

HB

163

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 16, 2000

SUBJECT: CSHB 163(STA) and HB 155

TO: Senator Jerry Ward
Attn: Loretta

FROM: Kathryn L. Kurtz *KL*
Legislative Counsel

You asked whether HB 155 could be rolled into CSHB 163(STA) without changing the title of the latter bill.

Article II, section 13 of the Constitution of the State of Alaska requires that the subject of each bill be expressed in the title. Although CSHB 163(STA) has a relatively long title, none of the clauses in that title appear to encompass the material in HB 155, which has to do with municipal assembly forms of representation and apportionment. As a result, I do not believe that HB 155 could be rolled into CSHB 163(STA) without a title change.

If I may be of further assistance, please advise.

KLK:glc
00-131.glc

AS 15.25.030

Amend

AS 15.25.030

new section

(a)(16) that the candidate is registered to vote as a member of the political party whose nomination is being sought and who has been approved as a candidate of that political party through the nominations procedures or by-laws adopted by that particular political party if the party nomination procedures complete their process before the statutory filing deadline.

AS 15.25.105

March 16, 2000

State Affairs Committee meeting

HB 163 Elections Clean-Up Bill by Rep. James

These are notes from House Judiciary:

This bill has been reported on before in House State Affairs, which is the sponsor. It's primarily a housekeeping measure that updates statutes to conform with the optical scanning ballots (i call them Votbots). In addition: No stickers on ballots, they mess up the machines--what a awful coincidence! Also, you now must file a letter with Light Guv saying you're a write in candidate. It Streamlines absentee voting to allow them (Div. Of Elect.) to drop ballots in the Votbots rather than have an Ibuprofen day handcountin' 13,000 ballots. Also it loosens the requirements of a "representative" voting for you. Anyone who has helped a bedbound person vote knows you spend a lot of time driving back and forth to the Div. of Elections. This would allow them to vote for the person themselves but take an oath that they voted for the bedbound persons' choices. The fiscal note says it saves 12 grand.

Croft, after learning of a recent decision by the U.S. Supreme Court saying that people getting signatures can't be forced to have their names on labels identifying themselves, offered an amendment to the bill bringing our statutes into constitutional compliance-- James didn't object. The Buckley decision, made in '99, found a Colorado provision requiring circulators to wear name tags unconstitutional. AS 15.45.110 (B) is substantially similar. In addition the Buckley decision said that circulators could not be required to be registered voters since that limited the number of people who could be petitioners--especially people who didn't register to vote for political reasons. This amendment changed the term of "Sponsor" to "circulator" and deleted the requirement that they be registered voters. There is an interesting legal opinion by Katherine Kurtz re: this issue and I'll make a copy if you are interested. Botelho's opinion too.

The amendment was adopted by the committee after a brief explanation about why our statutes were unconstitutional and it's good to have those in compliance with federal law rather than leaving them there null and void on our books.

HB 163 was passed out with amendments. It goes to Finance next. (P.S. the same amendment was put into Rep. Williams statutory petition bill that is accompanying his constitutional amendment through the Senate as we speak)

Other info: got "do passes" from Smalley, Kerttula in House State Affairs
Passed unanimously (except for absences) from House floor

SJR 26 Constitutional Amendment relating to education by Sen. Ward

Not much to say here—it's one of the pieces of the voucher plan, plus permission for the legislature to create a separate education fund, the assets of which can be land or cash.

SB 247 Eligibility for those receiving vet's benefits to also receive longevity bonus by Sen's Leman and Kelly

Allows those residing in nursing homes, whose payments are made wholly or partly by veteran's benefits, to also receive the longevity bonus.

From what I can figure out, those who receive Medicaid or Vet's benefits to pay for their nursing home costs were disqualified to receive the longevity bonus around 1997. I think the original concern was that longevity bonus benefits were actually harmful to those receiving Medicaid because these individuals became ineligible for Medicaid when they received this additional income. Vet's benefits are not income based, so the same danger does not apply.

The bill opens a one year window to reapply for the longevity bonus. The amount of bonus for those determined eligible will be the same amount they would have received had they not been made ineligible in 1997.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR WARD

TO: SCS CSHB 163(STA)

1 Page 2, line 2, following "petitions;":

2 Insert "relating to use of the state seal and flag in election campaigns;"

3 Page 6, following line 25:

4 Insert a new bill section to read:

5 "* Sec. 12. AS 15.13 is amended by adding a new section to read:

6 **Sec. 15.13.092. Use of state seal and state flag in political campaigns.** A
7 person may not use the state seal as defined in AS 44.09.010 or the state flag
8 described in AS 44.09.020 in an advertisement, billboard, handbill, paid-for television
9 announcement, or other communication intended to influence the election of a
10 candidate or the outcome of a ballot proposition or question."

