

HB

42

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: February 10, 1995

FURTHER REFERRALS:

Date of Committee Action: 2/23/95

The FINANCE Committee considered:

HB 42

HOUSE BILL NO. 42

ABSENTEE VOTING & USE OF FAX

"An Act relating to absentee voting, to electronic transmission of absentee ballot applications, and to delivery of ballots to absentee ballot applicants by electronic transmission, and enacting a definition of the term 'state election' for purposes of absentee voting."

recommends it be replaced with the following committee substitute CS HB 42 (STA) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) office of governor fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Mark Hanley</i>	Hanley	X			
<i>Laura Martin</i>	Martin	X			
<i>Sean Pannell</i>	Pannell	X			
<i>Vic Kohring</i>	Kohring	X			
<i>Barry Gussendorf</i>	Gussendorf	X			
<i>Pete Kelly</i>	Kelly			X	
<i>Gene Thernault</i>	Thernault	X			
<i>Richard Foster</i>	FOSTER	X			
<i>Ed Mulder</i>	MULDER	X			
<i>Ray Brown</i>	BROWN	X			

CO-CHAIR'S SIGNATURE *Mark Hanley* *Richard Foster*
 Hanley Foster

REVISED FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 42 (STA)

Revision Date: _____
Title: Absentee Balloting by FAX

Department Affected: Office of the Governor
BRU: Division of Elections
Component: Primary and General

Sponsor: Representative Martin
Requestor: _____

COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL	0	13.0	0	13.0	0	13.0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	18.8	0	18.8	0	18.8
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	8.0	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	0	37.8	0	28.8	0	28.8

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	0	37.8	0	28.8	0	28.8
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	0	37.8	0	28.8	0	28.8

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	1	0	1	0	1

Estimate of current year (FY95) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: David Kolvanemi, Acting Director Phone: 485-4811
 Division: Division of Elections Date: January 20, 1995 2-23-95
 Approved by Commissioner: Fran Ulmer, Lieutenant Governor
 Agency: Office of the Governor Date: _____
 January 20, 1995

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 Rev 12/93 Page 1 of 1

CS FOR HOUSE BILL NO. 42 (STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 1/25/95
Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVE MARTIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to absentee voting, to electronic transmission of absentee ballot
2 applications, and 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."

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 ballots 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

1 integrity and secrecy of the ballot process.

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

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

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

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

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

13 (C) two United States citizens who are 18 years of age or older.

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

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

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

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

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

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

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

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

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

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

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

1 the ballot was executed and postmarked.

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

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

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

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

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

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

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

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

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

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

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

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

REVISED FISCAL NOTE

STATE OF ALASKA

BILL NO. CSHD 42 (STA)

1995 LEGISLATIVE SESSION

Revision Date: _____
 Title: Absentee Balloting by FAX

Department Affected: Office of the Governor
 BRU: Division of Elections
 Component: Primary and General

Sponsor: Representative Martin
 Requestor: _____

COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL	0	13.0	0	13.0	0	13.0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	16.8	0	16.8	0	16.6
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	8.0	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	0	37.8	0	28.8	0	28.6

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	0	37.8	0	28.8	0	28.6
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	0	37.8	0	28.8	0	28.6

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	1	0	1	0	1

Estimate of current year (FY95) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: David Kolvanemi, Acting Director Phone: 485-4611
 Division: Division of Elections Date: January 22, 1995 2-23-95

Approved by Commissioner: Fran Ulmer, Lieutenant Governor
 Agency: Office of the Governor Date: _____
 January 20, 1995

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REG. DIV OF ELECTIONS

FAX NO. 5

1

Bill Version: CS HB 42 (STA)

(H) Publish Date: 1/25/95

FISCAL NOTE

STATE OF ALASKA

1995 LEGISLATIVE SESSION

Revision Date: _____

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 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	13.0	0	13.0	0	13.0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	16.8	0	16.8	0	16.8
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	8.0	0	8.0	0	8.0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	37.8	0	37.8	0	37.8

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	37.8	0	37.8	0	37.8
1005 GF/Program Receipts	0	0	0	0	0	0
1008 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	37.8	0	37.8	0	37.8

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	1	0	1	0	1

Estimate of current year (FY95) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: David Kolvundemi, Acting Director
Division: Division of Elections

