

HB

47

HOUSE COMMITTEE REPORT

7) Date Referred: March 5, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-25-94

The JUDICIARY Committee considered:

HB 47

HOUSE BILL NO. 47

ABSENTEE BALLOTS - PRIMARY ELECTIONS

An Act relating to the delivery of the primary ballots to persons making application for them when, by operation of political party rule, two or more primary ballots must be provided to the public."

RECOMMENDATIONS:

be replaced with CSHB(47) Jud 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 Div. of Elections (3/25/94)

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING/DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>Jim Donahue</i>			<input checked="" type="checkbox"/>
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>Channette James</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>Liz Phillips</i>	<input checked="" type="checkbox"/>				

[Signature]
CHAIRMAN'S SIGNATURE

8-LS0351NR
Chenoweth
2/8/94

CS FOR HOUSE BILL NO. 47(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MARTIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to primary elections and to the delivery of the primary ballots
2 to persons making application for them when, by operation of political party rule,
3 two or more primary ballots must be provided to the public; preventing a voter
4 from changing the voter's party affiliation within 30 days of a primary election
5 when two or more primary ballots must be provided to the public; and annulling
6 a related regulation; and providing for an effective date."

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

8 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) To implement the stipulation
9 and approval entered into between the state and various parties in the case captioned Zawacki
10 v. State, No. A-92-414-Civil, in the United States District Court for the District of Alaska, the
11 lieutenant governor prepared and adopted a series of emergency regulations, codified as 6
12 AAC 28. Among the provisions was a subsection, 6 AAC 28.040(c), directing that "if an
13 applicant for an absentee ballot does not indicate a ballot preference on the absentee ballot

1 application, the director [of elections] will send the applicant the open primary (statutory)
2 ballot." As a result of the stipulated subsection, persons registered to the one political party
3 whose rules then required the use of a ballot containing a listing of candidates limited to those
4 who were registered as members of that political party received the absentee ballot for the
5 September 8, 1992, primary that contained the names of candidates seeking the nomination
6 of other political parties. The regulations in question lapsed, effective November 7, 1992, and
7 do not apply to future primary elections. The division of elections has since adopted a
8 permanent regulation, 6 AAC 28.130(c), making the same provision.

9 (b) The purpose of AS 15.20.155, added by sec. 2 of this Act, is to establish that, for
10 purposes of guiding state primary elections after June 30, 1994, if a political party's rules
11 require the use of an absentee ballot containing a listing of candidates limited to those who
12 were registered as members of that political party, absentee ballot applicants shall receive the
13 primary election ballot of their choice or, in the event of failure to indicate a choice or lack
14 of opportunity to make the choice, shall receive the appropriate primary election ballot or, if
15 the director is unable to make a determination of the appropriate primary election ballot after
16 review of relevant division records, shall receive the open primary (statutory) ballot.

17 (c) It is the intent of the legislature in enacting secs. 3 and 4 of this Act to amend the
18 nominating process to take into account the decision in Tashjian v. Republican Party of
19 Connecticut, 479 U.S. 208 (1986).

20 * Sec. 2. AS 15.20 is amended by adding a new section to read:

21 Sec. 15.20.155. DELIVERY OF PRIMARY BALLOT. (a) The provisions
22 of this section apply to a state primary election held on or after July 1, 1994, when

23 (1) the central committee or other governing body of a political party
24 adopts a rule that, notwithstanding AS 15.25.010 - 15.25.130, nominees of the party
25 may not be chosen by a primary election open to all voters, but rather shall be chosen
26 by a primary election that is limited to voters whose political affiliation or
27 nonaffiliation is designated by the party rules; and

28 (2) the director is prevented by application of that rule from providing
29 to a voter the ballot of a political party if, under the rules of that party, the voter
30 would not be eligible to vote in that party's primary election.