11 Renumber the following bill sections accordingly.

12 Page 31, following line 4:

13 Insert a new bill section to read:

14 "* Sec. 80. AS 44.09.015(a) is amended to read:

15 (a) A person may not use or make a die or impression of the state seal for
16 any advertising or commercial purpose, unless written permission has first been
17 obtained from the lieutenant governor. The lieutenant governor may not grant
18 written permission for the use of the state seal in an advertisement, billboard,
19 handbill, paid-for television announcement, or other communication intended to
20 influence the election of a candidate or the outcome of a ballot proposition or
21 question."

- 1 Renumber the following bill sections accordingly.

- 2 Page 31, line 13:
 - 3 Delete "sec. 85"
 - 4 Insert "sec. 87"

- 5 Page 32, line 5:
 - 6 Delete "Section 81"
 - 7 Insert "Section 83"

- 8 Page 32, line 6:
 - 9 Delete "Sections 47, 48, 64, and 80"
 - 10 Insert "Sections 48, 49, 65, and 82"

- 11 Page 32, line 7:
 - 12 Delete "secs. 83 and 84"
 - 13 Insert "secs. 85 and 86"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR WARD

TO: SCS CSHB 163(STA)

1 Page 16, following line 8:

2 Insert a new bill section to read:

3 **** Sec. 42.** AS 15.15.450 is amended to read:

4 **Sec. 15.15.450. Certification of state ballot counting review.** Upon
5 completion of the state ballot counting review, the director shall certify the persons
6 [PERSON] receiving the largest number of votes for the offices of governor and
7 lieutenant governor [OFFICE FOR WHICH THAT PERSON WAS A
8 CANDIDATE] as elected to those offices, shall certify the person receiving a
9 majority of the votes cast for an office other than governor or lieutenant
10 governor as elected to that office, and shall certify the approval of a justice or judge
11 not rejected by a majority of the voters voting on the question. The director shall
12 issue to the elected candidates and approved justices and judges [,] a certificate of
13 their election or approval. The director shall also certify the results of a proposition
14 and other question, except that the lieutenant governor shall certify the results of an
15 initiative, referendum, or constitutional amendment. If no person received a
16 majority of the votes cast for an office other than governor or lieutenant
17 governor, the director shall hold a runoff election 30 days after the general
18 election. The director shall place on the ballot the names of the two persons who
19 received the greatest number of votes in the general election for each office other
20 than governor and lieutenant governor for which no person obtained a majority
21 of the votes cast. The director shall certify the person receiving a majority of the
22 votes cast for an office in a runoff election as elected to that office."

23 Renumber the following bill sections accordingly.

1 Page 31, line 13:

2 Delete "sec. 85"

3 Insert "sec. 86"

4 Page 32, line 5:

5 Delete "Section 81"

6 Insert "Section 82"

7 Page 32, line 6:

8 Delete "Sections 47, 48, 64, and 80"

9 Insert "Sections 48, 49, 65, and 81"

10 Page 32, line 7:

11 Delete "secs. 83 and 84"

12 Insert "secs. 84 and 85"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR WARD

TO: SCS CSHB 163(STA)

1 Page 2, line 2, following "petitions;":

2 Insert "relating to use of state seals and the state flag in election campaigns;"

3 Page 6, following line 25:

4 Insert a new bill section to read:

5 "* Sec. 12. AS 15.13 is amended by adding a new section to read:

6 **Sec. 15.13.092. Use of state seals and the state flag in election campaigns.**

7 A person may not use a state seal or the state flag in an advertisement, billboard,
8 handbill, paid-for television announcement, or other communication intended to
9 influence the election of a candidate or the outcome of a ballot proposition or
10 question."

11 Renumber the following bill sections accordingly.

12 Page 31, following line 4:

13 Insert a new bill section to read:

14 "* Sec. 80. AS 44.09.015(a) is amended to read:

15 (a) A person may not use or make a die or impression of the state seal for
16 any advertising or commercial purpose, unless written permission has first been
17 obtained from the lieutenant governor. The lieutenant governor may not grant
18 written permission for the use of the state seal in an advertisement, billboard,
19 handbill, paid-for television announcement, or other communication intended to
20 influence the election of a candidate or the outcome of a ballot proposition or
21 question."