Phone: 465-4811
Date: January 20, 1995 1/25/95

Approved by Commissioner: Fran Ulmer, Lieutenant Governor
Agency: Office of the Governor 1/17/95

Date: January 20, 1995

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FISCAL NOTE

**STATE OF ALASKA
1985 LEGISLATIVE SESSION**

BILL NO. HB 42

Personal Services

1 Clerk III at range 8A (June-November)	\$10888.00
Overtime	\$ 2300.00

Contractual

5 cases 4024 DP 8.5 x 11 paper	\$ 52.50 x 5 = \$ 262.50
Installation of 3 lines	\$ 332.00
Monthly Charges(June-November) (FCC, Toll)	\$ 198.50
Hunt Feature	\$ 840.00
Telephone Charges (June-November)	\$2500.00 x 6 = \$15000.00

Equipment

3 plain paper faxes	\$2898.00 x 3 = \$ 8088.00
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Total \$37,887.50

COMMITTEE COPY

REPRESENTATIVE
TERRY MARTIN
CHAIRMAN
BUDGET & AUDIT COMMITTEE
MEMBER
HOUSE FINANCE COMMITTEE

Alaska State Legislature



MAY 15 - JAN 15 258-8169
716 W. 4TH, SUITE 650
ANCHORAGE, AK 99504

JAN 15 - MAY 15 465-3733
STATE CAPITOL
JUNEAU, AK 99801-1182

HOME 333-6990
355 DONNA DRIVE, #11
ANCHORAGE, AK 99504

SPONSOR SUMMARY CSHB 42 (STA)

An Act relating to absentee voting by electronic transmission.

The intent of CSHB42 (STA) is to allow residents of Alaska voting absentee to utilize electronic transmission (fax), whether in-state, out-of-state in the United States, or outside of the United States.

Need for Legislation

Alaska's voter population is diverse and geographically dispersed. Many individuals require assistance in voting, specifically the physically challenged, elderly, and non-English speaking voters. In addition, our Armed Service members stationed outside of Alaska have encountered difficulties in absentee voting. Military members outside the U.S. have reported an escalation in absentee problems through failures in our postal system, changes in electoral regulations, and simple misinstruction. With regard to the military, 1994 reports reveal that there are approximately 15,600 Alaskan residents serving in the Armed Forces alone, in addition to over 12,000 spouses and dependents of voting age, and almost 6,000 Alaskan citizens not affiliated with the federal government but who claim legal residence in Alaska.

These figures do not include the other Alaskan residents who vote out-of-state by absentee such as college students, state employees, private business people who must leave state for work, and even vacationers. Nor do the statistics reference in-state travelers who may not be in their election district during a state election but could utilize electronic transmission to cast their absentee ballot. This is especially helpful when one considers the potential delays and difficulties in traveling throughout Alaska.

The national trend is to expand voting practices and allow those individuals voting absentee the most expeditious means by which to 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.

Over the last two decades, absentee ballot procedures and postal service problems have resulted in the loss and delay of numerous absentee voters' ballots. In the 1988 presidential election, 200,000 U.S. military personnel alone tried to vote absentee but were unable to do so because they didn't receive their ballot on time or at all. Presently, the following ten (10) states and territories accept a voted ballot by fax: Hawaii, Indiana, Kansas, Louisiana, Montana, North Dakota, Utah, Washington, District of Columbia, and Virgin Islands. In the 1992 presidential election 699 election offices in 49 states operated fax machines to distribute information and material to voters.

The purpose of CSHB42 (STA) is not to substitute the use of electronic transmission over mail service, but to decrease lost, delayed, or denied absentee ballots due to time constraints. The use of electronic transmission maintains confidentiality while furthering speed and efficiency. In essence, it expands the use of alternative voting procedures which, if not utilized, might otherwise disenfranchise an Alaskan resident voting absentee when time is of the essence.

REPRESENTATIVE
TERKY MARTIN
CHAIRMAN
BUDGET & AUDIT COMMITTEE
MEMBER
HOUSE FINANCE COMMITTEE

Alaska State Legislature



MAY 15 - JAN 15 258-8169
716 W. 4TH, SUITE 650
ANCHORAGE, AK 99504

JAN 15 - MAY 15 465-3783
STATE CAPITOL
JUNEAU, AK 99801-1182

HONIE 333-6990
355 DONNA DRIVE, #11
ANCHORAGE, AK 99504

SECTIONAL ANALYSIS CSHB 42 (STA)

An Act relating to absentee voting by electronic transmission.