31 (b) If an applicant for an absentee ballot under AS 15.20.071, 15.20.081, or

1 15.20.082

2 (1) indicates a ballot preference on the absentee ballot application when
3 an opportunity to indicate the preference has been provided on the application, the
4 director shall deliver to the applicant the primary ballot indicated on the application
5 unless the director reasonably believes the applicant does not qualify to vote in that
6 party's primary election;

7 (2) does not qualify to vote in a party's primary election for which the
8 applicant has indicated a ballot preference, does not indicate a ballot preference on the
9 absentee ballot application when an opportunity to indicate the preference has been
10 provided on the application, or has not been given an opportunity on the application
11 to indicate the applicant's preference, the director shall deliver to the applicant the
12 primary ballot that is appropriate based on the applicant's political party affiliation or
13 nonaffiliation; the director shall make the determination of appropriateness of the
14 primary ballot on the basis of voter registration documents maintained by the director
15 as follows:

16 (A) the director shall determine whether the applicant has filed
17 a change of party registration at the same time the person has filed an
18 application for an absentee ballot; if the person has

19 (i) filed a change of party affiliation and the change of
20 party affiliation may take effect before the primary election, the director
21 shall make the determination of appropriateness of the primary ballot
22 on the basis of the affiliation designated by the applicant on that change
23 of party registration form;

24 (ii) not filed a change of party affiliation, or has filed a
25 change of party affiliation that may not take effect before the primary
26 election because of the operation of AS 15.25.090(b), the director shall
27 make the determination of appropriateness of the primary ballot on the
28 basis of the then current registration of the applicant;

29 (B) the primary ballot that is appropriate based on the
30 applicant's political party affiliation or nonaffiliation is

31 (i) the ballot described in AS 15.25.060(b) of the

1 appropriate political party, if the applicant's registration shows
2 affiliation with a political party for which a separate ballot is required
3 under AS 15.25.060(b); or

4 (ii) the statutory primary ballot described in
5 AS 15.25.060(a) in cases not described in (i) of this subparagraph.

6 * Sec. 3. AS 15.25.060 is amended to read:

7 Sec. 15.25.060. PREPARATION AND DISTRIBUTION OF BALLOTS. The
8 primary election ballot shall be prepared and distributed by the director in the manner
9 prescribed for general election ballots except as specifically provided otherwise for the
10 primary election. Except when (b) of this section otherwise requires, the [THE]
11 director shall place the names of all candidates who have properly filed in groups
12 according to offices filed for, without regard to party affiliation. The names for each
13 office shall be rotated as provided for the general election ballot. Blank [NO
14 BLANK] spaces may not [SHALL] be provided on the ballot for the writing or
15 pasting in of names. The ballot prepared under this subsection shall be designated,
16 prominently labeled, and referred to as the "statutory primary ballot." In this
17 subsection, "statutory primary ballot" means that the ballot is available to all
18 qualified and eligible voters of the state.

19 * Sec. 4. AS 15.25.060 is amended by adding new subsections to read:

20 (b) If, for a primary election held on or after July 1, 1994, (1) the central
21 committee or other governing body of a political party adopts a rule that,
22 notwithstanding AS 15.25.010 - 15.25.130, nominees of the party may not be chosen
23 by a primary election open to all voters, but rather shall be chosen by a primary
24 election limited to voters whose political affiliation or nonaffiliation is designated by
25 the party rule; (2) the central committee or other governing body of the party delivers
26 a copy of the rule to the director no later than March 1 of the year in which a primary
27 election is to take place; and (3) the rule has been submitted to the United States
28 Department of Justice for review under 42 U.S.C. 1973c (section 5, Voting Rights Act
29 of 1965, as amended) and the Department of Justice has provided an affirmative
30 indication of nonobjection to the rule's implementation, the director shall prepare a
31 separate ballot listing only the candidates of that party, and shall authorize the

1 distribution of that ballot only to the registered voters who are eligible to vote in that
2 party's primary under the party rule. Candidates who are listed on a separate ballot
3 under this subsection may not be listed on the ballot described in (a) of this section.
4 The names of the candidates for each office shall be rotated as provided for the general
5 election ballot, and blank spaces may not be provided on the ballot for the writing or
6 pasting in of names. A ballot prepared under this subsection shall be designated,
7 prominently labeled, and referred to as the "(insert name of the party whose candidates
8 appear on the ballot) party primary ballot."

9 (c) If at a primary election under AS 15.25.010 there is more than one ballot
10 available, a registered voter may choose which ballot the voter wishes to use. A voter
11 may not be given more than one ballot, and may not be given a ballot of a political
12 party if, under the rules of that party as delivered to the director under (b) of this
13 section, the voter would not be eligible to vote in that party's primary election.