1 Renumber the following bill sections accordingly.

2 Page 31, line 13:

3 Delete "sec. 85"

4 Insert "sec. 87"

5 Page 32, line 5:

6 Delete "Section 81"

7 Insert "Section 83"

8 Page 32, line 6:

9 Delete "Sections 47, 48, 64, and 80"

10 Insert "Sections 48, 49, 65, and 82"

11 Page 32, line 7:

12 Delete "secs. 83 and 84"

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MEMORANDUM

March 18, 2000

SUBJECT: Draft SCS for CSHB 163(STA) (Work Order No. 1-LS0769M)

TO: Senator Jerry Ward, Chair
Senate State Affairs Committee
Attn: Loretta Brown

FROM: Kathryn L. Kurtz ^{KK}
Legislative Counsel

Enclosed is the draft CS you requested. I changed the language in section 1, and deleted sections 63 - 70, as you requested.

As I discussed with Loretta on the phone, I have made one additional change: for the sake of consistency, I have added AS 15.45.580 to the list of sections in the revisor's instruction to change references to "election district" to "house district."

The amendment adding sections 63 through 70 on the house side also added AS 15.45.110(b) to the repealer. Because you did not request that this section be removed from the repealer, I left it in. Please note that AS 15.45.110(b) is clearly unconstitutional in light of the United States Supreme Court's decision in Buckley v. American Constitutional Law Foundation, 525 U.S. 182 (1999) a case that also raises a question about the constitutionality of AS 15.45.110(a).

You should also be aware that deleting sections 63 through 70 has the effect of making the current title overinclusive. The current title at page 2, line 1-2 includes the phrase "relating to initiative, referendum, and recall petitions." Because the repeal of AS 15.45.110(b) is still in the bill, the reference to initiatives is accurate. However, with the removal of sections 63-70, there is no longer anything in the bill that relates to referenda or recall petitions.

Article II, section 13 of the Constitution of the State of Alaska requires that the subject of each bill be expressed in the title. Including items in the title which are not actually addressed in the bill could be construed as unconstitutional. Whether the Alaska Supreme Court would invalidate an act on this ground, I do not know. They have not decided the issue. Looking to the case law of other states, it appears that when an act contains provisions not covered by the title, the effect is to render the affected provisions invalid. Patrice v. Murphy, 966 P.2d 1271, 1274 (Wash. 1998). There is less case law involving the opposite situation, where the title of an act included material not referred to in the body of the act. Where a title indicated that the act contained a police regulation, and the act did not (and was

Senator Jerry Ward
March 18, 2000
Page 2

in fact a tax measure), the court ruled that the title was misleading. Reeves v. Adam Hat Stores, 198 S.W.2d 789, 791 (Kentucky 1946). The court wrote: "[t]he title to an act may be broader than necessary so long as it relates to only one subject, but it must be fairly expressive of the contents of the act..." *Id.* In a case where the title referred to bonded indebtedness not exceeding 20%, but the body permitted only indebtedness not exceeding 12%, the court held that the title was "not so deceptive or misleading as to render the entire act void." Watts v. Oliphant, 143 S.E.2d 813 (S.C. 1965).

The reference to referenda and recall petitions could be somewhat misleading in this case, since they are not addressed in the bill. But, an overinclusive title still gives notice to the public and to parties whose rights and liabilities are affected by the bill, *see Patrice v. Murphy*, 966 P.2d at 1275, so, I do not know whether the Alaska Supreme Court would go so far as to invalidate the whole bill on this basis. The safest legal course would be to change the title to remove the reference to referenda and recall petitions. If you would like me to draft a concurrent resolution suspending the uniform rules for this purpose, let me know.

If you would like any additional information about the constitutionality of Alaska's existing initiative, referendum, and recall laws in light of Buckley v. American Constitutional Law Foundation, 525 U.S. 182 (1999) please let me know.

If I may be of further assistance, please advise.