Section 1.

Directs Division of Elections to adopt regulations establishing absentee voting by fax. Requires compliance with current deadlines while ensuring accuracy, integrity and secrecy. Requires signature by absentee voter of a secrecy waiver and an oath to be taken before commissioned/non-commissioned Armed Services member, federal or state official authorized to administer oath (in state where fax will emanate), or by two U.S. citizens 18 or older.

Section 2.

Allows a qualified voter to apply for an absentee ballot by fax and to provide a corresponding fax number for confirmation.

Section 3.

Requires a mailed application to be received by Division of Elections not less than seven days (changed from four days) before the election and a faxed application to be received not less than four days. Prohibits registering to vote by fax.

Section 4.

Allows an absentee voter to request an absentee ballot by fax and to receive an absentee ballot by fax.

Section 5.

Allows a completed ballot to be faxed by voter, but requires that any faxed ballot be received by Division of Elections by the day of the election.



Section 6.

Requires the Division of Elections to record any faxed ballot.

Section 7.

Removes applicability of faxing from AS15.20.082 which clarifies absentee voting by mail.

Section 8.

Allows absentee voter to write in eligible candidates if the wrong ballot was sent or faxed.

Section 9.

Defines "State Election" and lists potential candidates and issues that could be voted on by fax.

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

☐ 1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907)269-5100
FAX: (907)276-3697

☐ KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907)451-2811
FAX: (907)451-2846

☐ P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-6735

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 13, 1995

Representative Terry Martin
Alaska State Legislature
State Capitol, Room 502
Juneau, Alaska

Re: House Bill 42 and Ballot Secrecy

Dear Representative Martin:

As the sponsor of HB 42, you have asked for our opinion as to whether CSHB 42 (STA), which would allow voting by electronic transmission in certain circumstances, violates the portion of article V, section 3 of the Alaska Constitution that provides that "[s]ecrecy of voting shall be preserved." In our opinion the bill, if enacted, would not violate that provision. We believe that a court, if confronted with a constitutional challenge, would likely employ a balancing test, and would find that the minor infringement on ballot secrecy would be outweighed by the bill's effect of enfranchising voters.

There are no reported decisions of the Alaska Supreme Court construing the ballot secrecy language of article V, section 3. However, the minutes of the constitutional convention show that the language was not intended to be absolute. See 2 Minutes of the Alaska Constitutional Convention 812-14. The secrecy provision was offered as a floor amendment to the elections section of the constitution. During the brief debate on it, Delegate Kilcher asked, "How can secrecy be guaranteed if, as in the case of a blind person, in the case of a person who can't read, the election judges might have to assist?" President Egan referred the question to Delegate Hellenenthal (not the amendment's sponsor), who responded that "the right to secrecy is not an absolutely unqualified right. It is like the right to freedom of speech. The classic example is that the right of freedom of speech does not give one the right to yell 'fire' in a crowded theatre." *Id.* at 814. Immediately following this exchange the amendment was adopted by voice vote.

Recognizing that constitutional rights are virtually never absolute, the Alaska Supreme Court has employed balancing of interests to determine whether governmental enactments are consistent with personal rights guaranteed by the Alaska Constitution. See, e.g., Messerli v. State, 626 P.2d 81 (Alaska 1980) (society's interest in knowing identity of person publishing newspaper advertisements seeking to influence outcome of vote on municipal bond proposition generally outweighs person's right, under free speech and privacy provisions of Alaska Constitution, to remain anonymous); Frank v. State, 604 P.2d 1068 (Alaska 1979) (Athabaskan's religious right, under article I, section 4, to have fresh game at potlatch outweighs state's interest in enforcing hunting season laws in these limited circumstances). We believe, therefore, that the court would use a balancing test here, as well.

The overriding purpose of provisions for ballot secrecy is to ensure that voters can vote as they wish, without intimidation or coercion. See, e.g., Kiehne v. Atwood, 604 P.2d 123, 127 (N.M. 1979) (quoting Carabajal v. Lucero, 158 P. 1088, 1092-93 (N.M. 1916)). CSHB 42 (STA) does not significantly interfere with this purpose.

