

HB

77

<TARGET><BILL>HB 77</BILL><SUBJECT>HB
77</SUBJECT><COMM>HSTA27</COMM></TARGET>

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
LABOR & STATE AFFAIRS SECTION

SEAN PARNELL, GOVERNOR

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January 31, 2012

Hon. Representative Paul Seaton
House State Affairs Committee
House of Representatives
Alaska State Legislature
State Capitol Room 102
Juneau, Alaska 99801

Re: HB 77 (Nonpartisan Blanket Primary Election)

Dear Representative Seaton:

At a recent hearing on HB 77, you asked whether there would be any legal ramifications arising from the bill's making the top two vote-getters in a primary election for each elective state executive and state and national legislative office—regardless of party affiliation, group, or preference—advance to the general election. As a result, Alaska statutes would no longer contain provisions or procedures for “no party” candidates to petition for access to the general election ballot.

The Department of Law sees no apparent facial constitutional restrictions to implementing this concept in statute. Under current law, the primary ballot is accessible only to nominees of each political party. See AS 15.25.010 and 15.25.014. The “nomination by petition” provisions of AS 15.24.140—AS 15.25.200, repealed by this bill, exist at least implicitly to protect and implement the federal and state constitutional freedom of speech and association rights of no-party candidates under the First Amendment to the United States Constitution and article I, sections 5 and 6 of the Alaska Constitution, as well as, potentially, the equal protection clauses of the state and federal constitutions. In summary, these existing provisions are a mechanism for individuals—otherwise excluded from the primary by virtue of their lack of party affiliation—to reach the general election ballot based on the will of the people.

In HB 77, anyone can gain access to the primary ballot simply by filing a declaration of candidacy and advance to the general election ballot if that person is one of the top two vote-getters in the primary. It should also be noted the United States Supreme Court found a “top two nonpartisan blanket primary” system facially constitutional under the First Amendment in *Washington State Grange v. Washington State Republican Party*, 522 U.S. 442 (2008).

Accordingly, it is our opinion that the ballot access safeguards reflected in existing provisions of state statute providing for nomination by petition to the general election ballot are not improperly repealed by HB 77, because ballot access is preserved in the primary election phase. Thus, any person who properly declares his or her candidacy for the primary election ballot and who gets enough votes (i.e. is one of the top two vote-getters) can advance to the general election ballot.

Please let us know if you have further questions.

Sincerely,

RICHARD SVOBODNY
ACTING ATTORNEY GENERAL

By:



Elizabeth M. Bakalar
Assistant Attorney General

EMB: vms

cc: Gail Fenumiai, Director, Division of Elections
Heather Brakes, Legislative Director, Office of the Governor
Hon. Mead Treadwell, Lieutenant Governor
Hon. Representative Bob Lynn, Chair, House State Affairs Committee
Hon. Representative Wes Keller, Vice Chair, House State Affairs Committee
Hon. Representative Peggy Wilson, House State Affairs Committee
Hon. Representative Max Gruenberg, House State Affairs Committee
Hon. Representative Pete Petersen, House State Affairs Committee
Hon. Representative Kyle Johansen, House State Affairs Committee
Cori Badgley, Legislative Contact for Civil Division, Department of Law
Sonia Christensen, Deputy Legislative Liaison, Office of the Governor

Member

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Alaska State Legislature

House of Representatives



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SPONSOR STATEMENT

SPONSOR SUBSTITUTE FOR HB 77 – NONPARTISAN BLANKET PRIMARY ELECTION

House Bill 77 would establish a nonpartisan blanket primary election in Alaska. Under this system, voters could cast their ballots for any candidate running for office in a primary election, and the top two vote-getters, regardless of party, would advance to the general election. HB 77 would give voters more freedom at the ballot box since their choices will not be restricted to their party affiliation. Voters could cast their ballots in support of the best, most qualified candidate, not just those that identify with a particular political party.

Since the United States Supreme Court struck down the California blanket primary law and then the Alaska Supreme Court struck down Alaska's blanket primary law (the "open primary"), Alaska has operated under a two primary system. Currently in Alaska, the Republican primary does not allow members of other political parties to participate. Winners for each political party advance to the general election in November.

However, the right Alaskans had previously enjoyed for approximately 40 years -- to vote for candidates of their choice for any elective office in the primary election -- is no longer available. Countless Alaskans have approached legislators pleading for a return to an open primary election system, where they could vote for the candidate of their choice in a primary election, regardless of party. Voters have demanded that they continue to be allowed to vote for a republican for one office, a democrat for another office, a green for another office, and so on. So have voters in other states. The "blanket primary" election system was previously in force in Washington and California, as well as Alaska. Several years ago in an initiative and in response to language in the US Supreme Court decision striking down the blanket primary,¹ an initiative passed in Washington state allowing voters to cast a ballot in the open primary. The only difference was that the top two vote-getters, regardless of party, would advance to the general election. Immediately after passage of the initiative, the political parties in Washington obtained injunctions from the federal district court in that state prohibiting the implementation of the new top-two primary law. The 9th Circuit affirmed. In early 2008 the United States Supreme Court