KLK:jdr:pl
00-114.jdr

Enclosure

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PHILLIPS

TO: CSHB 163(JUD)

1 Page 14, line 30, through page 15, line 5:

2 Delete

3 "(10) [STICKERS BEARING A CANDIDATE'S NAME MAY BE
4 AFFIXED TO THE BALLOT IN PLACE OF WRITING IN A CANDIDATE'S
5 NAME IF WRITE-IN VOTES ARE OTHERWISE PERMITTED. STICKERS MAY
6 NOT BE ISSUED BY MEMBERS OF THE ELECTION BOARD WHILE SERVING
7 AT THE POLLS. STICKERS MAY NOT BE OFFERED TO VOTERS WITHIN 200
8 FEET OF THE POLLING PLACE.

9 (11)]"

10 Insert

11 "(10) Stickers bearing a candidate's name may be affixed to the ballot
12 in place of writing in a candidate's name if write-in votes are otherwise permitted.
13 Stickers may not be issued by members of the election board while serving at the
14 polls. Stickers may not be offered to voters within 200 feet of the polling place.

15 (11)"

16 Page 15, line 6:

17 Delete "[OR PLACE A STICKER IN THE SPACE]"

18 Insert "or place a sticker in the space"

19 Page 15, line 9:

20 Delete "(11)"

21 Insert "(12)"

22 Page 15, line 12, following "written in":

- 1 Insert "or appears on a sticker placed in"

- 2 Page 15, line 14:
- 3 Delete "(12)"
- 4 Insert "(13)"

- 5 Page 15, line 20. following "written in":
- 6 Insert "or appears on a sticker placed in"

- 7 Page 15, lines 27 - 29:
- 8 Delete all material.

- 9 Renumber the following bill sections accordingly.

- 10 Page 33, line 16:
- 11 Delete "sec. 94"
- 12 Insert "sec. 93"

- 13 Page 34, line 8:
- 14 Delete "Section 90"
- 15 Insert "Section 89"

- 16 Page 34, line 9:
- 17 Delete "Sections 48, 49, 73, and 89"
- 18 Insert "Sections 47, 48, 72, and 38"

- 19 Page 34, line 10:
- 20 Delete "secs. 92 and 93"
- 21 Insert "secs. 91 and 92"

FISCAL NOTE

Bill Version: CSHB 163 (STA)
 (H) Publish Date: 2/9/00

**STATE OF ALASKA
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Office of the Governor
 Title An Act relating to voters and elections BRU Elective Operations
 Component Elections
 Sponsor Representative James
 Requester House State Affairs Committee Component No 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual	(12.5)					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(12.5)	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(12.5)					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	(12.5)	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 00

POSITIONS

Full-time					
Part-time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

The division will no longer be required to pay for the printing of the voter registration form in the annual permanent fund dividend booklet

Prepared by: Gail Fenumia
 Division Division of Elections

Phone 465-3935

Date/Time 2/3/00 2:53 PM

Approved by: Lt. Governor Fran Ulmer
 of the Lieutenant Governor

Date 02/03/2000

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1-LS0769H
Kurtz
3/22/00

AMENDMENT

OFFERED IN THE SENATE

BY SENATE STATE AFFAIRS

TO: CSHB 163(JUD)

1 Page 23, line 7 through line 16:

2 Delete

3 Renumber the remaining bill sections accordingly.



CITY OF WASILLA

290 E Herning Avenue
 Wasilla, AK 99654-7091
 Phone: (907) 373-9050
 Fax: (907) 373-9092

March 15, 2000

Honorable Jerry Ward
 State Senator, District E
 Chair, Senate State Affairs
 State Capitol
 Juneau, AK 99801

RE: Support for SB 120/HB 163 -- Relating to Elections

Dear Senator Ward:

I am unable to attend the public hearing scheduled for March 16, 2000 on SB 120/HB 163 relating to elections. Please accept this letter as my support for SB 120/HB 163.

SB 120/HB 163 simplifies the election procedures which will increase public participation in the election process as a whole. Therefore, Municipal Clerks around the state and the Alaska Association of Municipal Clerks (AAMC) support the passage of this bill.

I would like to thank you for your time and consideration.