We note first of all that CSHB 42 (STA) does not impinge on anyone's direct personal rights. Because no one is forced to submit a ballot by electronic transmission, anyone who chooses to vote in his manner is waiving whatever personal rights he or she has to ballot secrecy. And the bill contains a provision to guarantee that such a waiver will be a knowing and voluntary waiver: proposed AS 15.20.066(b)(1) requires that an absentee ballot returned by electronic transmission must contain a statement that the voter understands that, by using electronic transmission, he or she is voluntarily waiving the right to a secret ballot.

Moreover, CSHB 42 (STA)'s interference with society's general interest in ballot secrecy is minimal. Insofar as secrecy is compromised at the receiving end - the Division of Elections - the division can adopt regulations to ensure that its employees will not reveal how a ballot was voted. Insofar as secrecy is compromised at the sending end, a voter can decline to use electronic transmission if he or she fears coercion, or can request to send the ballot himself or herself. Moreover, it is likely that most people using electronic transmission will be out of state, and frequently out of the country, so that, when the ballot is transmitted, there will be no one present with any interest in how the voter votes.¹

¹ Because CSHB 42 (STA) requires the division to adopt regulations, it can address specific problems that persons concerned with absentee voting by electronic transmission may have.

On the other side of the scale, CSHB 42 (STA) will apparently allow people to vote who now cannot. This includes people living overseas in places where the mail service is not reliable. In addition, it seems likely that the bill will encourage more people away from their normal voting places to vote absentee, by potentially making it easier to cast an absentee ballot.

In light of this minimal intrusion on ballot secrecy, and the beneficial effects of the bill, we believe that, if CSHB 42 (STA) is enacted into law and is challenged as unconstitutional, the courts would find that the balancing test clearly supports the bill's constitutionality.²

We note that there is already a section of the elections code which impairs ballot secrecy to at least as great a degree as CSHB 42 (STA) would. AS 15.15.240, enacted by the 1960 legislature, addresses the concerns expressed by Delegate Kilcher (set out above). It provides, in relevant part, "A qualified voter who cannot read, mark the ballot, or sign the voter's name may request an election judge, a person, or not more than two persons of the voter's choice to assist." In our opinion, it cannot be seriously argued that this provision is unconstitutional, in light of the constitutional minutes. We have the same opinion with regard to CSHB 42 (STA).

² As discussed above, CSHB 42 (STA) does not force anyone to send a ballot by electronic transmission, and therefore does not directly infringe on personal rights. Because of this, it seems possible that the courts would not insist on as strong a showing of governmental interest as is required in some other cases. Compare Frank v. State (requiring the government to show "compelling state interests").

Representative Terry Martin

February 13, 1995

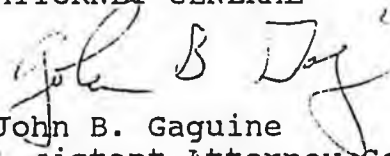
Page 4

Please feel free to contact us if you have any questions about this letter.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:


John B. Gaguine
Assistant Attorney General

JBG:kg

cc: Pat Pourchot
Legislative Liaison
Office of the Governor

Deborah Behr
Assistant Attorney General
Department of Law

DIVISION OF LEGAL SERVICES
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STATE OF ALASKA

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

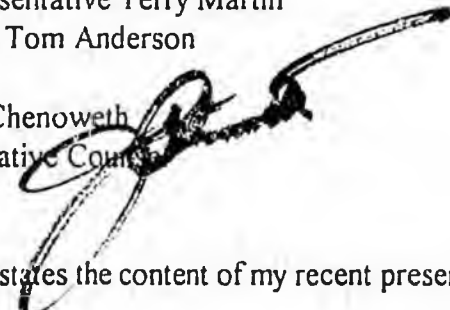
MEMORANDUM

February 10, 1995

SUBJECT: Effect of "secrecy of voting" guarantee of state constitution on CSHB 42(STA)

TO: Representative Terry Martin
Attn: Tom Anderson

FROM: Jack Chenoweth
Legislative Council



This memo summarizes and restates the content of my recent presentation to the House State Affairs Committee.

The second sentence of article V, section 3 of the Alaska constitution directs that, in matters relating to voting, "[s]ecrecy of voting shall be preserved." You have asked whether the provision would limit the use of those portions of CSHB 42 (STA) allowing the receipt and counting of votes cast by electronic transmission (facsimile transmission) in state elections. Under the bill draft, a voter casting a faxed vote acknowledges by signature that the casting of the vote using electronic transmission "voluntarily [waives the] right to a secret ballot."