¹ California Democratic Party v. Jones, 530 U.S. 442 (2008).

reversed those decisions and upheld that state law.² The United States Supreme Court held that the political parties' constitutionally-protected right of association did not apply when the voters, rather than political parties, controlled the nomination process. The main challenge to that law was that candidates could identify themselves by membership and/or adherence to the ideals of a particular political party. The United States Supreme Court rejected that argument, as long as the implementation of the state law made it clear the political parties were not endorsing any particular candidate and that the designation of the party membership or adherence was simply a matter of political preference by the candidate.

Washington state election officials were therefore free to implement the new top-two primary law. A similar initiative was attempted in Oregon, but failed, leaving the previous primary election system intact. In June of 2010, California voters by 60 percent passed a similar initiative like Washington's—a top-two primary election.

HB 77 is legislation taken from the Washington state law and incorporates suggestions made by the United States Supreme Court in the Washington State Grange opinion. It briefly provides that candidates of all political parties and independents may run for office in a single primary election. They may self-designate their political parties if they wish. However, the state must make it clear, in the Official Election Pamphlet (OEP), on ballot materials, and at polling places, that any such designations are self-designations only and do not imply endorsement by any political party.

The bill also contains other provisions that conform other statutes to the top-two primary law.

The sectional analysis explains the provisions, and testimony in committee will further cover the details. We will be available to answer questions.

Thank you for favorable consideration of this legislation.

² Washington State Grange v. Washington State Republican Party, 552 U.S. 442 (2008).

COPY

LEGAL SERVICES

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MEMORANDUM

January 23, 2012

SUBJECT: Sectional summary (SSHB 77; Work Order No. 27-LS0095\X)

TO: Representative Max Gruenberg
Attn: Ted Madsen

FROM: Alpheus Bullard *TKB*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Changes the qualifications of persons appointed to election boards.

Section 2. Changes who may appoint watchers in a voting precinct or counting center and how many watchers that represent a state party chairperson, precinct party committee, party district committee, or candidate may be on duty at any one time in a precinct or counting center.

Section 3. Changes the qualifications of persons appointed to the Alaska Public Offices Commission.

Section 4. Contains a conforming change relating to the previous section's change in the qualifications of persons appointed to the Alaska Public Offices Commission.

Sections 5 - 7. Add or edit language in statutes that relate to the financing of political campaigns that conform the sections to the bill's implementation of a top two nonpartisan blanket primary system.

Section 8. Provides that a qualified voter may vote for any candidate at a primary election without a limitation based on the political party or political group affiliation of either the candidate or the voter.

Section 9. Removes a candidate's party designation from the official ballot. Permits a candidate to indicate on the ballot a political party or group preference or a designation as nonpartisan or undeclared.

Section 10. Requires a statement to appear on certain pages of the ballot that a political party or group preference indicated by a candidate for state office, United States Senate, or United States Representative on the ballot reflects only the designation requested by that candidate.

Section 11. Requires a statement to appear in each polling place that a political party or group preference indicated by a candidate for state office, United States Senate, or United States Representative on the ballot reflects only the designation requested by that candidate.

Sections 12 - 13. Make conforming changes to absentee voting statutes relating to the bill's implementation of a top two nonpartisan blanket primary system.

Section 14. Changes the qualifications of persons appointed to district counting boards.

Section 15. Changes the state's primary election from an election that selects which candidate of each participating political party will appear on the general election ballot as that party's nominee to an election in which the two candidates who have received the greatest number of votes for an office, regardless of the candidates' party affiliation, advance to the general election.

Section 16. Changes what a person must state on a declaration of candidacy. Includes conforming references to the bill's extension of primary elections to special elections.

Section 17. Conforms the section to a change in the previous bill section.

Section 18. Requires that ballots be prepared and distributed in a manner consistent with the bill's establishment of a top two nonpartisan blanket primary election system.

Section 19. Provides which candidates will be placed on the general election ballot.

Section 20. Changes what a person who desires to be a write-in candidate in the general election must state in the person's letter of intent.

Section 21. Eliminates a requirement that a write-in candidate for the office of governor must be of the same political party as the candidate for the office of lieutenant governor who is running with that write-in candidate for the office of governor.

Section 22. Provides that, if a vacancy occurs in the office of United States Senator or United States Representative, there will be both a special primary election and a subsequent special election to fill that vacancy.

Section 23. Conforms AS 15.40.160 (providing that the governor shall issue a proclamation calling a special primary election and subsequent special election) to the changes made in the previous bill section.

Section 24. Provides that a petition for the nomination of a candidate for a vacancy in the office of United States Senator or Representative must be executed under oath and state in substance that which is required under AS 15.25.030 (declaration of candidacy).