Sincerely,

ALASKA ASSOCIATION OF MUNICIPAL CLERKS

KRISTIE L. VANGORDER, CMC
 Wasilla City Clerk and First Vice President of AAMC

Pc: Senator Lyda Green
 Senator Randy Phillips
 Gail Fenumiai, Election Program Specialist

ADMINISTRATION Phone: (907) 373-9055 Fax: (907) 373-9096	CLERK'S OFFICE Phone: (907) 373-9090 Fax: (907) 373-9092	FINANCE Phone: (907) 373-9070 Fax: (907) 373-9085	LIBRARY Phone: (907) 376-5913 Fax: (907) 376-2347	MUSEUM Phone: (907) 373-9071 Fax: (907) 373-9072
PARKS AND RECREATION Phone: (907) 373-9053 Fax: (907) 373-9092	PLANNING Phone: (907) 373-9094 Fax: (907) 373-9089	POLICE Phone: (907) 373-9077 Fax: (907) 373-9051	PUBLIC WORKS Phone: (907) 373-9095 Fax: (907) 373-9054	

HB 163

PAGE(S) LINE(S) COMMENTS

3	15-16	Why delete equal representation at the voting place?
10	16-17	What effect, if any, would this change have on the division of elections' purging of the voter registration list?
11	10-11	When will the stubs be removed and what impact will this have on the secrecy of the ballot?
12	25	
14	30-31	Why delete? Wouldn't stickers be easier to read or scan?
22	31	If a "reliable electronic transmission is received by 5 pm June 1 st , why are applicants given another 15 days for the delivery of a physical declaration.
23	1-6	
23	10-16	It appears that candidates for governor or Lt. Governor will have to guarantee a running mate before the name can be placed on the ballot. How did this work up to this point?
33	2-7	Would this require a voter to vote a question ballot if the mailing address on the PFD does not match the mailing address on the voter registration list?
33	16-19	Would this effect the candidates for this year's elections? Shouldn't candidates know "what and how" these regulations would effect them before they file for office?
34	10	



Alaska State Legislature

Representative Jeannette James

District 34 - Republican



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State Capitol, Room 102
Juneau, AK 99801-1182
Phone: (907) 465-3743
Fax: (907) 465-2381
[Send E-Mail](#)

Interim:
3340 Badger Road (no mail)
North Pole, AK 99705
Phone: (907) 455-9258

PO Box 56622 (mail only)
North Pole, AK 99705
Phone: (907) 488-1546
Fax: (907) 488-4271

Sponsor Statement for HB 163 Changes to Election Law

An Act relating to qualifications of voters; relating to the registration of voters; relating to election districts and officials; relating to election procedures and ballots; relating to special procedures for elections; relating to nomination of candidates; relating to national elections; relating to special elections and appointments; relating to constitutional amendments; relating to election offenses and corrupt practices; relating to election pamphlets; relating to the deferral of jury service for certain election officials; relating to an exemption from the State Procurement Code regarding election ballots; relating to the provision and use of mailing addresses on permanent fund dividend applications for election purposes; relating to the inclusion of voter registration forms with permanent fund dividend applications; making conforming amendments in references to 'election district' and 'chairman'; and providing for an effective date.

Updated: February 8, 2000

House Bill 163 is primarily a housekeeping bill that will update current election law to conform with the optical scanning ballot tabulation system.

The goal of House Bill 163 is to make the electoral process more efficient while continuing to maintain the integrity of the process.

In addition to housekeeping measures which are outlined in an accompanying sectional analysis, House Bill 163 contains three policy changes which will help make the election process more efficient for both the electorate and the Division of Elections.

Write-In Candidates

It became apparent after the 1998 gubernatorial election that the state needs

clear procedures for the qualification of write-in candidates and for the counting of votes. House Bill 163 will prohibit the use of stickers by write-in candidates. Write-in stickers cannot be used with the state's optical scan ballot tabulation system. The Division has been advised by the manufacturer, Global Elections Systems, that stickers could damage the Accu-Vote machines.

Revision of Absentee by Personal Representative Process

The current statutory process is too cumbersome and the resulting mistakes by people attempting to assist other voters have resulted in the disqualification of many ballots. Current law requires the personal representative to deliver an application to the voter, return the application to an election official, pick up the ballot and voting material, deliver the material to the voter and then return the voted ballot and material to an election official, and multiple signatures on a complex form. The new process would allow the personal representative to deliver an application and voting material at one time and then return the voted ballot and material to an election official. The same checks and balances remain in place to protect the integrity of the electoral process.

Change to the Absentee In-Person Voting Process

Early voting would apply to absentee voting in the regional election office absentee voting stations. Voters registered in a house district in which the regional election office has jurisdiction would no longer be required to complete an absentee oath and affidavit envelope. This will significantly reduce the number of absentee ballots requiring review by the division of elections. If a voter's residence address information is different from that which appears on the division's records at the time of voting, the voter will be required to complete an oath and affidavit envelope.

###

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