While my conclusion is not free from doubt, I believe that, because a voter may voluntarily waive the secret ballot guarantee, the constitutional provision would not be read so as to cut off the state's efforts to authorize faxed voting.

As a general matter, the rule with respect to treatment of a constitutional guarantee of ballot or voting secrecy appears to be that, while compromise of the secrecy right will not be ordered, an individual may waive the personal right of voter secrecy. Hamilton v. Marshall, 282 P. 1058, 1059 (Wyo. 1929), State ex rel. Hutchens v. Tucker, 143 So. 745, 755-756 (Fla. 1932), and cases summarized at 97 A.L.R.2d 218, at 236 - 237. Thus, though identified and often referred to as a "right," other jurisdictions have, in effect, treated a state constitutional guarantee of secrecy in voting as a personal privilege of the voter.

The opportunity for the voter to waive the privilege may have influenced earlier electronic or faxed voting efforts in other states. From information you provided to me, it appears that the following jurisdictions have state constitutional provisions guaranteeing "secrecy of voting" or "purity of voting," and all have recently enacted a faxed voting arrangement for use in state or county election contests: Hawaii, Louisiana, Montana, North Dakota, Utah, Washington.

Representative Terry Martin

February 10, 1995

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Presumably, as legislation was under development, each considered the matter of the interrelationship between the respective state constitutional guarantee and the possible compromise of ballot secrecy that occurs when a faxed ballot is completed, transmitted, and received, and determined that the opportunity to cast a meaningful vote outweighed any assertion of violation of the constitutional right.

JBC:klb

95-065.klb

PIONEERS' HOMES ADVISORY BOARD



Amos "Joe" Alter, Chair

P O Box 20304
Juneau, AK 99802-0304

January 23, 1995

Mr. Tom Anderson
Alaska State Legislature
State Capitol MS 3100
Juneau, AK 99801-1182

Dear Tom:

I have reviewed HB42, "An Act relating to absentee voting, to electronic transmission of absentee ballot applications, and to delivery of ballots to absentee ballot applications by electronic transmission, and enacting a definition of the term 'state election' for purposes of absentee voting." This review has been from the viewpoint of potential effect upon Pioneers' Homes residents. The following comments are a summary of my findings in talking with Pioneers' Homes Advisory Board members and others.

The objective is excellent and changes proposed by the bill should facilitate voting as well as encourage greater individual voter participation in the election process.

Some further clarification may be necessary as the bill is advanced. A specific point raised in our discussions involves potential abuse which might arise when cognitively impaired persons are represented by others. Although there are very few persons who may be declared legally incompetent many persons may be suffering from Alzheimer's or related dementias, and they must rely on others for help in voting.

Sincerely,

Amos J. "Joe" Alter Chair
Pioneers' Homes Advisory Board

Robert Gore, Vice Chair
Donald M. Hoover, Member
Dan Pistoresi, Member

Vallie Byrdson, Member
Robert Kallenberg, Member

Rocky Gutierrez, Member
Estella Odsather, Member



DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

11 AF/CC
5800 G St Ste 101
Elmendorf AFB AK 99506-2130

21 DEC 1994

Representative Terry Martin
355 Donna Dr, #11
Anchorage AK 99504

Dear Representative Martin

I received your letter of November 30 requesting my support and assistance for your efforts to modify absentee voting requirements in Alaska to authorize use of telefax to request, receive, and return absentee ballots.

Federal laws and Department of Defense directives limit my ability to engage in activity in support of, or opposition to, particular issues. Specifically, I cannot use my official authority or influence in support of your bill.

I personally support your effort because it affects Alaska residents who are in the armed forces and stationed outside Alaska. Your proposal would make absentee voting easier and, therefore, should increase participation in the democratic process.

In my personal capacity, I support your efforts and could so indicate by signing a petition in support of your bill. Beyond that, my support is constrained by current guidelines.

Sincerely

A handwritten signature in cursive script that reads "Lawrence E. Boese".