14 * Sec. 5. AS 15.25.090 is amended by adding a new subsection to read:

15 (i) The director shall change the party affiliation of a registered voter when
16 requested by the voter. However, when a primary election involves a ballot required
17 by AS 15.25.060(b), the director may not change a registered voter's party affiliation
18 during the period after the 30th day preceding the primary election and the date of the
19 primary election.

20 * Sec. 6. 6 AAC 28.130(c) is annulled.

21 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

OFFICE OF THE GOVERNOR

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

POSITION PAPER

FOR

CSHB47

The Division of Elections acknowledges the associational rights of Alaska's political parties to determine who can vote in their primaries.

We oppose CSHB 47 on the following grounds:

- It will be extremely difficult to maintain the integrity of the elections process with multiple ballots being sent to a voter;
- the difficulty and cost of programming our ballot tabulation system to accommodate the rotation and cross-ballot counting the bill requires;
- the cost, nearly \$1,000,000.00, to create as many as five ballots from which each voter would select one;
- the disillusionment and confusion of the voters when asked to select one of many ballots at the polls; and,
- the difficulty in training poll workers, especially in remote areas, on how to explain the multiple ballot process to voters in such a way that the voter is not confused and/or votes the wrong ballot.

2/7/94

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

REP. TERRY MARTIN

HOME
355 DONNA DR., #11
ANCHORAGE, AK 99504
PHONE: 333-6990

Alaska House of Representatives

DURING SESSION
P.O. BOX V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE: 465-3783

SPONSOR STATEMENT

CSHB47 (STA)

An Act pertaining to the delivery of primary ballots under political party rule, when two or more ballots must be provided.

As a direct result of the 1992 Primary Election, this legislation has been drafted with the intent of requiring all absentee voter applicants to receive the primary ballot selection of their choice. In the event they do not indicate a ballot or lack the opportunity, they shall receive the appropriate primary election ballot(s) and be directed to select and mark one.

Need for Legislation

In retrospect of last year's primary, a significant number of votes were lost for primary candidates due to the Division of Elections' emergency regulation 6 AAC 28.040(c) requiring the statutory ballot to be sent to applicants failing to signify their ballot choice. Many Republican absentee voters expected a ballot aligned with their registered party affiliation. Instead, all eligible absentee voters with the affiliation of Republican, Independent, and Undeclared who did not mark their ballot preference on the absentee ballot application received the statutory ballot with only Democrat, Green, and Alaska Independent Party candidates to select. As a result, they either voted for a candidate they did not truly support or opted not to vote. In either case, this hindrance to equal selection is an example of why the regulation of the electoral process should be changed.

Sponsor Statement

CSHB47(STA) removes the barriers to the democratic process of voting in a primary election in Alaska. If an individual voting absentee does not clearly mark the desired ballot on the absentee application, the absentee voter will be sent all ballots in which he is eligible to vote under state party laws. The unmarked ballot(s) would subsequently be returned with the marked ballot and a felony charge would result if more than one ballot was intentionally marked.

In the interest of fair election practices, CSHB47(STA) would afford all voters in Alaska the complete slate of candidates they are allowed to choose from on the ballot. The 1992 Primary Election was not conducive towards the freedom of choice, which is the underlying premise for all elections in the United States. This bill corrects the current regulations.

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Alaska House of Representatives

SECTIONAL ANALYSIS

CSHB47 (STA)

An Act pertaining to the delivery of primary ballots under political party rule, when two or more ballots must be provided.

Section 1: (a) Presents findings that the emergency regulations for the primary election in 1992 directed the Division of Elections to send the open primary (statutory) ballot to those absentee voters failing to indicate a ballot preference. This, in turn, created a problem for those absentee voters who received the wrong ballot of their choice and option. The emergency regulations for distribution of statutory ballots for non-marked applications lapsed on November 7, 1992.

(b) Requires the Division of Elections to distribute all ballots an absentee voter is eligible to vote from (as per party rule) if that absentee voter failed to select the desired ballot choice on the absentee application.

(c) Amends the nominating process to take into account the Tashjian v. Republican Party of Connecticut decision requiring states to accommodate a party's decision to close its primary.