Section 25. Provides, unless specifically provided otherwise, that a special primary election and subsequent special election to fill a vacancy in the office of United States Senator or Representative will be conducted in the same manner as a regular primary or general election.

Sections 26 - 27. Provide for the conditions for, and timing of, the special primary election and subsequent special election to fill the office of governor when a person appointed to succeed to the office of lieutenant governor succeeds to the office of acting governor.

Section 28. Requires the acting governor to issue a proclamation calling for a special primary election and special election for the office of governor at least 50 days before the special primary election.

Section 29. Provides that a petition for the nomination of a candidate for a vacancy in the office of governor must be executed under oath and state in substance that which is required under AS 15.25.030 (declaration of candidacy).

Section 30. Provides, unless specifically provided otherwise, that a special primary election and subsequent special election to fill a vacancy in the office of governor will be conducted in the same manner as a regular primary or general election.

Section 31. Amends the qualifications of a person appointed by the governor to fill a vacancy in the state legislature. The changes relate to the bill's establishment of a top two blanket primary system.

Sections 32 - 33. Provide for the conditions for, and timing of, the special primary election and subsequent special election to fill the office of state senator.

Section 34. Requires the governor to issue a proclamation calling for a special primary election and special election for the office of state senator at least 50 days before the special primary election.

Section 35. Provides that a petition for the nomination of a candidate for a vacancy in the state senate must be executed under oath and state in substance that which is required under AS 15.25.030 (declaration of candidacy).

Section 36. Provides, unless specifically provided otherwise, that a special primary election and subsequent special election to fill a vacancy in the state senate will be conducted in the same manner as a regular primary or general election.

Section 37. Requires a statement to be written in bold and placed in a conspicuous location in the general election pamphlet that a political party or group preference indicated by a candidate for state office, United States Senate, or United States Representative on the ballot reflects only the designation requested by that candidate and is not an official endorsement by any political party or group.

Section 38. Removes language relating to individuals who become candidates through party petition.

Section 39. Eliminates a paragraph requiring a political group to submit its bylaws to the director and the United States Department of Justice.

Section 40. Changes the definition of "political party."

Section 41. Removes a reference to a statute repealed by the bill.

Section 42. Repeals AS 15.25.014, 15.25.056, 15.25.110, 15.25.120, 15.25.130, 15.25.140, 15.25.150, 15.25.160, 15.25.170, 15.25.180, 15.25.185, 15.25.190, 15.25.200; AS 15.40.145, 15.40.150, 15.40.200, 15.40.210, 15.40.290, 15.40.300, 15.40.450, 15.40.460; AS 15.56.030(a)(4), 15.56.030(a)(5), and 15.56.035(a)(5).

Section 43. Requires the director of elections to inform voters of the changes made to the state's election system under the bill.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version HB077
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) HB077-DOE-OOG-1-22-12 Dept. Affected Office of the Governor
 Title "An Act establishing a top two nonpartisan blanket Appropriation Division of Elections
primary election system...." Allocation Division of Elections
 Sponsor Representatives Gruenberg, Cissna, Kawasaki
 Requester House State Affairs Committee OMB Component Number 21

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services	(34.0)			(34.0)		(34.0)		
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	(34.0)	0.0	0.0	(34.0)	0.0	(34.0)	0.0	0.0

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF	(34.0)			(34.0)		(34.0)	
1005	#REF!							
1037	#REF!							
1178	#REF!							
TOTAL		(34.0)	0.0	0.0	(34.0)	0.0	(34.0)	0.0

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES								

Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required;
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version

Prepared by Gail Fenumiai, Director
 Division Division of Elections
 Approved by Guy Bell, Administrative Director
Administrative Services, Office of the Governor

Phone 465-2644
 Date/Time 1/22/2012, 10:48am
 Date 1/22/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. HB077

Analysis

Based on the current primary election structure, the division is required to print three ballot styles for each primary election. This bill would require the division to print only one ballot style for each primary election. The division estimates printing 100,000 less primary election ballots which would result in a cost savings of \$34.0. This would be a reduction in the division's on-year election increment.

**Alaska State Legislature
House of Representatives**



**Representative Max F. Gruenberg, Jr.
House District 20**

**Anchorage (Mountain View, Russian Jack, East Anchorage)
House Minority Floor Leader**

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Rep.Max.Gruenberg@legis.state.ak.us

TO: Rep. Bob Lynn, Chair
House State Affairs Committee

FROM: Rep. Max Gruenberg

DATE: March 31, 2011

RE: Hearing Request for HB 77 – Nonpartisan Blanket Primary Election

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Please consider this memorandum as a request for House Bill 77 to be heard in the House State Affairs Committee. Accompanying this memo are the following documents:

- HB 77 (27-LS0095\D)
- Sponsor Statement
- Sectional Analysis

Thank you for considering my request for a hearing on HB 77. Please contact my legislative aide, Gretchen Staff, at 465-4940 with any questions.