, giving up three seats. Pennsylvania, Ohio, Michigan and Illinois are

each expected to lose two House seats; Montana, Kansas, Iowa, West Virginia and Massachusetts are expected to each lose one, and Kentucky may also lose one.

When the last census was taken, in 1980, members of the military stationed abroad and civilians who worked for the Defense De-

partment overseas were counted in the tally of U.S. citizens, but they were not counted when data were compiled to apportion congressional districts, Brace said.

In 1988, the House of Representatives rejected legislation that would include overseas military personnel in apportionment data.

But last year the Commerce Department, which operates the Census Bureau, agreed to include overseas military personnel for apportionment purposes.

Census information will be collected by the Defense Department with technical assistance from the Census Bureau.