Section 2: This is the operative provision, stating that in the event a political party opts to close its primary, thereby compelling the director of Elections to use multiple ballots, a ballot would be sent as designated by the absentee voter. If the absentee voter fails to make the choice, or the choice is not provided, the appropriate ballot (s)* are to be distributed. If the individual votes both ballots, he/she may be charged with voter misconduct in the first degree, constituting a class C felony.

* Note: "appropriate ballot" in terms of the person's voter registration record.

Section 3: Changes the name of the primary ballot available to all qualified and eligible voters to the "statutory primary ballot".

Section 4: (b) Codifies the decision in the Tashjian case by adding this new subsection stating that a party can close its primary if: 1) it adopts the rule in its by-law; 2) its governing body delivers a copy of the rule to the director of Elections no later than March 1 of the year of the primary; and 3) the rule is submitted and approved by the Department of Justice. If all three steps are followed and approved, the director must make a primary ballot with only that party's candidates listed and it must be labeled "(name of party) party primary ballot".

(c) States that an in-person voter may only select one ballot and must be eligible for that ballot.

ance with a political party's constitutional associational rights. In *Zawacki v. State*, No. A-92-414 CIV, the United States District Court for the District of Alaska at Anchorage concluded that the lieutenant governor had the authority to file regulations to implement political party rules even though the legislature failed to pass legislation that was enacted into law to accommodate political party rules. (Eff. 10/23/93, Regis'er 128)

Authority: AS 15.15.010

6 AAC 28.110. PREPARATION OF BALLOTS FOR THE STATEWIDE PRIMARY ELECTION. In accordance with political party rules in effect on 10/23/93, the director of elections will prepare a statutory ballot that includes candidates of all political parties except the Republican Party, and a separate ballot that includes only the candidates who have filed for the nomination of the Republican Party in the statewide primary election. (Eff. 10/23/93, Register 128)

Authority: AS 15.15.010

6 AAC 28.120. BALLOTS. A voter who is eligible to vote in the statewide primary election may request either the statutory or Republican Party ballot. The voter may vote only one ballot. The voter's vote will be counted if the voter is eligible to vote the ballot under AS 15 and votes

- (1) the statutory ballot, regardless of the voter's political party affiliation; or
- (2) the Republican Party ballot, if the voter is registered Republican, undeclared, or non-partisan. (Eff. 10/23/93, Register 128)

Authority: AS 15.15.010

6 AAC 28.130. STATEWIDE PRIMARY ELECTION ABSENTEE VOTING. (a) The absentee ballot application for the statewide primary election will include instructions informing the applicant of the eligibility requirements for the statutory and Republican Party ballots. In addition to providing the information required by AS 15.20.081(a), the application will allow the applicant for an absentee ballot to change party affiliation and to indicate whether the applicant requests the statutory ballot or the separate ballot for Republican Party candidates.

(b) The director of elections will send an applicant for absentee voting by mail or personal representative the ballot requested by the applicant.

(c) If an applicant for an absentee ballot does not indicate a ballot preference on the absentee ballot application, the director of elections will send the applicant the statutory ballot. (Eff. 10/23/93, Register 128)

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

COPY

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

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

MEMORANDUM

February 11, 1993

SUBJECT: Voter misconduct: voting two or more ballots in a single election. (HB 47)

TO: Representative Terry Martin
ATTN: Tom Anderson

FROM: Jack Chenoweth
Legislative Counsel

Casting multiple votes in a single election may constitute a class C felony. ^{1/} Under AS 15.56.040(a)(2):

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

...

(2) votes or attempts to vote more than once at the same election with the intent that the person's vote be counted more than once;

....

The key, of course, is whether or not there is evidence that the voter intended that his or her vote be counted more than once. For purposes of the state's Criminal Code, AS 11, an "intentional" violation is one in which "the person's conscious objective is to cause" the particular result that is sought. AS 11.81.900(a)(1).

I find it hard to believe that a voter would typically want to have more than one vote cast and counted in an election. Under the circumstances in which this question is raised--voting under the regular absentee procedure now in place and also by electronically transmitted facsimile vote--would more probably be treated as zealotry on the part of a voter that the voter's one vote be received by elections

^{1/} Classification of the penalty for the offense is set out in AS 15.56.040(b). Violation of the provision carries a sentence of not more than five years, AS 12.55.125(e), and a fine of not more than \$50,000 (AS 12.55.035(b)(2)).