LAWRENCE E. BOESE
Lieutenant General, USAF
Commander



FEDERAL VOTING ASSISTANCE PROGRAM
OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON, DC 20301-1155

February 6, 1995

The Honorable Brian Porter
Chair, House Judiciary Committee
State Capitol
Juneau, Alaska 99801

Dear Mr. Porter:

The *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*, which this office administers, concerns the absentee voting rights of over 15,600 Alaskan citizens currently serving in the Armed Forces. In addition, there are approximately 12,000 voting age spouses and dependents, and nearly 6,000 Alaskan citizens overseas not affiliated with the federal government that claim Alaska as their legal residence.

It is our understanding that CS HB 42 (SA) relating to the electronic transmission of election materials is again being considered this legislative session. We feel passage of this legislation as amended would greatly facilitate the enfranchisement of citizens voting under the Act.

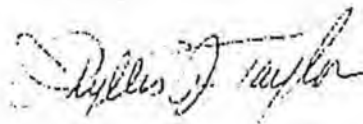
The primary problem citizens covered by *UOCAVA* experience is insufficient mail transit time for the entire process of requesting registration and ballot, receiving it and returning it in time to be counted. When this situation occurs, the alternative method of electronically transmitting election materials, may be the only option to help ensure these citizens are not disenfranchised. In fact, allowing for this alternative procedure will cut the transit time at least in half, thereby reducing the major obstacle to voting absentee by these citizens.

We also bring to your attention that this alternative procedure is at no cost to local election offices since all materials are faxed, toll free, on the secure fax line provided by the Federal Voting Assistance Program (FVAP), (800-368-8683). Once sent to the FVAP-operated processing center, the materials are routed to the fax number specified by the voter.

In 1992, voting materials were electronically routed to 699 local election offices in 49 states, the Virgin Islands, Puerto Rico and the District of Columbia. Voters served were located in 38 foreign countries as well as throughout the U.S. Currently, 36 states have successfully implemented electronic transmission of election materials.

On behalf of citizens covered by the UOCAVA, we urge Alaska legislators to adopt this alternative procedure which helps ensure voters are not disenfranchised.

Sincerely,



Phyllis J. Taylor
Director

cc: Rep. Terry Martin



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January 23, 1995

Members of the House of Representatives
State Capitol
Juneau, Alaska 99811

Dear House Members:

I am writing to express Access Alaska's strong support of HB 42, the Voting by Electronic Transmission bill, submitted by Representative Terry Martin.

For many Alaskans with disabilities finding accessible transportation to and from polling places is very difficult and causes them to forego voting due to the hassle. The Voting by Electronic Transmission bill provides an easy and effective way to remedy many of the voting problems experienced by voters with disabilities.

In passing the Voting by Electronic Transmission bill you are increasing opportunities for all Alaskans, including people with disabilities, to take part in the democratic process.

Again, Access Alaska strongly encourages you to pass HB 42 the Voting by Electronic Transmission bill!

If you have any questions regarding Access Alaska's support of HB 42, please give me a call.

Thank you!

Sincerely,

Duane M. French
Executive Director

1/18/95

Status of Electronic Transmission in the States & Territories*		
Allow FPCA by fax (37)	Accept blank ballot by fax (18)	Accept voted ballot by fax (10)
Arkansas	Arizona	Hawaii (under certain cond.)
Arizona	California	Indiana (declared emerg. only)
California	Hawaii (under certain conditions)	Kansas
Colorado	Idaho (in emergency only)	Louisiana
Connecticut	Indiana (declared emerg. only)	Montana (some counties)
Delaware	Kansas	North Dakota
Georgia	Louisiana	Utah
Hawaii (under certain conditions)	Montana (some counties)	Washington (some counties)
Idaho	Nevada (if reg. & OCONUS)	
Illinois (Armed Forces only)	New Jersey	District of Columbia
Indiana (declared emerg. only)	North Dakota	Virgin Islands
Iowa	Oregon	
Kansas	Utah	
Louisiana	Vermont	
Massachusetts	Washington	
Michigan	Wisconsin	
Minnesota		
Mississippi	District of Columbia	
Montana	Virgin Islands	
Nebraska		
Nevada (if reg. & OCONUS)		
New Jersey		
North Dakota		
Ohio (for ballot request only)		
Oklahoma		
Oregon		
Tennessee		
Texas		
Utah		
Vermont		
Virginia		
Washington		
Wisconsin		
American Samoa		
District of Columbia		
Guam		
Virgin Islands		

* The above states have enacted either legislation or administrative instructions to allow for electronic transmission of voting materials.