DRAFT INSTRUCTIONS TO VOTERS

BALLOT CHOICES AVAILABLE
IN AUGUST 25, 1992 PRIMARY ELECTION

THE BALLOT EXAMPLES TO THE RIGHT DISPLAY THE BALLOTS AVAILABLE TO ALL ALASKA VOTERS, WHETHER REGISTERED TO SPECIFIC PARTIES, OR REGISTERED NON-PARTISAN, "OTHER," OR "UNDECLARED."

YOU MAY SELECT ONE BALLOT ONLY. YOU MAY VOTE FOR ONLY ONE CANDIDATE IN EACH CONTEST.

THE DEADLINE FOR VOTER REGISTRATION, INCLUDING AN ADDRESS CHANGE, IS 30 DAYS BEFORE ELECTION DAY, OR JULY 26, 1992, FOR THIS PRIMARY ELECTION.

AS 15.05.010

NOTICE:

ALASKA LAW PROHIBITS ELECTION BOARD WORKERS FROM DISCUSSING ANY POLITICAL PARTY, CANDIDATE OR ISSUE WHILE ON DUTY.

AS 15.15.160

FURTHER, DURING THE HOURS THE POLLS ARE OPEN, A PERSON WHO IS IN THE POLLING PLACE OR WITHIN 200 FEET OF ANY ENTRANCE TO THE POLLING PLACE MAY NOT ATTEMPT TO PERSUADE A PERSON TO VOTE FOR OR AGAINST A CANDIDATE, PROPOSITION OR QUESTION.

AS 15.15.170

ATTENTION VOTERS

PRIMARY ELECTION
TUESDAY, AUGUST 25, 1992

IF YOUR PARTY AFFILIATION ON YOUR VOTER REGISTRATION IS:


ALASKAN INDEPENDENCE
DEMOCRAT
GREEN
REPUBLICAN
UNDECLARED
NON-PARTISAN
OTHER

YOU CAN VOTE A BALLOT WITH CANDIDATES FROM THE FOLLOWING PARTIES:


IF YOUR PARTY AFFILIATION ON YOUR VOTER REGISTRATION IS:

REPUBLICAN
UNDECLARED
NON-PARTISAN

YOU CAN VOTE A BALLOT WITH CANDIDATES FROM THE FOLLOWING PARTIES:



 TOP C

OFFICIAL PRIMARY
ELECTION BALLOT



 THIS SIGN TO BE REMOVED BY ELECTION BOARD

AKF01

STATE OF ALASKA Primary Election 8/25/92	
ALASKAN INDEPENDENCE	
DEMOCRAT	
GREEN	


 TOP C

OFFICIAL PRIMARY
ELECTION BALLOT


 THIS SIGN TO BE REMOVED BY ELECTION BOARD

AKF01

STATE OF ALASKA Primary Election 8/25/92	
REPUBLICAN	

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHB 47

1994 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Office of the Governor

Title: "An Act relating to primary elections and to the delivery of the primary ballots to persons making application for them when, by operation of political party rule, two or more primary ballots must be provided to the public."

BRU: Division of Elections

Component: General and Primary

Sponsor: Representative Martin

Requestor: _____

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	7.9	0	7.9	0	07.9	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	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	7.9	0	7.9	0	7.9	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	7.9	0	7.9	0	7.9	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	7.9	0	7.9	0	7.9	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: 1/24/94

Approved by Commissioner: John B. Coghlin, Lieutenant Governor

Agency: Office of the Governor

Date: _____

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 47

ANALYSIS:

Contractual (7.9)

Assumption: 10,000 absentee ballots are sent out for the primary election. 330,000 ballots cost \$165,000 or .50 per ballot. Therefore, absentee ballots for each party costs (10,000 ballots x .50) = \$5,000.00.

Postage for mailing absentee ballots for each party costs. (10,000 ballots x .29) \$2,900.00.

If a political party had their own designated absentee ballot, it would cost the State of Alaska \$7,900.00. This cost includes printing and postage. Each additional party ballot would increase the cost by 7.9